

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.531 & 532/Ind/2023
(Both Assessment Year: 2023-24)

Mohanlal Ramnarayan Khandelwal Foundation C/o Shri Ram Fibres (India) Pvt. Ltd. Awalda Bagh Road, Gandhwani Dhar	Vs.	CIT (E), Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAOCM7632H		
Assessee by	Ms. Nisha Lahoti & Shri Vijay Bansal, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.06.2024	
Date of Pronouncement	18.06.2024	

ORDER

Per Vijay Pal Rao, JM :

These two appeals by the assessee are directed against the composite order of the Commissioner of Income Tax (Exemption), dated 23.10.2023 whereby the applications of the assessee filed in form no.10AB for grant of registration u/s 12AB and approval u/s 80G(5) were rejected. The assessee has raised following grounds of appeal:

In ITA No.531/Ind/2023

1. *On the facts and circumstances of the case and applicable law, Ld. CIT(Exemption), Bhopal erred in rejecting the application made u/s 12AB(1)(b)(ii)(B) which is contrary to the material on record and provisions of the Act, unjust and bad in law.*
2. *On the facts and circumstances of the case and applicable law, Ld. CIT(Exemption), Bhopal erred in rejecting the application filed u/s 12A(1)(ac)(iii) without complying with the provisions of section 12AB(1)(b)(ii) which specifically requires the Ld. CIT(Exemption) to satisfy himself about the objects of the trust and the genuineness of the activities carried out.*
3. *On the facts and circumstances of the case and applicable law. Ld CIT(Exemption), Bhopal erred in rejecting the application filed u/s 12A(1)(ac)(iii) by reference to the provisions of section 80G(5) which is grossly incorrect.*
4. *On the facts and circumstances of the case and applicable law, Ld. CIT(Exemption), Bhopal erred in rejecting the provisional registration granted to the assessee*
5. *On the facts and circumstances of the case and applicable law, Ld CIT(Exemption), Bhopal erred in not considering the submissions and documentary evidences placed on record in response to the various notices issued in proper perspective.*
6. *The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal."*

In ITA No.532/Ind/2023

1. *On the facts and circumstances of the case and NA applicable law, Ld CIT(Exemption), Bhopal erred in rejecting the application made u/s 80G(5) which is contrary to the material on record and provisions of the Act, unjust and bad in law.*

2. *On the facts and circumstances of the case and NA applicable law, Ld CIT(Exemption). Bhopal erred in rejecting the application filed without specifically stating which of the conditions of section 80G(5) (i) to (v) are not fulfilled by the assessee*

3. *On the facts and circumstances of the case and NA applicable law, Ld. CIT(Exemption), Bhopal erred in rejecting the application filed by applying provisions of Explanation 3 to section 80G*

4. *On the facts and circumstances of the case and applicable law, Ld. CIT(Exemption), Bhopal erred innot examining which of the activities carried out by the assessee is not genuine within the meaning of rule 11AA(4) of the Income Tax Rule, 1962.*

5. *On the facts and circumstances of the case and NA applicable law, Ld. CIT(Exemption), Bhopal erred in traveling beyond the requirement of rule 11AA(4), which required Ld. CIT(Exemption), Bhopal to satisfy himself only about the genuineness of the activities of the applicant.*

6. *On the facts and circumstances of the case and applicable law, Ld. CIT(Exemption), Bhopal erred in rejecting the provisional registration granted to the assessee.*

7. *On the facts and circumstances of the case and NA applicable law, Ld. CIT(Exemption), Bhopal erred in not considering the submissions and documentary evidences placed on record in response to the various notices issued in proper perspective.*

8. *The appellant craves leave to add, amend, alter or NA otherwise raise any other ground of appeal."*

2. Ld. Counsel for the assessee has submitted that the assessee filed an application in form 10A on 17.10.2022 for provisional registration u/s 12AB as well as approval u/s 80G(5) of Income Tax

Act which was granted by issuing form 10AC dated 17.11.2022 and 24.12.2022 respectively. Ld. Counsel referred to the applications in form 10AB filed by the assessee on 14th April 2023 for regular registration u/s 12AA as well as approval u/s 80G(5) of the Act. She has referred to the impugned order of the CIT(E) and submitted that the notice dated 29.09.2023 was issued to the assessee for furnishing the information and documents regarding the activities of assessee and supporting evidences, details of the donation containing of name, address, mobile no., date, amount of donation, mode of donation and nature of donation along with audited balance sheet and audited income and expenditure account for F.Y.2002-23. Ld. Counsel has submitted that the assessee has duly replied the said notice which is also reproduced at page no.3 to 5 of the impugned order. In the said reply the assessee furnished all the relevant details except the mobile no. of the donors for which the assessee sought 15 days' time as the donors belong to rural area. Further the assessee also requested to fix the case after 15 days so that its CA/tax consultant can present the case properly. Ld. Counsel then referred to para no.3 of the impugned order and submitted that the impugned order has been passed even before 15 days of time as requested by the assessee. She has then referred to the reasoning of CIT (Exemption) for rejecting applications and submitted that in the entire order the CIT(E) has discussed the conditions for granting approval u/s80G(5) and no reason has been given for rejecting application for registration u/s 12AB of the Act. Ld. Counsel has submitted that the assessee has duly clarified the

query of the CIT(E) regarding the objects of the assessee on the points of religious activity and submitted that the assessee did not carry out any religious activity and the object clause intend to cover the wider object and charitable activities to be carried out by the assessee in its working in the future to achieve its objection of general public interest from time to time. Thus without even consider this fact that no expenditure has been incurred by the assessee on any religious activity and therefore, there is no breach of conditions prescribed u/s 80G(5B) of the Act which prescribes a permissible limit of religious expenditure up to 5% of the total income. Thus, the Ld. Counsel has submitted that when the assessee has not incurred any expenditure on religious activity then the denial of approval u/s 80G(5) is also not justified. Hence, Ld. Counsel has pleaded that the impugned order of CIT(E) be set aside and the assessee be granted registration u/s 10AB as well as approval u/s 80G(5) of the Act.

3. On the other hand, Ld. DR has submitted that the CIT(E) has issued notice dated 29.09.2023 for furnishing the specific information and details but the assessee has failed to submit requisite details and information to be considered by the Pr. CIT for his satisfaction about the genuineness of the activities and charitable nature of the object of the assessee. He has referred to para 3 of the impugned order and submitted that reply of the assessee was not found satisfactory as the assessee has not furnished any supporting evidence to show the charitable activities as claimed by the assessee and medical assistance and services to

the alleged beneficiaries as no list of beneficiaries, location, photos of any other documents were produced to show charitable activities for public at large. The assessee merely provided some bills and vouchers of some medicines, medical equipments & wheel chair purchased by it but the society has not provided any such documents to prove that the assessee is involved in charitable activity. Further the assessee also failed to provide details and list of the donors and explained the reasons that the donors are agriculturists and villagers and this will take time to collect the details. Another opportunity was given to the assessee vide notice dated 11.10.2023 but till the order was passed no one attended hearing nor any reply was filed. Thus, Ld. DR has submitted that in absence of the requisite details, information and supporting evidences it was not possible for the CIT(E) to accept the claim of the assessee that its objects are charitable in nature and activities are genuine to achieve the objects of the assessee. He has relied upon the impugned order of the CIT(E).

4. In rejoinder, the Ld. AR has submitted that the assessee has duly replied all the notices issued by the CIT(E). She has referred to reply dated 18.09.2023 placed at page no.53 as well as reply dated 10.10.2023 placed at page no.56 of the paper book and submitted that all the details of the donors were furnished except the phone no. or mobile no. for which the assessee sought time for collecting the same and furnishing before the CIT(E) however, without granting 15 days time sought by the assessee, the impugned order was passed.

5. We have considered the rival submissions as well as relevant material on record. Initially the CIT(E) vide notice dated 29.09.2023 asked the assessee to furnish the information/documents as under:

"1 As per the Memorandum of Association, it is noticed that the objects of the assessee includes "religious" activities also. Please explain the activities to be carried out in this regard.

2. As per details of charitable/religious activities, it is noticed that the assessee has enclosed the Bill & vouchers of some Medicines, Medical Equipments & wheel chair purchased by him but these are not sufficient to substantiate the charitable activities carried out by the assessee. Kindly explain the same and give complete details of charitable activities carried out.

3. Kindly provide the donation list for FY 2021-22, 2022-23 and 2023-24, in following chart:-Name of the donor, Address, Mobile Number, Date, Donation amount. Mode of donation, Whether Corpus /CSR/FCRA Donation?

4. Kindly provide the copy of Audited/provisional Balance sheet and I/E accounts for F.Y 2022-23."

5.1 The assessee vide its reply dated 10.10.2023 has explained that the objects of the assessee are charitable in nature and religious words as mentioned in the object clause intend to cover the wider object and charitable activities to be carried out by the assessee in its working in the future looking to the necessity in general public interest. The assessee further submitted that the main and foremost object of the assessee trust is to provide all possible helps and support to the needy people of the society. Further the assessee has explained that the area of assessee trust is rural area and

contributors of the donations are agriculturists and villagers. The donations are received in cash and smaller amount below Rs.2000/- only. The assessee furnished the list of the donors and others details except phone numbers or mobile numbers for which the assessee sought time to collect the same from donors and furnishing to the CIT(E). We further note that in the earlier reply dated 18.09.2023 in response to the notice dated 09.08.2023 regarding the proceedings u/s 80G(5)(iii) of the Act the assessee also stated in para 7 that list of donations received including CORPUS donations in last 2 years was enclosed as Annexure-7. The assessee also explained that the institution has incurred expenses only on treatment etc. of poor persons and list of the expenses incurred during the last two year for charitable purposes wasr also annexed to the reply as Annexure -6. Thus, it is clear that the assessee furnished the details in response to notice issued by the CIT(E) and also sought 15 days time from 11.10.2023 for submitting the other details sought by the CIT(E) as well as representation through his CA/tax consultant before CIT(E). The CIT(E) has recorded noncompliance of notice in para 3 as under:

"3. The reply of the assessee is considered but not found satisfactory. The society has mentioned in its reply that free medical assistance to the poor and needy persons & villagers are given, however, the society has not provided the list of beneficiaries, location, photos or any supporting documents which prove the charitable activities for public at large. The society has merely provided some bills & Vouchers of some medicines, medical equipments & wheel chair purchased by him but the Society has not provided any such documents by which it proves that the assessee is involve in charitable

activities for public at large. Further, the society was required to provide the list of donation for FY 2021-22, 2022-23 and 2023-24. However, the society has mentioned that donee are agriculturalists and villagers and this will take time to collect and will be submitted accordingly. Accordingly opportunity of being heard was given to the assessee vide notice dated 11.10.2023 but till date no one attended the hearing and no reply is received."

5.2 Since the impugned order was passed even before expiry of 15 days from the said date of notice dated 11.10.2023 therefore, we are of the considered opinion that the CIT(E) ought to have granted at least 15 days to the assessee to comply with the notice and furnish relevant details as well as representation of the assessee through its CA/tax consultant.

5.3 As regard the objection of the CIT(E) for not granting approval u/s 80G(5) we find that as per memorandum and article of association of the assessee company registered u/s 8 of the Companies Act the main objects are incorporated in para 3A as under:

"3. A. The main objects to be pursued by the company on its incorporation are:

To develop, establish, promote, facilitate, improvement of skill, educational, social, agricultural, rural, cultural, legal, religibus, environmental (including watersheds, forests and wildlife). economical, health and medical relief, and branches of arts, science, commerce, management, engineering, training and help to the poor and downtrodden and to carry objects of general public utility and community welfare and advancement of any other object of public utility or welfare either Mdependently or jointly with one or more governmental or non governmental

institutions and/or organizations to carry out the aforesaid activities for charitable purposes and not for profit.

No objects of the company will be carried out without obtaining the prior approval / no objection certificate from the concerned authorities, wherever required.

None of the objects of the company will be carried out on commercial basis."

5.4 Thus, the assessee has specified the area of charitable activities as education, social, agricultural, rural, cultural, legal, religious, environment economical, health and medical relief, arts, science, commerce and to help the poor and down-trodden and to carry objects of general public utility and community welfare. The incidental or ancillary objects also enumerated in para 3B and from entire list of main object as well as ancillary objects there is nothing about any specific religion activity or services. Thus, the word as "religion" used as one of the main objects covering more than two dozen areas and no activity was intended to be carried out for a particular religion or community. Therefore, the actual activities of the assessee carried out in the past as well as in present become relevant to arrive at the conclusion whether prominent object of the assessee are religious or not. Therefore, instead of considering one word used in the object clause of the assessee company the actual activities carried out by the assessee are to be taken into consideration at the time of granting approval u/s 80G(5) of the Act. Since the assessee was not granted the time as sought for furnishing the requisite details and representation through its tax consultant therefore, we are of the considered opinion that the

assessee be allowed one more opportunity to represent its case before the CIT(E) and to furnish the complete details as sought by the CIT(E) for his consideration to satisfy himself about objects of the assessee and genuineness of the activities. Accordingly in the facts and circumstances of the case and in the interest of justice the impugned order is set aside and both matters are remanded to the record of the CIT(E) for fresh adjudication after granting one more opportunity of hearing to the assessee.

6. In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 18.06.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 18.06.2024

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*