

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. 158/Ind/2023

Shree Jai Govind Gopinath Shiksha Samitee, 49, Gujar Kheda Road, Mhow	<u>बनाम/</u> Vs.	CIT (Exemption), Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AACTS 9397 Q		
Assessee by	Shri Atik Bansal, AR	
Revenue by	Ms.Simran Bhullar, CIT DR	
Date of Hearing	18.10.2023	
Date of Pronouncement	26.10.2023	

आदेश / O R D E R

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

Feeling aggrieved by order dated 10.04.2023 having DIN: ITBA/EXM/F/EXM45/2023-24/1051977279(1) passed by learned Commissioner of Income-Tax (Exemption), Bhopal ["CIT(E)"] by which assessee's application for grant of final approval u/s 80G of Income-tax Act, 1961 has been rejected and the provisional approval granted earlier is also cancelled, the assessee has filed this appeal.

2. Brief facts leading to present appeal are such that the assessee, an educational society, was granted provisional approval u/s 80G(5) by Income-

tax Department's order dated 06.04.2022. Thereafter, as required under law, the assessee filed application in Form No. 10AB for grant of final approval u/s 80G(5)(vi) but the Ld. CIT(E), vide impugned order dated 10.04.2023, rejected assessee's request of final approval and also cancelled the provisional approval granted earlier. Aggrieved, the assessee has come in this appeal.

3. Ld. AR for assessee drew our attention to Para No. 3 of impugned order and submitted that the CIT(E) has noted that the assessee received corpus donations from certain donors during 3 financial years 2019-20 to 2021-22 but not submitted any directions from donors justifying that the donations were really in the nature of 'corpus donations'. The CIT(E) further noted that the assessee has claimed the donations noted by him as fully exempt on the strength of 'corpus donations' and not offered them for taxation. Therefore, it is a violation of section 80G(5)(i) which prescribes thus:

“(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.”

4. Ld. AR then submitted that the assessee was having registration under old provision of section 12A granted by CIT, Bhopal vide Order F.No. Hqrs/Insp/12-A/6/92-93 dated 03.06.1992 w.e.f. 01.04.1991 (copy of order at Page No. 47 of Paper-Book). Further, the assessee has also obtained registration under new provision of section 12A granted by CIT(E) vide Order in Form No. 10AC bearing DIN: AACTS9397QE2021101 dated 05.04.2022 from AY 2022-23 to 2026-27 (copy of order at Page No. 44-46 of Paper-Book). Thus, the assessee always had registration u/s 12A and on the strength of such registration u/s 12A, the assessee always claimed

exemption u/s 11/12 of the act consistently year after year and the tax-authorities allowed exemption. Ld. AR submitted that the department has processed assessee's returns of financial years 2019-20 to 2021-22 noted by CIT(E) and allowed exemption u/s 11/12 for entire income of assessee including the alleged corpus-donations noted by CIT(E). In other words, the assessee's income, including corpus donations, has not been included in total income by virtue of provisions of section 11/12. Therefore, the CIT(E) is wrong in observing that there is a violation of section 80G(5)(i) whereas there is no such violation.

5. Then, Ld. AR carried us to Page No. 11-20 of the Paper-Book where the letters given by donors giving specific directions regarding use of donations alleged by CIT(E) are filed. Ld. AR read out contents of all letters, one by one, in the presence of Ld. DR for revenue and demonstrated successfully that the said letters of donors contain sufficient directions to establish 'corpus donations'. Ld. AR submitted that although these letters were not submitted before CIT(E) but they have been placed for prima facie satisfaction of Bench that the donations were in fact 'corpus donations'. Having said so, Ld. AR went on contending that for the sake of discussion, even if we assume but without accepting that the donations were 'non-corpus/ordinary donations', then also the exemption u/s 11/12 would be available to assessee qua those very donations u/s 11(1)(a) though it may not be u/s 11(1)(d). Moreover, it is a part of assessment-exercise to look into the nature of donations, whether corpus or non-corpus, and allow

exemption u/s 11(1)(a) or 11(1)(d). But in either case, the exemption u/s 11/12 would be allowable to assessee. Ld. AR submitted that interpretation of section 80G(5)(i), as pressed into service by Ld. CIT(E), is very simple and should not be confused i.e. the assessee must be having exemption u/s 11/12 for being eligible for approval u/s 80G(5). In more simplified words, the assessee's registration u/s 12A must be in force, which the present assessee has. Therefore, Ld. AR concluded that the CIT(E) has wrongly rejected assessee's application; his order must be quashed and he should be directed to grant approval as applied for.

6. Ld. DR dutifully supported the order of CIT(E).

7. We have considered rival submissions of both sides and perused the impugned order as well as documents filed in the Paper-Book. After a careful consideration, we find that the CIT(E) has assigned a limited reason for denying approval to assessee i.e. there is a violation of section 80G(5)(i). On a careful reading of section 80G(5)(i), re-produced earlier, what we are able to interpret is that the said section merely requires that the assessee must be entitled to exemption u/s 11/12. In present case, the assessee is having valid registration u/s 12A in force year to year and the revenue has allowed exemption to assessee u/s 11/12 on the basis of such registration. It is not the case of revenue that the assessee's income was not eligible for exemption in past or that the exemption u/s 11/12 was not allowed to assessee. Therefore, the CIT(E)'s order rejecting the approval u/s 80G is not

a valid order. We quash the same and direct him to pass order afresh granting approval to assessee as applied for.

8. Resultantly, this appeal of assessee is allowed.

Order pronounced in the open court on 26.10.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 26.10.2023

Patel/Sr. PS

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

By order

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