

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW 'B' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.296 & 297/Lkw/2020  
A.Y.- 2023-24

Gallant Foundation (formerly known as Govind Foundation), Bargadwa, Vikasnagar, U.P.	vs.	CIT (Exemption), Lucknow
<b>PAN:AAATG5740R</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. P.K. Kapoor, C.A.
Revenue by:	Sh. S.H. Usmani, CIT DR
Date of hearing:	13.08.2024
Date of pronouncement:	30.09.2024

**ORDER**

**PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:**

These two appeals are filed by the assessee against the orders of the Id. CIT(Exemption), Lucknow, denying the registration under section 12AB and approval under section 80G(5) of the Income Tax Act, 1961. The grounds of appeal preferred by the assessee in the two appeals are as under:-

**ITA No.297/Lkw/2023**

*"1. BECAUSE the "CIT" has erred in law and on facts in rejecting the application dated 27.01.2023 filed by the appellant in Form 10AB for registration u/s 12AB of the Act on the ground that "the appellant has failed to file documentary evidences to enable me to satisfy about the genuineness & commencement of its charitable activities and to verify these activities are in consonance with its objects".*

*2. BECAUSE as per the material and information placed on record, the appellant had carried out its activities towards fulfillment of one of its objects*

*and in support of such activities the appellant had duly placed requisite evidences on record, on a due consideration of which the registration under sub clause (iii) of clause (ac) of sub section (1) of Section 12A deserved to be granted.*

*3. BECAUSE various adverse observations made by the CIT in the impugned order particularly that -*

*i) no expenditure has been incurred on the objects as mentioned in the trust deed of the assessee;*

*ii) expenses on food distribution are not as per object of the assessee trust;*

*iii) assessee has not incurred expenditure as per its object;*

*iv) activities of assessee trust are not as per object mentioned in trust deed; &*

*v) assessee has failed to file supporting documentary evidences with regard to charitable activities as per object of the trust, are contrary to the facts on record and law applicable thereto."*

### **ITA No.296/Lkw/2023**

*"1. BECAUSE the "CIT" has erred in law and on facts in rejecting the application dated 27.01.2023 filed by the appellant in Form 10AB for approval u/s 80G(5) of the Act on the grounds that -*

*i) "the appellant has failed to file documentary evidences to enable me to satisfy about the genuineness & commencement of its charitable activities and to verify these activities are in consonance with its objects";&*

*ii) "the applicant failed to comply with the terms and conditions of section 80G(5)(i) of the Act, hence derived fund of the institution is liable to be inclusion in its total income under the provisions of sections 11 & 12 of the Act."*

*2. BECAUSE as per the material and information placed on record, the appellant had carried out its activities towards fulfillment of one of its objects and in support of such activities the appellant had duly placed requisite evidences on record, on a due consideration of which the approval under Section 80(5) deserved to be granted.*

*3. BECAUSE various adverse observations made by the CIT in the impugned order; particularly that -*

*i) no expenditure has been incurred on the objects as mentioned in the trust deed of the assessee;*

*ii) expenses on food distribution are not as per object of the assessee trust;*

*iii) assessee has not incurred expenditure as per its object;*

*iv) activities of assessee trust are not as per object mentioned in trust deed; &  
v) assessee has failed to file supporting documentary evidences with regard to  
charitable activities as per object of the trust, are contrary to the facts on  
record and law applicable thereto.*

*4. BECAUSE the case law relied upon by Ld. CIT is distinguishable on facts and  
as such the same is not applicable.*

*5. BECAUSE the appellant craves leave to alter, delete, modify and add to any or  
all of the grounds of appeal before or at the time of hearing of appeal.*

*6. BECAUSE the order appealed against is contrary to facts, law and principles  
of natural justice.”*

2. The facts of the case are that the assessee filed an application for registration of the trust under section 12AB on 27.01.2023 in Form 10AB. The Id. CIT(Exemption) records that she issued a notices to the applicant on 19.04.2023, 11.05.2023 and 30.05.2023. In response to these, the assessee filed a reply on 30.06.2023. The Ld. CIT(Exemption) records that vide her letter dated 19.04.2023, she had asked the assessee to submit a note on the activities conducted since inception and a note specifying the main areas of charitable / religious activities as also a projection plan for the main charitable and religious activities to be undertaken in the next two years. The assessee was also required to furnish documentary evidences to substantiate the charitable activities carried out by the assessee. The Id. CIT(Exemption) held that the enquiry regarding the actual activities of the trust was necessary in view of the provisions for registration under section 12AB of the Act which she reproduced in her order. She thereafter reproduced a copy of the reply submitted by the assessee in response to such notice and a copy of the income and expenditure account for the financial year 2022-23, in her order. Thereafter, she observed that as per the income and expenditure account, no expenditure had been incurred on the objects as mentioned in the trust deed of the assessee. She observed that the aims and objects of the assessee trust were mainly education, but no expenses had been incurred on it. Finding that a sum of Rs.

49,33,687/- had been incurred on food distribution, she held that it was not as per the object of the assessee trust and because the activities of the assessee trust were not as per the objects mentioned in the trust deed and the assessee had failed to file supporting evidences with regard to charitable activities, as per the objects of the trust, therefore, no verification of such activities could be made. Thus, she held that the genuineness of activities as per the objects of the trust deed does not get established. She held that section 12AB makes it clear that before granting registration under that section, the Id. Commissioner had had to satisfy herself about the genuineness of the activities of the trust or institution and verify that these activities are in consonance with the objects, trust or institution. Thus Relying upon the judgment delivered by the Hon'ble Supreme Court in the case of ***CIT vs. Dawoodi Bohara Jamat*** (Civil Appeal No. 2492/2014), she rejected the application of the assessee trust for registration. However, at the same time, she recorded that she was not drawing any adverse influence against the assessee and that the provisional registration granted under section 12AB on 3.08.2022 would remain valid.

3. On the matter of grant of approval under section 80G(5) of the Income Tax Act, it is seen that an application was filed by the assessee on 7.07.2023 in Form 10AB under Rule 11AA of the I.T. Rules, 1962 and a notice was issued to the applicant on 19.06.2023 to which a response was filed on 5.07.2023. Here too, the Id. CIT(Exemption) records that she asked the assessee trust to submit a note on the activities conducted since inception/ during last three years, a note specifying the main areas of charitable / religious activities and a projection plan for the activities to be undertaken in the next two years as also furnish documentary evidences to substantiate the charitable activities. She pointed out that the above mentioned enquiry was necessary in view of the proviso 3 to section 80G(5)(iii), which she reproduced in her order. She also reproduced the reply of the assessee trust to the said notice and the income and expenditure account and hereto she recorded her

views that, as per the income and expenditure account for the year ending March, 31, 2023, the expenditure had not been incurred on the objects, as mentioned in the trust deed of the assessee, as those were mainly for education, but on food distribution, which was not as per the object of the assessee trust. Therefore, following the same line of reasoning as she had followed in her order under section 12AB(1)(ii)(B) of the Income Tax Act, 1961, she also rejected the application for registration under section 80G(5) of the Act. Once again, she held that no adverse influence was being drawn against the assessee and the provisional registration under section 80G on 2.03.2023 would remain valid.

4. The assessee is aggrieved against these two orders passed by the Id. CIT(Exemption) and has accordingly come up in appeal before us. It is observed that both these appeals were late by eight days. In this regard, condonation applications have been filed by the assessee in which it has been pointed out that the said orders dated 18.07.2023 were communicated to the foundation on 19.07.2023, but the assessee was advised by his counsel, that the aforesaid orders were rectifiable under section 154 of the Act and therefore, the assessee filed rectification applications on 8.08.2023 for rectification of mistake apparent from record. However, because there was delay in disposal of the rectification application, the assessee trust approached the senior counsel who advised that an appeal should also be filed against the said orders, under section 12AB(1)(ii)(B) and section 80G(5)(ii)(b) of the Act and therefore, after receipt of such advice, the assessee promptly filed the appeal before the ITAT, Lucknow on 25.09.2023. However, these appeals were late by eight days and it was prayed that in view of the aforesaid circumstances, the delays may kindly be condoned.

5. We have duly considered the reasons and feel that there are sufficient grounds to condone the delay in the filing of the appeal and hence delay is condoned and the case is admitted for decision on merits.

6. Shri P.K. Kapoor, C.A. (hereinafter referred to as the 'ld. AR') appeared on behalf of the assessee. It was submitted that the ld. CIT(Exemption) was in error on her findings that the expenditure on the distribution of food was not an object of the assessee's trust deed. Inviting our attention to Point No. 12 of the objects of the society, he pointed out that eradication of hunger, poverty and malnutrition were contained in the said Clause No. 12 and the distribution of food was in accordance with the said clause. He submitted that the details of activities had been submitted in the paper book placed before the ld. CIT(Exemption) and he took us through the paper book placed before the ld. CIT(Exemption) which contained all the documents received and filed before the ld. CIT(Exemption). Drawing our attention to Annexure IV of the paper book relating to registration under section 12A, the ld. AR read out from the said note to explain how food distribution was part of the objectives of the assessee trust The same reads as under:-

*"The main area of Charitable activity of Gallantt Foundation is to provide the healthy food as well as healthy education to the people at a large and to achieve this object it is working at present at Gorakhpur and nearby area of Gorakhpur. Gallantt is planning to develop the school by providing the clean water, healthy environment particularly in the village side school. During earlier years, Gallantt was engaged in a number of social works, particularly donation to the school and college for the development work, expenses on maintenance of road and providing of water through installation of hand pumps etc. in village. During COVID-19 period, Gallantt had incurred expenses on providing food and water to the effected peoples. Further during the Financial Year 2022-23 onwards Gallantt is providing food facility to the poor people at Gorakhpur and nearby areas. The food distribution activity had been started in the presence of Hon,ble Chief Minister of Uttar Pradesh. Foods are distributed through Food Van and to the needy people at various hospitals at Sahjanwa and Gorakhpur district. The society is distributing 2000 plates foods to the people.*

*For the next two years Gallantt of planning for other charitable activities, such as to give donation to the hospitals and schools and contribute in providing a better health and education to the society. Further it is planning to develop a auditorium at the Mahayogi Gorakhnath Vishwavidhyalaya, Balapar, Sonbarsa, Gorakhpur to provide the other cultural and educational activities to the students. It is also planning to set up a higher secondary*

*school with day boarding facility so that the girls and boys of the local area may take the better education without leaving the native place.”*

6.1 Thereafter, the Id. AR drew our attention to Annexure VI of the paper book filed in respect of the proceedings under section 80G on page 47 in which it was submitted as under:-

*“Further during the Financial Year 2022-23 Le at present the society is providing food facility to the poor people at Gorakhpur. The food distribution activity had been started in the presence of Hon’ble Chief Minister of Uttar Pradesh. Foods are distributed through Food Van and to the needy people at various hospitals at Sahjanwa and Gorakhpur district. The society is distributing 2000 plates foods to the people. The other activities proposed during the year are to give donation to the hospitals and schools and contribute in providing a better health and education to the society.*

*Further the future plan of the society is to incur expenses towards development in the area of healthy food and fresh water to the poor people in the village area and special attention towards development of education by giving donation to school and colleges and construction of school building to provide a better education to the society.”*

7. He, therefore, submitted that the distribution of food was well within the scheme as provided in Clause 12 of the objects of the society and therefore, the Id. CIT(Exemption) was not right in her observation that the expenditure was not made in accordance with the objects of the trust. He further pointed out that the supporting documentary evidences had been filed before the Id. CIT(Exemption) in form of invoices, photographs and newspaper cuttings all of which form part of the paper book submitted before the Id. CIT(Exemption) and also were contained from page nos. 86 to 161 of the paper book filed before us, in respect of the proceedings under section 12AB and from page nos. 103 to 178 in respect of the proceedings under section 80G. He, therefore, prayed that the registration under section 12AB and exemption under section 80G be allowed to the assessee trust. Relying upon the order of the Hon’ble Allahabad High Court in the case of **CIT(Exemption) vs. Reham Foundation**, (2019) 111 taxmann.com 379 (All), the Id. AR argued that it was

within the powers of the ITAT to grant the registration without remanding the matter back to the Id. CIT(Exemption).

8. On the other hand, Shri. S.H. Usmani, Id. CIT DR also drew our attention to the objects of the society as contained in the order of the Id. CIT(Exemption) and pointed out that clause 12 was relating to support to convalescent homes, charitable hospitals, dispensaries, maternity homes, clinics etc., and for support to such institutions including eradication of hunger, poverty and mal nutrition. It was not for food distribution *per se*, but for providing food to persons admitted at such places. Since, it had not been shown that this was being done by the assessee, the Id. CIT(Exemption) was justified in her rejection of the applications under sections 12A and approval under section 80G.

9. We have duly considered the facts and circumstances of the case. It is observed that clause 12 of the objects of the society read as under:-

*"12. To establish, maintain or extend support to convalescent homes, charitable hospitals, dispensaries, maternity homes, clinics etc., and or contributing for the support of such institutions and eradication, hunger, poverty and mal nutrition, promoting preventive health care and sanitation and making available safe drinking water."*

9.1 A perusal of this clause would show that eradication of hunger, poverty and mal nutrition are separate objectives of the assessee trust which cannot *ipso facto* be linked to their support to convalescent homes, charitable hospital etc,. Therefore, it is our view that distribution of food packets to poor and destitute persons also fall within the objects of the trust and the Id. CIT(Exemption) is mistaken in her belief that the money has not been spent according to the objects of the trust. We also note that the assessee has submitted that food is also distributed to needy people at various hospitals at Sahjanwa and Gorakhpur district and therefore, even if one were to accept that the distribution of food, as per the objects, is to be done in support of the charitable hospitals, convalescent homes, then this condition is also

fulfilled by the assessee trust. We observe that it is not necessary that for procurement of registration, a trust should expend its funds on all its objects. Rather, even if it can be shown that the income of the trust has been applied to any particular object of the many objects that the trust is set up for, the same would still entitle the trust for registration under section 12A / approval under section 80G of the Act. Furthermore, on going through the paper book filed by the Id. Authorized Representative, we find that there is no basis to the observation of the Id. CIT(Exemption) that the assessee has failed to file supporting documentary evidences with regard to the charitable activities of the trust and we are of the view that such an opinion has been expressed only because the Id. CIT(Exemption) has chosen to disregard the expenditure on distribution of food for needy persons, as being part of the objects of the trust. Therefore, in our opinion, in view of the documentary evidences, such as newspaper articles, photographs, invoices and statement of expenditure filed, there is no occasion to doubt the genuineness of the activities of the trust. We, therefore, hold that it is a fit case for grant of registration under 12AB and for approval under section 80G(5). Accordingly, we direct the Id. CIT(Exemption) to register the trust under section 12AB and issue the approval under section 80G(5).

10. In the result, both the appeals of the assessee are allowed.

Order pronounced on 30.09.2024 at Lucknow, U.P.

*Sd/-*

**[SUDHANSHU SRIVASTAVA]**  
**JUDICIAL MEMBER**

DATED: 30/09/2024

Sh

*Sd/-*

**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order  
Sr. P.S.