

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER
(Conducted through Virtual Court)

ITA No.374 & 375/Ind/2022

Path Foundation 76, Mall Road, Mhow, Indore	<u>बनम/</u> Vs.	CIT, Exemption Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AAKCP 9651 P		
Assessee by	Shri Ashish Goyal & Shri N.D. Patwa, Ars	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	23.02.2023	
Date of Pronouncement	28.04.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by orders bearing DIN: (i) ITBA/EXM/F/EXM45/2022-23/1046018906(1), and (ii) ITBA/EXM/F/EXM45/2022-23/1046019255(1), both dated 27.09.2022 and both passed by learned Commissioner of Income-Tax (Exemption), Bhopal ["Ld. CIT(E)"] rejecting the applications submitted by assessee for grant of registration u/s 12AB and 80G respectively, the assessee has filed these appeals on the grounds mentioned in respective Appeal Memo (Form No. 36).

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee named "Path Foundation" is a company incorporated u/s 8 of the Companies Act, 2013

on 01.01.2020 for various objects as set out in the Memorandum of Association (MOA) filed to the Registrar of Companies (ROC). The assessee sought registration u/s 12AB and 80G of Income-tax Act, 1961 and for that applied to Ld. CIT(E). In the matter of section 12AB, the assessee initially filed application dated 27.03.2021 for provisional registration which was duly granted by an order dated 27.05.2021. Subsequently, the assessee filed application dated 31.03.2022 for final registration but the same was rejected by an order dated 27.09.2022 and the provisional registration granted earlier was also cancelled. Same way, in the matter of section 80G, the assessee initially filed application dated 07.01.2022 for provisional registration which was duly granted by an order dated 14.01.2022. Subsequently, the assessee filed application dated 31.03.2022 for final registration but the same was rejected by a separate order dated 27.09.2022 and the provisional registration granted earlier was also cancelled. Now, the assessee has come in these two appeals assailing rejection-orders dated 27.09.2022 passed by Ld. CIT(E). Since these appeals in the matters of registration u/s 12AB and 80G are inter-related, at the request of parties they were heard together and being disposed of by this consolidated order for the sake of convenience, clarity and brevity.

Proceedings before Ld. CIT(E):

4. During the course of proceeding before him, Ld. CIT(E) observed that the assessee has committed two defaults:

- (i) The assessee submitted notarized but unregistered lease-deed entered into with Prakash Chand Agarwal for a period of 5 years. Section 17 of the Registration Act, 1908 prescribes for compulsory registration of any lease-deed of immovable property for a period of one year or more. Hence, the non-registration of lease-deed executed by assessee for 5 years, is a violation of Registration Act, 1908.

- (ii) The Ministry of Corporate Affairs, Govt. of India, has issued a Notification F.No. CSR-05/03/2020-CSR-MCA dated 22.01.2021 by which Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 had been amended, according to which every company established u/s 8 of Companies Act, 2013 (like assessee-company) who intends to undertake CSR activity shall get itself registered w.e.f. 01.04.2021 with Central Govt. by filing Form CSR-1. The assessee obtained such registration w.e.f. 11.02.2022, although it had taken funds for CSR activities from M/s Prakash Ashphalting & Toll Highways (India) Ltd. during the period 01.04.2021 to 11.02.2022. Ld. CIT(E) has made a list of such contributions received by assessee in his order. Thus, the assessee has committed violation of Notification.

5. Then, Ld. CIT(E) observed that the aforesaid two violations of laws, committed by assessee, attracted the provision of section 12AB(1)(b)(i)(B), highlighted below in bold letters:

“12AB(1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

(a) XXX (not relevant, hence not re-produced)

(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—

(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of the trust or institution; and

(B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;

(ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i),—

(A) pass an order in writing registering the trust or institution for a period of five years; or

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

6. With such observations, Ld. CIT(E) rejected assessee's application for registration u/s 12AB. Since the registration u/s 80G is dependent upon registration u/s 12AB, he also rejected assessee's application for registration u/s 80G.

Assessee's submissions:

7. Before us, Ld. AR representing the assessee raised following contentions and assailed the action of Ld. CIT(E):

- (i) Regarding violation of Registration Act, 1908 by way of non-registration of lease-deed, it is submitted that the lease-deed is executed on stamp paper of Rs. 500/- and the assessee has got it notarized from Notary Public, a copy is placed in Paper-Book. Then, Ld. AR submitted that the provision of section 12AB(1)(b)(i)(B), as relied upon by CIT(A) requires "*the compliance of such requirements of any other law for the time being in force by the trust or institution **as are material for the purpose of achieving its objects***". Ld. AR submitted that the verdict of section is very specific, clear and unambiguous; it requires only such compliances of law **as are material for the purpose of achieving objects** of assessee. Ld. AR submitted that non-registration of lease-deed may be a non-compliance of law but that is nothing to do with achievement of objects of assessee. Ld. AR submitted that the assessee is carrying out its objects perfectly, fully, validly and uninterruptedly even without registration of lease-deed. Therefore, the reason assigned by CIT(E) is not valid.
- (ii) Regarding alleged violation of Notification dated 22.01.2021, Ld. AR straightaway drew our attention to the amended Rule 4 prescribed therein which reads as under:

"4(2)(a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the Form CSR-1 electronically with the Registrar, with effect from the 01st day of April, 2021:

Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April, 2021.

[Emphasis supplied]

Ld. AR submitted that the aforesaid amended Rule has substituted the original Rule 4 of the Companies (Corporate Social Responsibility Policy). Ld. AR invited our attention to the Proviso in the new Rule (emphasized above) and submitted that the Govt. has specifically prescribed that the amended Rule shall not affect the CSR projects or programmes approved prior to 1st day of April, 2021. Then, Ld. AR submitted that the assessee received contributions from Prakash Ashphaltings & Toll Highways (India) Ltd. for various ongoing CSR projects, which is very much evident from letter dated 01.04.2021 given by **Prakash Ashphaltings & Toll Highways (India) Ltd.** to assessee at the time of giving contribution to assessee, a copy of the letter is placed at Page No. 189 of the Paper-Book and the same was also filed to CIT(E) vide Para No. 4 of letter dated 14.09.2022 (Page No. 93 of Paper-Book). Drawing our attention to these Pages of Paper-Book, Ld. AR submitted that the names of various projects which were ongoing and approved prior to 01.04.2021 are also mentioned. Thus, Ld. AR submitted that the assessee's case was covered by Proviso to amended Rule 4; therefore the assessee was not required to obtain registration under CSR *qua* the contributions received from **Prakash Ashphaltings & Toll Highways (India) Ltd.** Hence, there is no violation of Notification as stated by Ld. CIT(E).

8. Lastly, as a matter of fact, Ld. AR also drew our attention to Page No. 103 to 169 of the Paper-Book and submitted that the assessee is doing so many activities for the welfare of public at large which is evident from various news items, photographs, etc. With these submissions, Ld. AR prayed that the CIT(E) was not justified in rejecting applications of assessee, he ought to have granted the registrations as applied for.

Revenue's submissions:

9. Per contra, Ld. DR made following submissions:
- (i) Regarding violation of Registration Act, 1908, Ld. DR fairly agreed to the submission of Ld. AR that the non-registration of lease-deed is not a default which can attract section 12AB(1)(b)(i)(B).
 - (ii) Regarding violation of Notification dated 22.01.2021, Ld. DR heavily relied upon the order passed by CIT(E).

Our analysis and decision:

10. We have considered rival submissions of both sides and perused the material held on record including the orders passed by CIT(E). After careful consideration, we find as under:

- (i) Regarding violation of Registration Act, 1908, both sides agree that non-registration of lease-deed is not a type of non-compliance which can attract section 12AB(1)(b)(i)(B).
- (ii) Regarding violation of Notification dated 22.01.2021, we had some discussion with learned Representatives of both sides on the provision of amended Rule 4 and apparently it was observed that the impugned contributions received by assessee from Prakash Ashphaltings & Toll Highways (India) Ltd. for the projects approved before 01.04.2021, were covered by Proviso to amended Rule 4; hence the assessee was not required to obtain registration *qua* such contributions. But, however, it was thought fit to obtain expert opinion on this point and Ld. AR agreed to submit such opinion. Both sides agreed that the Bench may take into account such expert-opinion while passing order. Subsequently, the assessee has submitted opinion-letter No. IJ/PATH/2023 dated 04.03.2023 of M/s 5Isha Jain & Co, Company Secretaries, Indore (received in ITAT Office vide inward entry No. 1857 dated 09.03.2023). The said opinion-letter is scanned below:

ISHAN JAIN & CO.
Company Secretaries

Ishan Jain (FCS, RV(SFA))
Mob.: +91 - 9479555060

4th March, 2023

IJ/PATH/2023

Without Prejudice

To,
The Board of Directors of,
PATH Foundation,
1218/7, Baircha Road Post office
Army War College Mhow
Indore (M.P.)- 453441

Sub.: Opinion on the matter related to Corporate Social Responsibility (CSR) activities undertaken by PATH Foundation on behalf of Prakash Asphaltings and Toll Highways (India) Limited.

Dear Sir/Madam,

We have been asked to provide our opinion on the following matters:-

- I. What are the requirement for obtaining CSRIN by the PATH Foundation?
- II. Whether the CSR fund accepted by PATH Foundation from Prakash Asphaltings and Toll Highways (India) Limited for its ongoing projects prior to CSR Amended Rule effective from 22nd January, 2021 is Valid or not even the PATH Foundation is not having CSRIN?

We have been provided copies of the following documents which have been referred:

- (1) CSR Policy approved by the Board of Directors of the Prakash Asphaltings and Toll Highways (India) Limited;
- (2) Memorandum and Articles of Association of PATH Foundation;
- (3) Auditors Certificate for utilisation of funds;
- (4) Project Report as approved by the CSR Committee and Board of Directors of Prakash Asphaltings and Toll Highways (India) Limited and the copy of CSR Committee and Board Resolution dated 18th Sept., 2020.

We have also referred the applicable provisions of section 135 of the Companies, Act, 2013 read with the relevant rules and Schedule VII of the Companies Act, 2013.

We have also discussed the matter with the representatives of the PATH Foundation for sake of clarifications as required for making this opinion.

Now we submit our following opinion as desired:

- I. PATH Foundation is a company registered under the provisions of Section 8 of Companies Act, 2013 and the said company is promoted by Prakash Asphaltings and Toll Highways (India) Limited for the purpose of CSR only pursuant to section 135 of the Companies Act, 2013.
 - (a) As per the requirement of Section 135, every Trust/Society/Section 8/25 Companies/ Entites established under an act of Parliament or a State Legislature is required to obtain CSRIN i.e. Corporate Social Responsibility Identification Number issued by the Ministry of Corporate Affairs after implementing the new



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CSR Rules applicable from 22nd January, 2021. However, as per Rule 4(2) of Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended vide notification dated 22nd January, 2021, the every entity as discussed above is required to register itself with MCA by filing form CSR-1 to MCA after 1st April, 2021.

(b) *Since, PATH Foundation is a company registered u/s 8 of the Companies Act, 2013 is required to take CSRIN from MCA for undertaking CSR projects/programmes approved on or after 1st April, 2021.*

II. - As per the Project Report approved by the Board and CSR Committee on dated 18th Sept., 2020 specifying the following projects of Prakash Asphaltings and Toll Highways (India) Limited:-

S. No.	Name of Project	Amount in Rs. Allocated for project
1	Social Welfare	Rs. 50,00,000
2	Women Welfare	Rs. 75,00,000
3	Education	Rs. 80,00,000
4	Healthcare	Rs. 4,00,00,000

And the company has appointed PATH Foundation as the agency for undertaking CSR Activities for and on behalf of Prakash Asphaltings and Toll Highways (India) Limited.

- As per the Rule 4(2)(a) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended on 22nd January, 2021 which states that "4(2)(a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021. Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021.
- As per the documents and information and Auditors Certificate present to me, it is opined that, the funds received from Prakash Asphaltings and Toll Highways (India) Limited between 1st April, 2021 till the date of getting CSRIN is related to on-going projects of Prakash Asphaltings and Toll Highways (India) Limited and as per the proviso given in Rule 4(2)(a) for accepting this amount PATH Foundation was not required to take CSRIN as the said project was approved on 18th Sept., 2020 i.e. before commencement of the amended rule.

LIMITATIONS:

1. Our opinion is based on the facts as placed before us and discussion had with the management and is restricted to the Companies Act, 2013 based on the provisions of section 135 of the Companies Act, 2013 read with Companies (CSR) Rules, 2014 for the aforesaid purposes.
2. The interpretation and analysis put forth is on the basis of the existing statutory laws prevailing as on date, limited to the facts and query raised.
3. Any change in the law, prospective or retrospective would necessarily involve a re-evaluation.
4. Unless requested, no responsibility is taken for updating the view point.
5. This opinion is provided on request and is not meant for circulation.





Thus, the opinion given by expert in concluding para of letter reads as under:

“As per the documents and information and Auditors Certificate present to me, it is opined that, the funds received from Prakash Ashphaltings and Toll Highways (India) Limited between 1st April, 2021 till the date of getting CSRIN is related to on-going projects of Prakash Ashphaltings and Toll Highways (India) Limited and as per the proviso given in Rule 4(2)(a) for accepting this amount, PATH Foundation was not required to take CSRIN as the said project was approved on 18th Sept., 2020 i.e. before commencement of the amended rule.”

This brings us to conclude that there is no violation of Notification dated 22.01.2021 by assessee.

11. Thus, in view of above discussion and for the reasons stated therein, we observe that the twin-reasons assigned by Ld. CIT(E) as basis for rejection of assessee’s applications for final registration u/s 10AB and 80G are not valid. Therefore, we quash both of the orders dated 27.09.2022

passed by Ld. CIT(E) in the matter of section 12AB and 80G. We also direct the Ld. CIT(E) to grant registration to the assessee u/s 12AB and 80G as applied for. The assessee succeeds in these appeals.

12. Resultantly, these appeals of assessee are allowed.

<i>Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on/...../2023.</i>
<i>Order pronounced in the open court on 28/04/2023.</i>

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28.04.2023
Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	

4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	