

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 No. 79 & 80/Ind/2023
(Assessment Year:)

Bhopal Diocesan Trust Association CNI 9 Bondary Road, Nasik Kanya Higher Secondary School Campus, Indore	Vs.	CIT Exemption Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAETB 222 R		
Assessee by	Shri Ashish Goyal and N.D. Patwa, ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	05.07.2023	
Date of Pronouncement	25.08.2023	

ORDER

Per Vijay Pal Rao, JM:

These two appeals by the assessee are directed against the composite order dated 07.02.2023 of Commissioner of Income Tax (Exemption), passed u/s 12AA/80G(5) of the Act.

2. The assessee has raised following grounds of appeal in ITANo.79/Ind/2023:

“1. The order appealed against is bad-in-law, void-ab-initio, barred by limitation, against the principles of natural justice and fair play, illegal and therefore liable to be quashed.

2. Without prejudice, the Ld. CIT Exemption, Bhopal erred in rejecting the application filed for registration u/s 12AB without providing fair opportunity and without considering the facts and circumstances of the case.

3. Without prejudice, the registration u/s 12AB ought to be granted in the facts and circumstances of the case.

4. The appellant carves leave to add, amend or modify any of the grounds of appeal.”

3. The assessee has raised following grounds of appeal in ITANo.80/Ind/2023:

“1. The order appealed against is bad-in-law, void-ab-initio, barred by limitation, against the principles of natural justice and fair play, illegal and therefore liable to be quashed.

2. Without prejudice, the Ld. CIT Exemption, Bhopal erred in rejecting the application filed for registration u/s 80G(5) without providing fair opportunity and without considering the facts and circumstances of the case.

3. Without prejudice, the registration u/s 80G(5) ought to be granted in the facts and circumstances of the case.

4. The appellant carves leave to add, amend or modify any of the grounds of appeal.”

4. The assessee applied in form no.10AB for registration u/s 12AB and approval u/s 80G(5) under the new provision of the I.T.Act. The registration as well as approval was denied by the CIT(E) on the ground that there is no charitable activities carried out by the assessee, the main object of the assessee is religious in nature and donation received by the assessee from 414 persons is in cash without complete address which is in violation of the provisions of section 80G(5) of the Act. Therefore, the CIT(E) denied the registration u/s 12AA of the Act as well as approval u/s 80G(5) of the Act.

5. Before the Tribunal the Ld. AR of the assessee has submitted that the objects of the assessee inter alia are to aid and further the religious, social, educational, medical and charitable work of the diocese of Bhopal. The objects also includes to accept the properties to be held by the trust, to act or exercise any power which may be confined to the trust of

appointing managers, treasurer, trustees, auditors, inspectors, examiners and charities. Ld. AR has submitted that the assessee trust was registered with the Registrar of Public Trust, Indore vide registration certificate date 05.01.2005. The Memorandum of Trust incorporate, the main objects of the assessee trust and one of the objects is to aid and further the religious, social, educational medical and charitable work of the Diocese of Bhopal cannot be considered that the assessee's objects are not charitable in nature. He has submitted that initially trust was defunct since its registration as there was no donation received by the assessee but subsequently the assessee received donation and then started the charitable activities. Ld. AR has submitted that merely use of word 'religious' would not make it religious but the overall objects of the assessee trust are to be considered. The object is to aid and further the various works including the religious, social, educational medical and charitable work of the diocese of Bhopal would make it clear that object is not limited to any religious activity or any religions. The objects of the trust predominantly are charitable as there is no restriction in such objects. It is not a case whereby the charity would be limited to any particular religion. The main object of the assessee to do work in the area of education, medical and social work which are all falling in the definition of charitable activities. Ld. AR has submitted that the trust has started its activities recently. He has pointed out that earlier all the matters were taken care by the Church of North India Trust Association Delhi directly as there were no funds available with the assessee trust. The parent body was looking after everything, as per requirements. Now the assessee trust is looking and doing the activities on its own after able to raise the funds and receiving the donation. The assessee trust has started operations and applied for registration u/s 112AA as well as for approval u/s 80G. The donation were received since financial year 2021-22 and in the earlier years there were no donation and no income of the assessee trust except a normal bank interest of Rs.254/-. He has further submitted that as the operations of the trust just started from the financial year 2021-22, the assessee trust has called request for pending work which needs to be

completed. Thereafter the assessee had done several activities of charitable. He has pointed out that during the COVID period nurses, teachers and volunteers distributed Ration and food free of cost and also our hospitals were open day and night. Since all the affairs were earlier financially managed by the Church of North India Trust Association, therefore as per the audit report no such expenses has been incurred in this record. The assessee has donated medical equipment to Christian Hospital Indore which were received by the assessee from Lanxess India Pvt. Ltd. Thane. Thus, the AR has submitted that this shows that the assessee has done charitable activities. The CIT(E) has not asked the assessee to provide any supporting evidence regarding the medical equipment received by the assessee and donated to the Christian Hospital. The assessee is ready to produce the agreement with Christian Hospital and Lanxess India Pvt. Ltd. as available with the assessee. The assessee trust has also carried out some repair work to the Christian Hospital as requested by the Hospital vide letter dated 14.09.2022. Ld.AR has submitted that the assessee although do not run any school and hospital however, the very object of the trust is to supporting other Diocesan and Church of North India Trust Association and its affiliates therefore, the payment of salary to the school staff of St. Andrew's Diocesan which was pending from last three year was paid on 04.07.2022 via bank RTGS and another staff member via Cheque dated 18.05.2022. The assessee has also got the work of repair of the boundary wall of St. Andrew's English Medium School and made to payment to the contractors through banking channel. Therefore all these activities clearly show that the assessee has carried out charitable activities which were not considered by the CIT(E) while passing the impugned order. As regards the donation received from persons Ld. AR has submitted that representatives of the assessee trust including father of Church received donation from various persons in the small amount of Rs.500/1000 thereafter the amount is given to the assessee trust with the name of the donors and mobile no. Since the donation amount was very small and the donor did not intent to claim the exemption u/s 80G therefore, the assessee did not issue form no. 10BE to the donors for

claiming deduction u/s 80G. Thus, the Ld. AR has submitted that the Ld. CIT(E) has rejected the application for registration u/s 12AA and approval u/s 80G(5) without considering relevant facts and evidence.

6. He has pleaded that the impugned order may be set aside and the assessee be granted registration u/s 12A as well as approval u/s 80G(5) of the Act. He has pointed out that the identical cases in case of Unit Church of Northern India Trust Association the registration was granted by the department u/s 12A as well as approval u/s 89G vide order dated 30.12.2021. He has also referred to the registration granted to the Diocesan of Delhi vide order dated 12.03.2022 and submitted that all these trusts are having identical objects and bylaws as of the assessee. He has then referred to the registration granted to Nagpur Diocesan Trust Association vide order dated 24.09.2021 and submitted that on identical objects and bylaws the department has granted the registration to these trusts then denial of the registration to the assessee is not justified.

7. On the other hand, ld. DR has submitted that the holding of property is not charitable activity. The ld. CIT(E) has examined the objects of the assessee trust and found that one of the main objects of the assessee trust is religious in nature and there is no infrastructure to do the charitable activity. All the donations were received by the assessee in cash without complete address of the donors, therefore, it is clear violation of the provisions of section 80G. The assessee has submitted audit report in form no.10B and form no.10 has been filed on 28.09.2022 therefore, form no.10 was not submitted while claiming accumulation u/s 11(1)(a) of the Act. The assessee has failed to comply with the conditions as per section 11(1) and (2) of the Act for accumulation of the income. He has relied upon the order of the Ld. CIT(E).

8. We have considered the rival submissions as well as relevant material on record. The Ld. CIT(E) while passing impugned order has observed that there was no charitable activity carried out by the assessee after it was created in the year 2005. Further the CIT(E) has observed that

on perusal of the clause 3A(b) one of the object is furtherance of religious, therefore, the assessee's object is not purely charitable in nature. The next objection of the Ld. CIT(E) was regarding the donation received by the assessee in cash without complete address of the donors and the claim of the assessee regarding medical equipment donated to the Christain Hospital was not supported with documents. Now the assessee has produced relevant document in the paper book and also placed registration granted u/s 12A and approval u/s 80G to various trusts namely United Church of Northern India Trust Association, Diocese of Delhi and Nagpur Diocesan Trust Association. The assessee has claimed that the objects and bylaws of these trusts are identical to objects of the assessee and thus contended that when the department has accepted the objects of these trusts as charitable and granted registration then the denial of the same to the assessee is not justified. Further the assessee has also explained that earlier there was no donation received by the assessee and therefore, no charitable activities were carried out and only recently the assessee received the donation and carried out charitable activities. The assessee was working as carrying out the activities on behalf of United Church of Northern India Trust Association. It is pertinent to note that when the assessee has started the charitable activities after receiving donation then the same are required to be verified and considered. Further the identical cases of the trust the registration has been granted by the department which has not been taken into account by the CIT(E) while passing impugned order and rejecting application for registration u/s 12AA as well as approval u/s 80G(5) of the Act. Accordingly in the facts and circumstances of the case and in the interest of justice we set aside the impugned order of the CIT(E) and remand the matter of the record to the Ld. CIT(E) for reconsideration of the application of the assessee for registration u/s 12AA as well as approval u/s 80G(5) after considering all the relevant evidences and explanation of the assessee as well as the registration granted by the department to the other trusts stated to be having identical objects and bylaws. Needless to say the

assessee be given appropriate opportunity of hearing before passing fresh order.

9. In the result, appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 23 .08.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 23 .08.2023

Patel/Sr. PS

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

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

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