

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 128 & 144/Asr/2023
Assessment Years: NA

Sarfaroosh Foundation,
Gandhi Road, Moga

[PAN: AAZTS9528G]
(Appellant)

Vs. The Commissioner of Income Tax,
(Exemptions), Chandigarh

(Respondent)

Appellant by : Sh. S. K. Vatta, CA
Respondent by : Sh. Amit Jain, CIT DR
Date of Hearing : 23.08.2023
Date of Pronouncement : 13.09.2023

ORDER

Per Dr. M. L. Meena, AM:

Both the captioned appeals are filed by the assessee against the separate orders of the Id. Commissioner of Income Tax (Exemptions), Chandigarh even dated 27.03.2023.

2. The assessee has raised the following grounds of appeal in ITA No. 128/Asr/2023:

- “1. *That the worthy CIT(Exemptions), have erred both on facts and in law and was unjustified to refuse to grant/approval Registration of Trust u/s 12AB of the Income Tax Act, with the objects for carrying on CSR activities and for Public Charitable purposes, since failed to consider and appreciate, the followings, facts and legal provisions in right perspective :*

 - (i) *That CSR provisions for Public Charitable objects/purposes u/s 135 of the Companies Act, read with Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 specifically provides that Board shall ensure that the CSR activities are undertaken by the company itself or through a Registered Public Trust or Society established by the company either singly or alongwith any other company;*
 - (ii) *That the objects and purpose for carrying on CSR activities under schedule VII read with section 135 of the Companies Act and for Public Charitable purposes are similar and analogous to each other and there is no adverse findings with regard to same in the impugned order of refusing registration/granting approval.*
2. *That neither the company have claimed such contributions made to the impugned Trust as Business expenditure nor even otherwise was eligible for deduction in respect of such contribution/s for CSR activities/Public Charitable purposes and the impugned Trust have submitted its duly audited Financial Statement for the year ended 31.03.2021 and 31.03.2022 and also details of such expenditure incurred upto 31.12.2022, duly supported by Bills/vouchers/supporting documents evidencing amount spent/incurred for such specified CSR activities / Public Charitable purposes and no illegality/defects have been raised/pointed out to justify such refusal of Registration/approval u/s 12AB of the Income Tax Act.*
3. *That the Learned CIT(Exemptions) was unjustified and also erred both on facts and in law for refusing registration/approval of the Trust on the grounds that the composition of the Trust is restrictive since failed to*

consider clause ' 18' of the Trust Deed where the maximum numbers of the Trustees could be seven, therefore, there is no restrictive clause to limit the appointment of number of trustees, to the Directors of the company only; And even otherwise there are no existing legal restrictive provisions that the directors of the company could not be the Trustees of Trust so formed.

4. *That the assessee Trust craves to add, modify, delete any ground/s of Appeal during the course of Appeal proceedings.”*

3. Grounds of appeal in ITA No. 144/Asr/2023:

- “1. *That the worthy CIT(Exemptions), have erred both on facts and in law and was unjustified to refuse to grant/approval Registration of Trust u/s 80G of the Income Tax Act, with the objects for carrying on CSR activities and for Public Charitable purposes, since failed to consider and appreciate, the followings, facts and legal provisions in right perspective :*

- (i) *That CSR provisions for Public Charitable objects/purposes u/s 135 of the Companies Act, read with Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 specifically provides that Board shall ensure that the CSR activities are undertaken by the company itself or through a Registered Public Trust or Society established by the company either singly or alongwith any other company;*

- (ii) *That the objects and purpose for carrying on CSR activities under schedule VII read with section 135 of the Companies Act and for Public Charitable purposes are similar and analogous to each other and there is no adverse findings with regard to same in the impugned order of refusing registration/granting approval.*

2. *That the worthy CIT (Exemptions) have erred/unjustified both on facts and in law to reject to grant approval/registration u/s 80G of the Income Tax Act ignoring the substantial facts that the amount as spent by the Trust was for Public Charitable purposes since the impugned Trust have submitted due Audited Financial Statement for the year ended 31st March, 2021, 31.03.2022 and upto 31.12.2022 duly supported by Bills/Vouchers*

supporting documents evidence amounts spent/incurred and no defects, whatsoever have been raised/pointed out in the impugned order denying registration/approval u/s 80G of the Income Tax Act.

3. *That the assessee Trust craves to add, modify, delete any ground/s of Appeal during the course of Appeal proceedings.”*

4. The appellant assessee has filed an application in Form No. 10B on 30.09.2022 under sub clause (iii) of section (ac) of sub-section 12A of the Income Tax Act, 1961 for seeking registration u/s 12AB of the Act for the trust claimed to be created on 26.02.2020 by M/s Puri Oil Mills Ltd., a Company incorporated under the Companies Act, 1956, having its registered office at 302 Jyoti Sikhar Building, 8 Distt. Centre, Janak Puri, New Delhi and its factory situated at Gandhi Road, Moga, through Mrs. Indu Puri, Chairperson of the Company. The trust was created to carry on and execute the CSR activities of M/s Puri Oil Mills Ltd. as per Schedule VII of the Companies Act, 2013. The Id. CIT(E), Chandigarh has stated that the provision of the Act necessitates examination of two basic conditions of grant of registration u/s 12AB that the objects of the society in satisfaction of the Competent Authority in respect of genuineness of activities in consonance to the objects of the society when the applicant is an ongoing entity.

5. After considering the reply of the applicant submitted on 24.11.2022, the Id. CIT(E) has issued an additional query on 27.01.2023 to ascertain the genuineness of the activities of the trust and rejected the application for registration u/s 12AB and approval u/s 80G of the Act as under:

5.1(b) On perusal of the reply submitted by the applicant, following additional queries were raised on 27.01.2023 to ascertain the genuineness of the activities of the applicant:

- Please furnish date-wise details of charitable activities performed by Society/trust/ company as per its objects during the F.Yrs. 2020-21, 2021-22 and 2022-23 (Till date) alongwith documentary evidences i.e. Photographs, newspaper cuttings etc. Also furnish the year-wise details of expenditure incurred to carry out these activities alongwith copy of bills/vouchers.

Sr. No.	Particulars of charitable	Date	Expenditure incurred	Detail of Payments	Documentary evidence
	activities		(in Rs.)		

- Please furnish copies of bank account statements for F.Yrs. 2020-21, 2021-22 and 2022-23 (Till date) and furnish the narration of debit and credit entries.
- Please corroborate the expenditure shown in Income & Expenditure Account with the date-wise details of charitable activities and highlight the payments thereof in Bank account statement or Cash Book.

5.1(c) In response to above queries, the applicant has submitted the following documents on 31.01.2023:-

- Bank Account State for the period 01.04.2021 to 31.03.2022
- Income Expenditure Statement for F.Y. 2021-2022.
- Ledger Account of expenses for F.Y. 2021-2022.

6.1 The contents of the trust deed of the applicant trust particularly points that the trust is declared on 26.02.2020 by the company M/s Puri Oil Mills Ltd., New Delhi, the settlor, having its factory situated at Gandhi Road, Mbga through Mrs Indu Puri, Chairperson of the company and *“WHEREAS THE SETTLOR is desirous to **create a dedicated trust to carry on and execute the CSR activities as per Schedule VII of the Companies Act, 2013**”*. Further, as per para 3 of the trust deed containing the objects of the trust it is mentioned that the objectives of the Trust shall be **wholly for the purpose of CSR activities of M/s Puri Oil Mills Ltd.**, defined under Schedule VII read with section 135 of the Companies Act, 2013 and public and charitable purposes and income shall be applied for the same and accumulated in India wholly for **CSR Activities**, public & charitable purposes.

6.2 It is pertinent to mention here the trust deed of the applicant trust was declared on 26.02.2020 by M/s Puri Oil Mills Ltd., a Company incorporated under the Companies Act, 1956, having its registered office at 302 Jyoti Sikhar Building, 8 Distt Centre, Janak Pun New Delhi and its factory situated at Gandhi Road, Moga, through Mrs. Indu Puri, Chairperson of the Company. As per the information available on the portal of Ministry of Corporate Affairs, Gol, the trustees of the applicant trust viz. Smt Indu Puri, Smt. Shalini Puri and Sh Vivek Puri are the Directors of the company M/s Puri Oil Mills Ltd. This makes the M/s Puri Oil Mills Ltd. closely linked to the applicant trust.

6.3 From the above it is clear that the objects narrated regarding other charitable activities being claimed are ostensible addendum to the main activity which is proposed to conduct CSR activities of M/s Puri Oil Mills Ltd. The company M/s Puri Oil Mills Ltd in its obligation to carry out mandated CSR activities has tried to present the activities of the trust as a charitable one.

7. With this background behind the rationale that went into creation of the applicant trust it would also be worthwhile to examine the provisions of other Acts in this regard.

8.1 Corporate Social Responsibility (CSR) implies a concept, whereby companies decide voluntarily to contribute to a better society and a cleaner environment - a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of their stakeholders and society in general in a voluntary way. The above is the rationale that went behind the inclusion of CSR in the case of corporates

supporting Government's efforts at nation building. "Corporate Social Responsibility" means and includes but is not limited to Projects or programs relating to activities specified in Schedule VII to the Companies Act, 2013. The Corporate Social Responsibility has been incorporated through Section 135(1) of Companies Act, 2013 in which 2% of average Net Profit for the last 3 years of some large companies has to be spent on C.S.R. There is no specific tax exemptions available on expenses incurred on C.S.R. However, there are several activities, part of Schedule VII of the Companies Act, 2013, that enjoy exemptions under the IncomeTax Act.

8.2 Projects or programs relating to those activities which are undertaken by the Board of Directors of a company in ensuring the recommendation of the CSR Committee of the Board as per declared CSR Policy of the Company along with the conditions that such policy will cover subject specified in Schedule VII of the Companies Act, 2013.

The provisions of CRS applies to:

- Every company
- Its holding company
- Its subsidiary company
- Foreign company

Having in the preceding financial year:

- Net worth > 500 crore
- Turnover > 1000 crore
- Net profit > 5 crore

8.3 Every company to which CSR criteria are applicable shall constitute a Corporate Social Responsibility (CSR) Committee. The CSR Committee shall formulate and recommend a CSR policy to the Board. CSR policy shall point out the activities to be undertaken by the company as enumerated in Schedule VII the Companies Act, 2013. The activities should not be the same which are done by the company in its normal course of business.

8.4 The amount spent by a Company on CSR activities cannot be claimed as business expenditure. The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to Corporate Social

Responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

8.5 The companies have been mandated to spend 2% of the Net Profit on social causes through projects or programs relating to activities specified in Schedule VII of the Companies Act, 2013. It is also to be borne in mind that the corporates, as a group, had waged a sustained campaign at the time of inclusion of CSR provisions in the enactment of 2013 to elicit two concessions from the government i.e. allow tax exemption on expenditure incurred as a part of CSR and also allow them a leeway to have a control over the way their contributions are spent by the Government.

8.6 Even in the case of captive trusts it has been mandated that functions envisaged to be covered by CSR shall be undertaken by the primary implementation agency and undertaking its own programmes to impact targeted beneficiaries.

9. It is reiterated that as per the provisions of CSR that the amount spent under the head CSR will not be deductible under Income Tax Act in the hands of the Company. In the instant case, it is seen that in order to work around the above provisions, the company M/s Puri Oil Mills Ltd has created the instant trust through its Directors to implement CSR activities and other charitable activities. This is a close arrangement whereby a Limited company is not only able to claim redemption of its CSR obligation but also at the same time able to control the finances of the Trust. Seeking exemption of CSR amount u/s 11 & 12 of the Income Tax Act, 1961 is otherwise not allowed.

10. The method adopted by the applicant, which is controlled by single company and managed through trustees who are simultaneously part of the Company, is to build an in- house captive trust ostensibly for doing C.S.R. activity so that the amount, which is compulsorily to be spent, remains within their control The present represents an attempt to:

- (i) to create a closely held trust which in the instant case is controlled by M/s Puri Oil Mills Ltd through its directors.
- (ii) seek exemption from taxation by taking recourse to purported charitable activity u/s 2(15) of I.T. Act

- (iii) to retain control over money, invested in a closely held trust, that has otherwise been precluded from being claimed as business expenditure by the Finance Act of 2014.

11. Considering all of the above it is safe to conclude in the present case that:

- (i) the main aim behind creation of the trust is to on one hand comply with CSR activities under the garb of doing charitable activities and on the other claim the benefit of exemption available u/s 11 & 12 of the Act, which will otherwise not be permitted to any company undertaking CSR activities.
- (ii) the composition of the trust is restrictive and to that extent not amenable to public charity

It is reiterated that the trust is intended to be a mere instrument to carry out CSR functions of the company M/s Puri Oil Mills Ltd and given its restrictive composition it in no way enures to the benefit of general public nor does it partake the meaning of a public charitable trust.

Accordingly, the activities of the trust are held not to be charitable.

12. In the backdrop of above discussion, accordingly the application filed by the applicant for registration u/s 12AB of the Act is hereby rejected, which rejection and consequent lack of registration will apply from this F.Y. 2022-23 onwards and also supersede any registration granted u/s 12AB or 12AA of the Act by any authority at any earlier time.

6. The Ld. AR submitted that the worthy CIT (Exemptions), was unjustified in rejecting the grant/approval of Registration of Trust u/s 12AB of the Income Tax Act, with the objects for carrying on CSR activities and for Public Charitable purposes, that he failed to consider and appreciate, the merits on facts in right perspective that CSR provisions for Public Charitable objects/purposes u/s 135 of the Companies Act, read with Rule

4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 specifically provides that Board shall ensure that the CSR activities are undertaken by the company itself or through a Registered Public Trust or Society established by the company either singly or alongwith any other company and that the objects and purpose for carrying on CSR activities under schedule VII read with section 135 of the Companies Act and for Public Charitable purposes are similar and analogous to each other and there was no adverse findings with regard to same in the impugned order of refusing registration/granting approval. He further submitted that neither the company have claimed such contributions made to the impugned Trust as Business expenditure nor even otherwise was eligible for deduction in respect of such contributions for CSR activities/Public Charitable purposes. The impugned Trust stated to have submitted its duly audited Financial Statement for the year ended 31.03.2021 and 31.03.2022 and also details of such expenditure incurred upto 31.12.2022, duly supported by Bills/vouchers/supporting documents evidencing amount spent/incurred for such specified CSR activities / Public Charitable purposes and no illegality/defects have been raised/pointed out to justify such refusal of Registration/approval u/s 12AB of the Income Tax Act and thus, it was contended that the Learned CIT(Exemptions) was unjustified in law for

refusing registration/approval of the Trust on the grounds that the composition of the Trust is restrictive since failed to consider clause ' 18' of the Trust Deed where the maximum numbers of the Trustees could be seven, therefore, there is no restrictive clause to limit the appointment of number of trustees, to the Directors of the company only and that even otherwise there are no existing legal restrictive provisions that the directors of the company could not be the Trustees of Trust so formed.

7. Per Contra, the learned CIT (DR) supported the impugned order.

8. We have heard both the sides, perused the record and impugned orders. Admittedly, the Ld. CIT Exemption has not categorically addressed and adjudicated on the basic conditions required for grant of registration u/s 12AB regarding the objects and purpose for carrying on CSR activities under schedule VII read with section 135 of the Companies Act and that whether the Public Charitable purposes and proposed CSR activities are similar and analogous to each other. In our view, the CIT Exemption is required to give specific findings regarding same in the impugned order while refusing registration/granting approval. The decision of the Ld. CIT Exemption rejecting the grant/Approval of appellants application without pointing out any deficiency in objects or activities of the Trust in violation of

provisions to proviso to section 2(15) of the Act, and discussion about the manner of activities being carried out by the company and whenever contributions made to the impugned Trust were claimed as Business expenditure or even otherwise was not eligible for deduction in respect of such contribution/s for CSR activities/Public Charitable purposes in spite of the facts that the Trust claimed to have submitted its duly audited Financial Statement for the year ended 31.03.2021 and 31.03.2022 and also details of such expenditure incurred upto 31.12.2022, duly supported by Bills/vouchers/supporting documents evidencing amount spent/incurred for such specified CSR activities / Public Charitable purposes.

9. It is seen that in the present cases the impugned orders of the the CIT (Exemptions) are non-speaking and without discussion in refusal to grant Registration u/s 12AB and approval u/s 80G of the Income Tax Act because, he has not addressed the objectives and activities of the Trust, in respect of the appellant, being ongoing entity for three financial years. Further, the CIT(E) order of rejection of the applications in arbitrary manner for the reason that he has not addressed the submission of appellant that the composition of the Trust is restrictive without considering clause ' 18' of the Trust Deed where the maximum numbers of the Trustees could be

seven, and that there was no restrictive clause to limit the appointment of number of trustees, even the Directors of the company when there are no existing legal restrictive provisions that the directors of the company could not be the Trustees of Trust so formed. In view of that matter, we consider it deem fit to remand back the matter to the file of the CIT exemption to adjudicate the issue of grant of registration under section 12AB and approval under section 80G of the act afresh after allowing sufficient opportunity of being heard to the appellant trust and considering the material filed on the record and to filed in the course of the fresh proceedings. The CIT(E) is also directed to examine the application of the applicant trust as per amended provision of law for the grant of registration under section 12 AB and approval under section 80G of the Act.The appellant Trust is also directed to cooperate in the fresh proceedings before the CIT exemption in compliance to quarries raised.

10. Accordingly, the matter is remanded to the file of the CIT exemption for afresh examination and adjudication of the applications of the Appellant Trust for grant of registration under section 12AB and approval under section 80G of the act as per law.

11. In the result, the both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 13.09.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order