

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 13/JP/2023
निर्धारणवर्ष/Assessment Year :2023-24

Gauri Shankar and Nirmala Agarwal Foundation 509-512, Vth Floor Sun N Moon Chambers Plot Nos. S-4, Kalwad Scheme Near Ajmer Flyover, Jaipur – 302 006	बनाम Vs.	The CIT(Exemption) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAGCG 8461 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Surendra Shah, CA
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 14/02/2023
उदघोषणा की तारीख / Date of Pronouncement: 03 /05/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(Exemption), Jaipur dated 30-11-2022 for the assessment year 2023-24 wherein the assessee has raised the following grounds of appeal.

“1. In the facts and circumstances of the case, the CIT(E), Jaipur is wrong, unjust and has erred in law by rejecting the application filed in Form 10AB for granting exemption u/s 80G of the Act solely on the basis that application is not registered under Rajasthan Public Trust Act, 1959 and wrongly applying the provisions

of Section 12AB(1)(b)(i)B of the Act for rejecting the application. The ld CIT(Exemption), Jaipur failed to appreciate the fact that:-

(i) The applicant was a company duly incorporated under section 8 of the Companies Act, 2013, a Central Act and was not required to be registered under Rajasthan Public Trust Act, 1959, a State Act.

(ii) That under Section 80G(5) of the Act, there was no requirement for the applicant to be registered under any other law apart from registration under the Companies Act.”

2.1 Apropos Ground No. 1 of the assessee, the facts as emerges from the order of the ld.CIT(Exemption) are as under:-

“06. In the absence of registration of the institution under Registration Public Trust, 1959, it could not be determined whether the applicant is complying with the requirements of Section 12AB(1)(b)(i)(B) of the Income Tax Act, 1961 and genuinely carrying out activities as per its objects.

07. Sufficient opportunity has been provided to the applicant to produce details and documents in support of his claim for exemption u/s 80G of the Income Tax Act, 1961 but applicant have failed to do so. In the light of the above facts, the application seeking exemption u/s 80G is hereby rejected and filed.

8. Therefore, the application in Form No. 10AB seeking approval u/s 80G is rejected.”

2.2 During the course of hearing the ld. AR of the assessee prayed that the ld. CIT(E) has erred in law by rejecting the application filed in Form 10AB for granting exemption u/s 80G of the Act solely on the basis that application is not

registered under Rajasthan Public Trust Act, 1959 and wrongly applying the provisions of Section 12AB(1)(b)(i)B of the Act for rejecting the application for which the ld. AR of the assessee filed the written submission.

2.3 On the other hand, the ld. DR supported the order of the ld. CIT(E)

2.4 We have heard both the parties and perused the facts of the case. As per facts of the present case, the assessee had filed an application in Form No. 10AB for granting exemption u/s 80G of the Act which was rejected by the ld. CIT(E) by holding that the assessee is not registered under Rajasthan Public Trust Act, 1959 and has violated the provisions mentioned u/s 12AB(1)(b)(i)(B) of the Act. During the course of hearing, the ld.AR although relied upon the written submission but after analyzing the record, we find that the assessee trust is carrying out charitable activities and registered u/s 12A of the Act and the said registration was also valid as on the date of rejection of application for grant of registration u/s 80G of the Act. We noticed that the assessee vide letter dated 11-11-2022 had provided the details of charitable activities being carried out by the assessee trust and even the ld CIT(E) has not disputed the same. Apart from this, the ld. AR has also drawn our attention to page no. 26 of the paper book wherein details of charitable activities being carried out by the assessee has been placed on record. However, the ld. CIT(E) while relying upon the judgement of Hon'ble Supreme Court in the case of New Noble Education Society in Civil Appeal No.3795 of 2014 has held

that since the assessee trust is not registered under Rajasthan Public Trust Act, therefore, it could not be determined whether the assessee trust is complying with the provisions of Section 12AB(1)(b)(i)(B) of the Act and genuinely carrying out the activities as per its objects. In our view, for granting registration u/s 80G of the Act, compliance of provisions of Section 12AB(1)(b)(i)(B) of the Act is not required to be looked into. There is no requirement that the institution is required to be registered under Rajasthan Public Trust Act, 1959 for seeking registration u/s 80G of the Act as there is no such pre-condition. As far as the judgement in the case of New Noble Education Society (supra) is concerned, the same is not found applicable in the facts of the present case as said judgement was in respect of seeking approval u/s 10(23C) and Section 12A of the Act and not for approval u/s 80G of the Act.

2.5 Before proceeding further, we would like to analyse the Second proviso to Section 80G(5) of the Act which prescribes the process to deal with the application received for seeking approval under first proviso to Section 80G(5) and the same is reproduced for ready reference.

“Provided further that the Principal Commissioner or Commissioner, on receipt of application made under the first proviso shall,-

(i) Where the application is made under clause (1) of the said proviso, pass an order in writing granting it approval for a period of five years;

(ii) Where the application is made under clause (i) or clause (iii) of the said proviso,-

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about-

(A) the genuineness of activities of such institution or fund; and

(B) the fulfillment of all the conditions laid down in clause (1) to (v);

(b) after satisfying himself about the genuineness of activities under item (A), and the fulfillment of all the conditions under item (B), of sub clause (a),-

(A) pass an order in writing granting it approval for a period of five years; or

(B) if he is not satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard;"

From the above, it is evident that for seeking approval u/s 80G(5), the Id. CIT(E) has only to satisfy himself about the genuineness of the activities and the fulfillment of the conditions under item (B) i.e. clause (i) to (v) of Section 80G(5) of the Act. Clause (i) to (v) of Section 80G(5) is reproduced hereby for ready reference.

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of section 11 and 12 or clause (23AA) or clause (23C) of section 10:

Provided that where an Institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if-

(a) the institution or fund maintains separate books of account in respect of such business;

- (b) the donations made to the institution or fund are not used by it, directly or Indirectly, for the purposes of such business; and
- (c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;
- (ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;
- (iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;
- (iv) the institution or fund maintains regular accounts of its receipts and expenditure;
- (v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority;”

From the records, we find that the Id. CIT(E) has not brought anything on record which proves that the activities of the assessee trust are not genuine and are in violation of its objects. The fact is that the company had been granted registration u/s 12A of the Act and it was valid on the date of rejection also which proves that the activities being carried out by the assessee was not in violation of its objects

2.6 After appreciating the entire facts of the present case, we found that the assessee has made complete compliance of clause no. (i) to (v) to Section 80G(5)

as the company/ assessee is registered u/s 12A of the Act and its income is not liable to be included in its total income under the provisions of Section 11 & 12 of the Act. Apart from above, clause 5 of the Memorandum of Association of the company specifically mentions that the surplus, if any, or the other income and property of the company, whatsoever derived shall be applied solely for the promotion of its objects as set forth in the memorandum. The said clause also restricts the company from paying or distributing surplus or income directly or indirectly by way of dividend, bonus or otherwise to the members of the company. Similarly, we have also analysed clause 10 of the Memorandum which specifically states that in event of winding up or dissolution of the company, the property shall not be distributed amongst the members and shall be given or transferred to such other company having objects similar to the objects of this company. We have also noticed that the objects of the company do not express that they are for the benefit of any particular religious community or case. The Company regularly maintains its accounts for receipt and expenditure and is audited by a CA Firm. The duly audited financial statements are also filed with the Ministry of Corporate Affairs every year. However the Company is undisputedly registered u/s 8 of the Companies Act, 2013. Thus, in our considered view, the assessee company fulfills the conditions laid down in clause (ii) to second proviso of Section 80G(5) and, therefore, the Id.CIT(Exemption) has erred in not granting exemption u/s 80G(5) to

the assessee trust and we direct the ld. CIT (E) to grant approval as per the provisions of law keeping in view of the totality of the facts of the case. Hence, in view of the above deliberation, the appeal of the assessee is allowed.

3.0 In the result, the appeal filed by the assessee is allowed

Order pronounced in the open court on 03 /05/2023.

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 03/05/2023

*Mishra

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

1. The Appellant- M/s. Gauri Shankar and Nirmala Agarwal Foundationl, Jaipur
2. प्रत्यर्थी / The Respondent- The ld CIT(Exemption), Jaipur Jaipur
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 13/JP/2023)

आदेशानुसार / By order,

Asstt. Registrar