

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos.404 & 405/Ind/2022

Autism Mitra Society for the welfare of persons with intellectual disability, 54, Premier Orchards Colony, Bhopal (Assessee / Appellant)	<u>बनाम/</u> Vs.	CIT (Exemption), Bhopal. (Revenue / Respondent)
PAN: AALAA 4434 C		
Assessee by	Shri Ashish Goyal, C.A. and Shri N. D. Patwa, Adv.	
Revenue by	Shri P.K.Mishra, CIT DR	
Date of Hearing	11.07.2023	
Date of Pronouncement	14.07.2023	

आदेश / O R D E R

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

Feeling aggrieved by orders bearing DIN: (i) ITBA/EXM/F/EXM45/2022-23/1046393756(1) & (ii) ITBA/EXM/F/EXM45/2022-23/1046392693(1), both dated 19.10.2022 and both passed by Commissioner of Income-tax (Exemption), Bhopal ["Ld. CIT(E)"] rejecting the applications filed by assessee for grant of registration u/s 12AB & 80G respectively, the assessee has filed these appeals on the grounds mentioned in respective appeal memos.

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

3. Briefly stated the facts are such that the assessee is a society engaged in charitable activity for welfare of children suffering from autism, a serious and non-curable disease. The assessee sought registration u/s 12AB and 80G of Income-tax Act, 1961 and for that purpose applied to Ld. CIT(E) in two separate proceedings. In both matters, the assessee was granted provisional registrations by two separate orders dated 28.05.2021. Subsequently, the assessee filed applications dated 16.04.2022 for final registrations but the same were rejected by impugned orders dated 19.10.2022 and the provisional registrations granted earlier were also cancelled. Now, the assessee has come in these two appeals assailing the impugned orders passed by Ld. CIT(E). Since these appeals for grant of registration u/s 12AB & 80G are inter-related and involve the same line of reasoning for adjudication, 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.

4. Ld. AR for the assessee carried us to the orders passed by Ld. CIT(E) and demonstrated that there are 3 reasons assigned by CIT(E) for denial of registration. The Ld. AR assailed these reasons one by one as under:

(i) The first reason given by Ld. CIT(E) in Para No. 3(a) of his order is such that the assessee is running a residential facility for autism-affected children and at the relevant time 13 children were residing. Ld. CIT(E) observed that out of 13 children, the assessee received amounts from parents of 7 children and the receipts so made were shown as donation in books of account and the assessee also issued Form No. 10BE to the parents of those students for availing deduction u/s 80G. The Ld. CIT(E) has, therefore, concluded that on one hand charging fee from parents is wrong and on other hand giving donation-

receipts in Form No. 10BE so as to entitle the parents for deduction u/s 80G is also promoting tax evasion.

In this regard, Ld. AR admits that it is true that the assessee received certain amounts from parents of 7 children but the Ld. CIT(E) has given month-wise/parent-wise details of receipts in a Tabular format on Page No. 6 & 7 of his order. Ld. AR drew our attention to same and contended that from a cursory look of the details, one can easily discern at least three vital aspects, namely (a) the receipts are from 7 parents and not from parents of all 13 children; (b) even from 7 parents, the receipts are not made in all months, they are in a few months; and (c) the amounts received are neither identical nor constant; they are varying. Ld. AR further submitted that there is no agreement made by assessee with the parents which creates any obligation or commitment on the part of parents to make any payment to assessee; all those payments are voluntary contributions made by parents out of their own desire. Ld. AR submitted that the CIT(E) has wrong described the receipts as charges or fee; they are essentially the voluntary contributions. Without prejudice, Ld. AR emphatically submitted that even assuming but not accepting that the receipts are in the nature of fee/charges, then also there is nothing wrong for the reason that the assessee-society is incurring much higher expenses for running of the residential places and it is always in dire need of funds for such charitable activity. Ld. AR submitted that there are schools which are charging/receiving fee from students and still granted registration u/s 12AB by department since their objects and activities are charitable. Therefore, the receipt of fee, even if there be, does not come in the way of grant of registration.

- (ii) The second reason given by Ld. CIT(E) in Para No. 3(b) for rejecting registration is such that the assessee has made certain payments to

the parents of 2 children, namely Shri S.K. Shrivastava and Shri Naveen Agrawal.

In this regard, Ld. AR admits that it is true that the assessee has made payments to those two parents. But, however, the fact is such that those parents are giving honorary services to the assessee-society and in performance of such honorary services, they had purchased some material for use by assessee and made payments out of their pockets. Subsequently, the assessee reimbursed actual amounts to them. In this regard, Ld. AR has also placed on record the copies of invoices of the suppliers, mainly Amazon.in, on Page Nos. 6 to 28 of Paper-Book. Ld. AR carried our attention to those invoices one by one in the presence of Ld. DR and also identified the description of items purchased through those invoices to show that the items mentioned therein were needed for use/consumption by autism-affected persons. In short, Ld. AR established that the payments were in the nature of mere reimbursements.

- (iii) The third reason for rejection mentioned by Ld. CIT(E) in Para No. 3(c) of his order is such that the assessee had issued Form No. 10BE for amounts received on 06.04.2021, 07.05.2021 and 12.04.2021, which is before grant of provisional registration on 28.05.2021 and, therefore, the assessee has attempted to give undue benefit of section 80G to the payers even before grant of provisional registration.

In this regard, Ld. AR pointed out that the actual dates of receipts were 04.06.2021, 05.07.2021 and 04.12.2021 but due to MM/DD/YYYY format in Bank statement, the dates did not appear in DD/MM/YYYY format and that has created a confusion in the mind of Ld. CIT(E). Ld. AR asserted that the assessee has not issued any Form No. 10BE prior to grant of provisional registration.

5. At last, Ld. AR also submitted that the assessee is engaged in welfare of children suffering from autism which is a very pious and charitable work. Ld. CIT(E) has nowhere disputed or doubted the objects and activities of assessee; therefore the registration u/s 12AB and 80G must be granted.

6. Per contra, Ld. DR for the revenue dutifully relied upon the order of Ld. CIT(E) but, however, he could not rebut or contradict the submissions made by Ld. AR.

7. We have considered submission of both sides and also perused the impugned orders of CIT(E) as well as the documents filed by Ld. AR in Paper-Book. After a careful consideration, we find that the CIT(E) has assigned three reasons for denial of registration but the Ld. AR has successfully dispelled all those reasons. In so far as 1st reason of receipts from parents of children is concerned, we find that (i) the assessee has not received amounts from parents of all 13 children residing in assessee's campus, the receipts were from parents of 7 children only; and (ii) the receipts are not systematic i.e. neither in all months nor of identical or constant amounts. Furthermore, as argued by Ld. AR, there is no agreement creating any obligation or commitment on the part of parents to make payment to assessee. These factual aspects clearly demonstrate that the payments made by parents are in the nature of mere voluntary contributions and not in the nature of recovery of charges/fee. Had it been from parents of all children and it would have been systematic in terms of periodicity and amount, there might have been a signal of charge/fee but that is absent. Therefore, the Ld. CIT(E) is not correct in perceiving the amounts received by assessee as charge/fee. Regarding 2nd reason of payments to Shri S.K. Shrivastava and Shri Naveen Agrawal, on perusal of evidences placed by Ld. AR, we prima facie find that the payments are in the nature of re-imburements of actual expenses incurred by those persons for the purposes of assessee. Regarding 3rd and last reason of issuance of receipts before grant of provisional registration, Ld. AR has demonstrated

that there had been a confusion due to MM/DD/YYYY format in place of DD/MM/YYYY only and also there is a clear assertion by Ld. AR that the assessee has not issued any certificate in Form No. 10BE for donations prior to grant of provisional registration. During hearing, the Ld. DR, though dutifully supported the order of CIT(E), but could not rebut or contradict the submissions of Ld. AR. That brings us to conclude that none of the reasons assigned by Ld. CIT(A) for rejection of registration is valid. Therefore, we are inclined to quash both of the impugned orders passed by Ld. CIT(E) denying registration to assessee u/s 12AB and 80G. We also direct Ld. CIT(E) to grant registration to the assessee u/s 12AB and 80G as applied for. The assessee succeeds in these appeals.

8. Resultantly, these appeals are allowed.

Order pronounced in the open court on 14.07.2023.

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 14.07.2023

CPU/Sr. PS

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

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*