

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.4266 & 4267/Del/2019
Assessment Year: NA

Research & Education Society of Vs. CIT (Exemptions),
Medical Oncology, New Delhi.
E-65, Kamla Nagar,
Delhi.

PAN: AADAR8492F

(Appellant)

(Respondent)

Assessee by : Shri Nirmal Jain, CA
Revenue by : Ms Sapna Bhatia, CIT, DR
Date of Hearing : 25.08.2022
Date of Pronouncement : 22.09.2022

ORDER

PER C.M. GARG, JM:

These appeals filed by the assessee are directed against the order dated 11.03.2019 of the CIT(E), New Delhi, u/s 12AA(1)(b) r.w.s. 12A & 80G(5)(vi) of the Income tax Act, 1961.

2. The grounds of appeal raised by the assessee read as under:-

ITA No.4266/Del/2019

“1. That the order of CIT (Exemption) is bad in law as independent order has not been passed U/s 12AA of Income Tax Act.

2. That common order rejecting registration is not a valid order U/s 12AA as the proceedings were separately conducted through

filing of separate application in form 10A and issue of separate letters.

That without prejudice to above, it is submitted that:-

3. That Ld. CIT(Exemption) Delhi has erred in law and facts of the case while passing order dated 11.03.2019, rejecting application for registration U/s 12A of Income Tax Act against applications in Form 10A filed online 14.09.2018.

4. a) That order for rejection of registration U/s 12A has been passed for non appearance and non compliance against letters alleged to be issued but without following provisions prescribed in rule 127(2) r.w. section 282 of Income Tax Act.

b) That registration application U/s 12A has been wrongly rejected presuming in Para 2 that assessee is not interested in registration.

c) That order rejecting registration U/s 12A has been passed wrongly alleging in Para 4 that the genuineness of activities cannot be established.

d) That order rejecting registration U/s 12A has been passed wrongly alleging that the conditions for granting registration have not been satisfied by assessee.

e) That order rejecting registration U/s 12A has been passed mentioning general remarks without pointing any specific reason to hold that objects and activities available on record are not charitable and are not genuine respectively.

5. That on the facts and circumstances of the case and under the provisions of the law, Ld. CIT (Exemption) erred in appreciating the objects and activities of the society in the proper and prospective manner on record as filed along-with application for registration U/s 12A.

6. That the order rejecting registration U/s 12A has been passed without considering the prescribed requirements under rule 17A filed along with form 10A and available on record.

7. *That rejection order has been passed without providing any adequate opportunity of being heard to petitioner.*

8. *That order for rejection of registration has been passed arbitrary, hurriedly, in haste when it was getting time barred.*

9. *That Ld. CIT (Exemption) has erred while not passing separate order U/s 12A of Income Tax , Act.*

10. *That Ld. CIT (Exemption) has failed to pass a speaking and reasoned order while rejecting registration U/s 12A.*

11.*That the appellant craves , leaves, to amend , to add, to delete or to amend any other grounds at the time of the hearing.*

PRAYER

It is therefore prayed that:

A. *That deemed registration U/s 12A may be granted in view of no independent order passed U/s 12A of Income Tax Act.*

B. *Ld. CIT (Exemption) rejecting application for registration U/s 12AA of Income Tax Act without examining the objects and genuineness of activities may be reversed and direction may be issued to grant registration U/s 12A w.e.f. date of application.”*

ITA No.4267/Del/2019

“1. *That the order of CIT (Exemption) is bad in law as independent order has not been passed U/s 80G(5)(vi) of Income Tax Act.*

2. *That common order rejecting registration is not a valid order U/s 80G as the proceedings were separately conducted through filing of separate application in form 10G and issue of separate letters.*

That without prejudice to above, it is submitted that:-

3. *That Ld. CIT(Exemption) Delhi has erred in law and facts of the case while rejecting application for registration U/s 80G of*

Income Tax Act against application filed online 19.09.2018 only by referring in para 5 of common order dated 11.03.2019.

4. *That para 5 of common order rejecting registration u/s 80g has been passed, automatically stating “the applicant is not granted registration u/s 12AA (a) of the Income Tax Act, 1961, its application in Form No.10G seeking exemption u/s 80G is also hereby rejected as genuineness of activities is not established.*

5. *That order rejecting registration has been passed for non-appearance and non-compliance against letters alleged to be issued but without following provisions prescribed in rule 127(2) r.w. section 282 of Income Tax Act, 1961.*

6. *That on the facts and circumstances of the case and under the provisions of the law, Ld. CIT (Exemption) erred in appreciating the objects and activities of the society in the proper and prospective manner on record as filed along-with application for registration.*

7. *That the order rejecting registration has been passed without considering the prescribed requirements under rule 11AA filed along with form 10G available on record.*

8. *That order rejecting registration U/s 80G has been passed without providing adequate opportunity of being heard to petitioner.*

9. *That order for rejecting of registration U/s 80G has been passed arbitrary, hurriedly, in haste when it was getting time barred.*

10. *That Ld. CIT (Exemption) has failed to pass a speaking and reasoned order while rejecting registration U/s 80G.*

11. *That Ld. CIT (Exemption) has erred while not passing separate order U/s 80G of Income Tax , Act.*

12. *That the appellant craves , leaves, to amend , to add, to delete or to amend any other ground at the time of the hearing.*

PRAYER

It is therefore prayed that:

A. That deemed registration U/s 80G may be granted in view of no independent order passed U/s 80G 5 (vi) of Income Tax Act.

B. Id. CIT (Exemption) rejecting application for registration U/s 80G(5) (vi) of Income Tax Act without examining the objects and genuineness of activities may be reversed and direction may be issued to grant registration U/s 80G w.e.f. date of application.”

3. The Id. AR of the appellant submitted that the appellant filed separate applications for grant of registration u/s 12AA(1)(b) r.w.s. 12A and u/s 80G(5)(vii) of the Income-tax Act, 1961 (for short, 'the Act') on 14.09.2018 and both the applications were dismissed by the CIT(E), New Delhi, by observing that the conditions for granting registration u/s 12AA are not satisfied as the genuineness of the activities could not be established. The application seeking exemption u/s 80G was also rejected consequently to the rejection of registration u/s 12A of the Act. The Id. AR further submitted that the Id.CIT(E), however, granted liberty to the assessee to re-apply afresh for grant of registration u/s 12A and 80G of the Act after complying with the requisite details. The Id. Counsel further submitted that the assessee filed applications for grant of registration u/s 12A and 80G of the Act on 09.05.2019 and the Id.CIT(E) was kind enough to grant both the registrations u/s 12A and 80G vide order dated 28.11.2019 and these registrations were also renewed vide order dated 23.09.2021 from AY 2022-23 to AY 2026-27. After making the above submissions, the Id. AR further submitted that for AY 2018-19, the assessee filed the return of income on 20.09.2018 and the assessee received intimation/assessment order u/s 143(1) of

the Act on 10.02.2020 wherein the assessee was not allowed the benefit of section 11 of the Act as the assessee was not having registration u/s 12A of the Act for AY 2018-19. The Id. AR further elaborated that despite the fact that the assessee has granted registration u/s 12A and 80G of the Act by order dated 28.11.2019 which has also been renewed by order dated 23.09.2021, but, since the assessee was not having registration for AY 2018-19, therefore, the assessee is bound to file these appeals for grant of registration u/s 12A and 80G of the Act for AY 2018-19.

4. The Id. Counsel also informed that the assessee was also assessed as 'association of persons' for AY 2019-20 and since the amount of tax payable was very less, the assessee accepted the same and did not agitate the issue of grant of benefit u/s 11 of the Act for AY 2019-20, but the assessee is facing great hardship for AY 2018-19, therefore, the assessee press that since the applications for grant of registration u/s 12A and 80G dated 14.09.2018 and 19.09.2018 respectively were dismissed by passing a cryptic order and without allowing due opportunity of hearing to the assessee, therefore, the issue of grant of registration may kindly be restored to the file of the Id.CIT(E) enabling the assessee to avail the benefit of section 11 of the Act for AY 2018-19.

5. The Id. Counsel of the assessee alternatively submitted that as per proviso to sub-section (2) of section 12A of the Act and various judicial pronouncements the assessee is otherwise entitled to the benefit of subsequently granted

registration u/s 12A of the Act as on the date of grant of registration u/s 12A of the Act on 28.11.2019 the assessment proceedings were pending and the assessee received intimation u/s 143(1) of the Act on 10.02.2020 and appeal was filed on 27.02.2020 which is pending before the Id.CIT(A). Therefore, both the issues may kindly be restored to the file of the Id.CIT(A).

6. Replying to the above, the Id.CIT-DR vehemently opposed to the prayer of the assessee and submitted that all the factual matrix narrated by the assessee regarding rejection of first applications and allowance of second applications and its renewal by order dated 23.09.2020 are true which the Department did not dispute. However, when the assessee was granted registration u/s 12A and 80G of the Act which have also been renewed till AY 2026-27, then what purpose would be served if these appeals are restored to the file of the CIT(E) for reconsideration of prayer of the assessee for grant of registration u/s 12A and 80G of the Act. Therefore, the Id.CIT-DR extraneously submitted that the appeals of the assessee being misconceived may kindly be dismissed. The Id.CIT-DR vehemently submitted that these legal/alternative arguments of the assessee may be relevant before CIT(A) in the respective appeals, but, not before this Tribunal in the present appeals.

7. Placing rejoinder to the above, the Id. AR submitted that it is not the case of the authorities below that the assessee is doing any activities beyond its charitable objects and, therefore, the assessee has been granted registration u/s

12A and 80G of the Act which is effective till AY 2026-27. But, the hardship have arose to the assessee when the Department has denied the benefit of section 11 of the Act to the assessee for AY 2018-19 perhaps in absence of effective registration for AY 2018-19 as the first applications of the assessee trust was dismissed by way of a cryptic order and without allowing due opportunity of hearing by the Id.CIT(E) vide order dated 11.03.2019. Therefore, these appeals may kindly be allowed and the issue of registration u/s 12A and 80G of the Act effective for AY 2018-19 may kindly be restored to the file of the CIT(E). The Id. AR also reiterated that the assessee had filed the return of income for AY 2018-19 on 20.09.2018 and received intimation/order u/s 143(1) of the Act on 10.02.2020 wherein the benefit of section 11 of the Act was denied as the assessee was not having effective registration u/s 12A and 80G of the Act prior to 28.11.2019 which was effective from AY 2020-21 onwards. Therefore, it is necessary to restore the matter to the file of CIT(E) for grant of registration u/ss 12A and 80G of the Act effective for AY 2018-19 as the assessee filed the first application for registration u/s 12A of the Act on 14.09.2018 and for registration u/s 80G on 19.09.2018 keeping in view the charitable activities of the assessee for cancer patients being vital service to the weaker sections of the society. The Id. AR lastly submitted that appropriate directions may kindly be given to Id. CIT(E) or CIT(A) to grant justice to the assessee which is doing great charity service to the society.

8. On careful consideration of the above rival submissions, we note that in the impugned order dated 11.03.2019, the Id.CIT(E) dismissed the applications of the assessee, but, he granted liberty to the assessee to re-apply for the said registrations. Undisputedly, during the second round of proceedings before CIT(E), the assessee was granted registration u/s 12A and 80G of the Act by order dated 28.11.2019 w.e.f. AY 2020-21 which has also been renewed by order dated 23.09.2021 to be effective till AY 2026-27. However, the main grievance of the assessee is that since it was not having effective registration u/s 12A of the Act prior to AY 2020-21 including the present AY 2018-19, therefore, it was denied benefit of section 11 of the Act by order dated 10.02.2020 against which he has filed appeal on 27.02.2020 before the Id.CIT(A) pertaining to AY 2018-19 which is still pending for adjudication.

9. In the light of the above factual matrix, we are of the considered view that the Id.CIT(E) although dismissed the application for registration u/s 12A and 80G of the Act by passing the impugned order dated 11.03.2019, but, he also granted liberty to the assessee for filing second application which was allowed and the assessee was granted registration u/s 12A and 80G of the Act by order dated 28.11.2019. In view of the above factual position, we decline to accept the contention of the assessee that the impugned order passed by the Id.CIT(E) dated 11.03.2019 is cryptic and that the same was passed in violation of principles of natural justice. Thus, we also decline to accept and allow the ground of the

assessee for restoring the matter to the file of the CIT(E). Further, by taking note of the fact that registrations u/s 12A and 80G of the Act granted by order dated 28.11.2019 are existing and after renewal the same is effective till AY 2026-27, it would be not justified to direct the Id.CIT(E) to re-adjudicate the first applications dated 14.09.2018 and 19.09.2018 for grant of registration u/s 12A and 80G of the Act respectively. Therefore, we conclude that there is no need of restoring the said first applications to the file of the Id.CIT(E) for re-adjudication of the issue of grant of registration to the assessee u/s 12A and 80G of the Act.

10. Regarding alternative prayer of the assessee-appellant. In the present case, the assessee filed the return of income on 20.09.2018 for AY 2018-19 and received intimation/order u/s 143(1) of the Act on 10.02.2020. The assessee was granted registration u/s 12A and 80G on 28.11.2019 and, thereafter, received intimation/order u/s 143(1) of the Act on 10.02.2020, against which the assessee filed first appeal before the CIT(A) on 27.02.2020 which is as per the Id. AR, pending for adjudication till date. But, in the present appeals, this issue is not adjudicable, thus, the alternative prayer of the assessee is also dismissed being irrelevant and untenable in present appeals. However, the assessee will be at liberty to place all arguments on legal and merits before the Id.CIT(A) in that first appeal which would be adjudicated by the Id.CIT(A) within the four corners of law independently.