

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.225/PUN/2021

Mauli Multipurpose Organisation,
Property No. 1019,
Grampanchayat Lohgaon,
Pune - 411047

PAN : AAEAM5620K

.....अपीलार्थी / Appellant

बनाम / V/s.

The CIT, Exemption,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor B. Phadke
Revenue by : Shri B. Koteswara Rao

सुनवाई की तारीख / Date of Hearing : 26-04-2023
घोषणा की तारीख / Date of Pronouncement : 17-05-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 30-03-2021 passed by the Commissioner of Income Tax (Exemption), Pune [‘CIT(Exemption)'].

2. We find that this appeal was filed with a delay of 03 days. Upon hearing both the parties, we find that the delay of 03 days is saved by the decision of Hon'ble Supreme Court passed during National Lockdown

imposed on account of pandemic Covid-19. Therefore, the delay of 03 days is condoned.

3. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(Exemption) justified in rejecting the application seeking registration u/s. 80G of the Act.

4. It is noted that the assessee sought registration u/s. 80G(5)(vi) of the Act vide application dated 24-09-2020 in Form No. 10G. The CIT(Exemption) issued a letter on 12-10-2020 through ITBA portal requesting to upload certain other information/clarification for the purpose of verifying the genuineness of the activities carried out during the process of above said application. According to the CIT(Exemption), the assessee has shown value of building of Rs.14.62 lacs as on 31-03-2017 and no corresponding land is reflected in the Balance sheet for construction of building. The CIT(Exemption) sought explanation from the assessee to furnish the proof of ownership of immovable properties on which the building was constructed. It is noted that the CIT(Exemption) opined that the assessee constructed the said building deriving funds from the trust on the land owned by the four trustees i.e. Shri balkrushna Dnyanoba Khandve, Shri Ashok Dnyanoba Khandve, Shri Bhausahab Dnyanoba Khandve and Shri Tanaji Dnyoba Khandve. Therefore, according to the CIT(Exemption) that whatever educational activities are carried out, building constructed, funds invested in construction of building by the assessee are not protected and denied the registration u/s. 80G(5)(vi) of the Act.

5. The ld. AR submitted that admittedly, the said land belongs to the four trustees and the assessee's trust entered into lease agreement with the said trustees for 30 years. He vehemently argued that the finding of CIT(Exemption) has no basis for rejecting the application filed seeking for registration u/s. 80G(5)(vi) of the Act. He undertaken that the assessee is ready to modify the lease deed that, by inserting any clause benefiting the assessee's trust and prayed to allow the grounds raised by the assessee.

6. The ld. DR filed written submissions on 10-02-2023 which is on record and supported the order of CIT(Exemption).

7. Heard both the parties and perused the material available on record. As noted above the facts remains admitted that there was no land belonging the assessee's trust in the Balance sheet, but however, the assessee utilized its funds in constructing a building on land belonging to the trustees. The CIT(Exemption) discussed certain clauses at page No. 2 of the impugned order. On perusal of the same, we note that the lease period is for 30 years which clearly establishes that the assessee is not the owner and the ownership with the trustees. According to the CIT(Exemption) that the deed is not irrevocable which means that can be terminated at any time. It is pertinent to note the respondent-revenue filed written submissions vehemently opposing the registration u/s. 80G(5)(vi) of the Act. The relevant portion of the said written submissions is reproduced hereunder:

“2. Since the overall activity of construction of building as per the terms of the lease agreement having-direct benefit of the persons covered u/s1313) of the-income-tax Act, the same violates the conditions mentioned u/s 80G(5)(vi) of the Income-tax Act. For better understanding of the case, relevant provisions of the lease agreement dated 20.11.2015 (as translated by the appellant) is reproduced below:

"3. The agreed property is the ancestral property of the lessors and the said property's 7/12, bears the name of the lessee since today.

4. The agreed property is leased out by the lessors to the lessee for a span of past 30 years, the monthly rent of the same being Rs 1,00,000. As such each lessor is receivable Rs. 25,000/- monthly. In this agreement, there is no deposit receivable or payable by any of the parties to the agreement. Accordingly, irrespective of this agreement, the ownership of the agreed property vests in the lessors of the property. There will be no change in the ownership, that is, the ownership rights will still vest in the original owners of the property. But, the lessors cannot refrain the enjoyment and possession rights of the lessee.

5. The 'agreed property, being the property of the lessors is registered in lessors' name in government records. The 'agreed property' is in possession of the lessors.

6. Lessee is in need of land for establishing educational institution. As such, the "agreed property has been leased to the lessee by the lessor. As per the discussion between the lessors and the lessee, the following terms and conditions have been agreed and approved by the lessee on the basis of which, this agreement has been executed.

7. The lease agreement of the 'agreed property will-commence from the date of establishment of an educational institution for a period of 30 years.

8. This lease deed of the "agreed property' is executed with a prior discussion between the lessors and the lessee. In case, some technical constrain! of obtaining license for the establishment of the educational institution arises, then, in such a case, the lease agreement will be cancelled. In such a case, any expenses incurred by the lessee in the course of obtaining licence and permissions for the establishment of educational institution, will be a expenditure of the lessee and will be borne by him and the lessors will, in no circumstance be responsible for the same.

9. Any expenses of electricity connection, water and any miscellaneous expenses incurred by the lessee in it's activities will be borne by the lessee only. Likewise, at the time of expiry of the lease agreement, any connections established shall be disconnected, any liabilities relating to the property shall be paid off by the lessee. The bills relating to expenditures incurred by the lessee in relation to any connections established, shall be made available to the lessors for inspection after an interval of every 6 months.

10. The agreed property shall be restored in its original form after due cleaning, etc. on the expiry of the said lease agreement or in case of termination of the agreement before the expiry. In case there is no violation of the terms and conditions of the agreement by the lessee during the subsistence of the lease agreement, the same may be renewed on the discretion of the lessors.

11. An actual possession of the said property has been given to the lessee by the lessors an today's date.

12. The lessee will use the agreed property for the purpose of establishment of educational institution and any other educational purposes.

13. After the expiry of the lease agreement, the lessee will, without any prejudice, hand over the possession of the property to the lessors. Accordingly, the lessee will not set up any adverse title to the property of the lessors.

14. In case of an intention of the lessee to rescind the contract, a notice of the same shall be given to the lessors 6 months prior to the date of such termination of the agreement.

15. The lessors will support and assist the lessee for any permissions/accounts required for the said venture. Any signatures required will be provided by the lessee without consideration.

16. The licenses required for undertaking the said venture on the said property will be obtained by the lessee on his own responsibility. Similarly, the financial responsibility of the said venture will be that of the lessee. The lessee will not be in any way, directly or indirectly responsible for the said venture.

17. Above mentioned terms and conditions will be completely binding on the descendants of the lessee. Every term and condition shall be consciously followed. No term or condition shall be violated. In case of any violation of the terms and conditions of the agreement, the lessee will be bound to pay the damages, due to such violation.

18. The consideration for this lease agreement will be payable by the lessee on or before every 10th of the month as per the English calendar. Accordingly, you are willingly, with your free consent executing this lease agreement which is and will be binding on you is executed by you today."

On perusal of the above agreement it can be seen that the monthly rent of Rs.1,00,000/- has been agreed upon. The L'd AR during the course of hearing on 30.01.2023 has stated that no rent has been received by the trustees till date. However, it is a matter of fact that as per the mercantile system of accounting, the rent-remains payable to the trustees and outstanding liabilities has to be reflected in the books of accounts of the assessee. Since the aforesaid liabilities are not found into the balance sheet of the assessee, it can be construed that books of accounts of the assessee are not maintained as per the prescribed accounting method adopted by the assessee.

On perusal of Para-13, the terms of the agreement completely dispossess the assessee from the property i.e. the building construction at the end of the lease period of 30 years. It is pertinent of mention here that the aforesaid lease agreement is devoid of "Automatic renewal clause". From the simple interpretation of clause 13 it can be clearly construed that the assessee will build not only the constructed property but along with "Brand Value" of the educational institution after deriving the benefit of donations and freely hand over, a tax free asset having a Brand Value with the property constructed, to the trustees at the end of lease period of 30 years.

As per the terms of the lease agreement, the assessee will have no Right over the constructed building, property and the assessee is bound to

vacate the land of the trustees without claiming any adverse title to the property of the lessors. The agreement is completely silent on the fate of the constructed property which is nothing but an arrangement wherein no charitable purpose is plausible as entire activity of the trust get devised for the benefit of the persons/trustees/lessors in violations of section 13(3) of the Income-tax Act. It is also a matter of clarification as to whether the assessee trust, who has incurred capital expenses towards the construction of building is on the agricultural land with due NA permission of the competent authority and that too in whose name the approval for NA has been obtained.

3. Further from the memorandum of association (Annexure-A) it can be seen that the primary object of the organisation is to start virtual education solutions/institutions imparting pre-Primary/primary/ secondary education and skilable/employable education in the various disciplines like Engineering, Medicine, Pharmacy etc. Hence, the primary object of the institution being that of imparting virtual education also run counter to the capital expenses incurred by the assessee trust for the construction of the building.

4. It will not be out of context to mention here that when the assessee trust was conferred 12AA(1)(b)(i) registration on 28.09.2016 at para 7, it has been specifically mentioned as follows:

"07. The Registration u/s 12AA of the Income Tax Act 1961, does not automatically exempt the income of the Trust. The registration u/s 12AA of the Income Tax Act 1961 does not confer any exemption u/s 80G & therefore, a separate application may be filed for grant of registration u/s 80G of the Income Tax Act 1961."

Both the sections 12AA and 80G are exclusive of each other and approval of 12AA do - not tantamount to automatic approval of 80G.

5. The L'd AR has relied upon the judgement of High Court of Bombay in the case of CIT-II, Pune Vs National Education Foundation. The facts of the referred citation do not match vis-a-vis facts of the present case. In the referred case law, the 80G approval was already existent and subsequent denial of 80G by the CIT-II, Pune has been on the issue of non-compliance of financial statements of the preceding years and the denial of 80G has been primarily on procedural non-compliance. Contrary to the facts of the referred case law, the application of 80G in the present case has been already rejected twice before on 27.08.2019 and 08.08.2020. Further, there is nothing on record in the paper book submitted by L'd AR as to post amendment of section 12A w.e.f. 01.04.2021, whether re-registration of 12A has been obtained by the assessee trust or not.

Thus in view of the above submission, the order passed by the CIT(Exemption), Pune rejecting the application for grant of recognition under section 80G(5)(vi) of the Income-tax Act dated 30.03.2021 may kindly be upheld.

(Keyur Patel)
 Commissioner of Income Tax (DR)
 A-Bench, ITAT-I, Pune
 Email id: pune.cit.itat1@incometax.gov.in

8. On perusal of the above, we note that the respondent-revenue vehemently contended that overall activity of construction of building as per the terms of the lease agreement direct benefit of the persons covered u/s. 13(3) of the Act which clearly violates the conditions mentioned u/s. 80G(5)(vi) of the Act. Further, the said lease agreement is not containing automatic renewal clause and the trustees can dispossess the assessee from the building constructed by the assessee from its funds. The ld. DR argued that the assessee's trust after deriving the benefit of donations and constructing buildings on the land belonging to the trustees is a tax free asset, will hand over the said tax free asset to the trustees at the end of lease period of 30 years. We find force in the arguments of the ld. DR the assessee will have no right whatsoever over the construction of building and its development, utilizing from the assessee's trust fund. The assessee is also bound to vacate the said premises after the lease period. Further, it is brought to our notice that the CIT(Exemption) rejected the assessee's application on two earlier occasions and this is the third application wherein the assessee has not made any efforts in modifying the lease deed as the case may be. As noted above as rightly pointed by the ld. DR if the registration u/s. 80G(5)(vi) of the Act is granted, the assessee is entitled to receive certain donations which are tax free being utilized for construction, development and the achievement of its objects etc. which goes to the hands of the lessors after the expiry of lease period of 30 years. We find there is no guarantee or protection given to the said tax free asset in the lease deed and will benefit the persons i.e. trustees covered u/s. 13(3) of the Act. Thus, we find no infirmity in the order of CIT(Exemption) and it is justified. Thus, the grounds raised by the assessee are dismissed.

9. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 17th May, 2023.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th May, 2023.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT, Exemption, Pune
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune