

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA Nos. 398 & 399/Ind/2024**

Aruva Foundation, MIC II/12, Janta Colony, Sanjeet Road, Mandsaur. (Assessee/Appellant)	<b><u>बनाम/</u></b> Vs.	Commissioner of Income- tax, Exemption Circle, Bhopal (Revenue/Respondent)
<b>PAN: AAXCA6299D</b>		
Assessee by	Shri Arpit Gaur, CA	
Revenue by	Shri Ram Kumar Yadav, CIT DR	
Date of Hearing	09.12.2024	
Date of Pronouncement	11.12.2024	

**आदेश / O R D E R**

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

The captioned two (2) appeals, *ITA No. 398/Ind/2024* relating to registration u/s 12AB and *ITA No. 399/Ind/2024* relating to approval u/s 80G, are filed by assessee against two (2) separate orders bearing DIN: ITBA/EXM/F/EXM45/2023-24/1062050291(1) dated 05.03.2024 and DIN: ITBA/EXM/F/EXM45/2023-24/1062049583(1) dated 05.03.2024 respectively, passed by learned Commissioner of Income-Tax (Exemption), Bhopal ["CIT(E)"] by which the assessee's applications for grant of final registration u/s 12AB / final approval u/s 80G(5) of Income-tax Act, 1961 ["the act"] have been

rejected and the provisional registration u/s 12AB / provisional approval u/s 80G(5) granted earlier have also been cancelled.

2. The background facts leading to present appeal are such that the assessee-company incorporated u/s 8 of the Companies Act, 2013 claiming to be for charitable purpose, applied to CPC for grant of provisional registration u/s 12AB and provisional approval u/s 80G, which were granted by CPC. Subsequently, the assessee applied to CIT(E) for grant of final registration u/s 12AB and final approval u/s 80G but the Ld. CIT(E) rejected assessee's applications for final registration u/s 12AB / final approval u/s 80G and also cancelled provisional registration u/s 12AB / provisional approval u/s 80G vide two separate orders as mentioned above. Aggrieved, the assessee has come in these appeals.

***ITA No. 398/Ind/2024 - relating to registration u/s 12AB:***

3. Ld. AR for assessee carried us to the impugned order. Referring to same, he submitted that the CIT(E) initially interpreted Object Nos. 2,3,4,29,30,32 and 48 mentioned in Memorandum of Association (MOA) of assessee as 'commercial' in nature and show-caused assessee. In reply, the assessee explained that the impugned objects were 'charitable' in nature and not 'commercial' while agreeing to amend its MOA if the CIT(E) desired. Ultimately, to satisfy the CIT(E), the assessee amended its MOA and filed copy of amended MOA to CIT(E). However, on perusal of amended MOA, the CIT(E) made following observation:

*"In response to notice dated 21.02.2024, the company has submitted the amended objects of Memorandum of Association. On perusal of amended objects of MOA, it is observed that as per Para IIIrd Part A of the Memorandum of Association, objects mentioned in S.No. 2 and 3 are almost same objects as these were earlier. The amended objects of MOA mentioned in S.No. 02 and 03 are reproduced hereunder :-*

*"2. To provide employment, job opportunities and create market for the products developed by disabled, women and poor and economically weaker sections of the society, and to apply all the surplus derived, if any, from above activities for the purpose and objects of the foundation.*

*3. To sell and market the various products like plants, garments, textile, handicrafts etc. developed by disabled, women, youths and poor and weaker sections of the society through establishing, maintaining shops or other establishments of such places permitted which will generate employment and provide suitable job opportunities for the above deprived persons and to apply all the surplus derived, if any, from above activities for the purpose and objects of the foundation."*

*-- The above referred objects clearly show that the intention of the assessee is to carry out various commercial activities and also to engage in trading of various products as mentioned in the objects of the assessee."*

Based on this observation only, the CIT(A) concluded that the assessee is not eligible for registration u/s 12AB.

4. Ld. AR then raised three-fold contentions as under:

- (i) A careful scrutiny of Object Nos. 2 and 3, re-produced in CIT(E)'s order as narrated above, would demonstrate that the said objects are completely charitable and not commercial. The object No. 2 enables the assessee to provide employment, job opportunities and create market for disabled, women, poor and economically weaker sections of society. Similarly, object No. 3 enables the assessee to sell and market various products developed by disabled, women, youths, poor and

weaker sections of the society through establishing, maintaining shops or other establishments to generate employment and provide job opportunities for these deprived persons. Thus, the assessee is enabled to undertake both of object No. 2 & 3 only and only for the benefit of disabled, women, poor, weaker sections of society, etc. and when it is so, how such objects can be said to be commercial or non-charitable?

- (ii) That till date, the assessee has not carried out any activity of the nature mentioned in object No. 2 & 3. To show this factual aspect, Ld. AR drew us to the P&L A/c of previous years 2022-23 & 2023-24 where the assessee has generated income only from donations. Ld. AR also drew us to photographs of actual activities undertaken by assessee filed in Paper-Book at Page 95 onwards to show that the assessee has done activities of holding educational camps, health camps, nature conservation, women empowerment, etc. which are fully charitable.
- (iii) Alternatively, Ld. AR submitted that even if the object Nos. 2 & 3 are interpreted as enabling the assessee to carry out commercial activity, section 2(15) of the Act defining the term 'charitable purpose' itself allows commercial activities upto a ceiling limit of 20%. Further, section 11(4A) of the Act also grants exemption to a body involved in commerce or business subject to fulfillment of certain requirements. Therefore, the commercial element, even if there be in any object of

assessee, cannot come in the way of grant of registration. The element of commercial nature at best would reduce or restrict the assessee's quantum of exemption u/s 11/12 which would be an year to year exercise to be done by the Assessing Authority while computing total income of assessee. However, the CIT(E) cannot deny registration to assessee on the basis of commerciality in object No. 2 & 3.

5. With aforesaid submissions, Ld. AR requested to direct the CIT(E) to grant registration u/s 12AB as applied by assessee.

6. Per contra, Ld. DR for revenue strongly relied upon impugned order of CIT(E). He submitted that the CIT(E) granted assessee a proper opportunity to amend objects, still the assessee kept object No. 2 & 3 as commercial. Ld. DR further contended that the CIT(E) has also relied upon *East India Industries (Madras) Pvt. Ltd. Vs. CIT (1967) 65 ITR 611 (SC)* to hold that all objects must be charitable and that application of income to charitable purpose is immaterial. Further, the CIT(E) has also relied upon *Yogiraj Charity Trust Vs. CIT (1976) 103 ITR 777 (SC)* wherein it was held that if the trust-deed provides many charitable objects and the trustees are given uncontrolled discretion to spend the whole of trust funds for any of the non-charitable purpose, the income would not be exempt u/s 4(3)(i) of 1922 Act.

7. We have considered rival contentions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. Admittedly, the CIT(E) has analysed object No. 2

& 3 of assessee and observed *"The above referred objects clearly show that the intention of the assessee is to carry out various commercial activities and also to engage in trading of various products as mentioned in the objects of the assessee"*. On this limited basis, the CIT(E) has denied registration to assessee. Here, we find a strong merit in the contention raised by Ld. AR that proviso to section 2(15) of the Act defining 'charitable purpose' itself allows commerciality in the activities of assessee but upto a ceiling limit of 20%. Further, section 11(4A) of the Act grants exemption to commercial or business activity on fulfillment of certain requirements. It is also important to note that the section 13(8) also provides that the exemption u/s 11/12 shall be denied in that previous year only in which the proviso to section 2(15) is violated. Therefore, these provisions of law clearly show that even if any object or activity of assessee, out of various multiple objects and activities, has element of commerciality, that would result in denial of exemption u/s 11/12 to that extent and in that particular previous year only but the CIT(E) in exercise of power u/s 12AB, cannot deny registration to assessee. The decisions in *East India Industries (Madras) Pvt. Ltd. Vs. CIT (1967) 65 ITR 611 (SC)* and *Yogiraj Charity Trust Vs. CIT (1976) 103 ITR 777 (SC)* relied by Ld. CIT(E) are not related to grant of registration but are for computation of total income by Assessing Authority. In present case, we are concerned with grant of registration by CIT(E), therefore those decisions are not relevant. It also remains a fact, as shown by Ld. AR with reference to the documents in Paper-Book, that the assessee has done only charitable

activities till now and not undertaken any activity contemplated by object No. 2 & 3. Therefore, as and when the activity of Object No. 2 & 3 is actually undertaken by assessee in future, it would be a prerogative of Assessing Authority in that particular year, to ascertain the quantum of exemption u/s 11/12 available to assessee. Being so, we are inclined to hold that the CIT(E) is not justified in denying registration to assessee on the footing that by means of object No. 2 & 3, the assessee had intention to carry out commercial activity. Consequently, we direct the CIT(E) to grant registration u/s 12AB to assessee as applied. The assessee succeeds in this appeal.

***ITA No. 399/Ind/2024 - relating to approval u/s 80G:***

8. Ld. AR for assessee carried us to the impugned order. He would demonstrate that the CIT(E) can be said to have denied approval u/s 80G to assessee for two-fold reasons, (i) the registration u/s 12AB has been denied as a consequence of which approval u/s 80G is also not available, and (ii) the assessee was granted provisional approval u/s 80G vide order dated 09.11.2022 and thereafter the assessee was required to apply for final approval within 6 months from start of activities but the assessee applied belatedly in September, 2023. The CIT(E) has also noted that although the CBDT has extended time-limit vide Circular No. 6/2023 dated 24.05.2023 but that extension is only for registration u/s 12AB and not for approval u/s 80G.

9. Ld. AR submitted that subsequent to passing of impugned order dated 05.03.2024, the CBDT has issued a new Circular No. 7/2024 dated 25.04.2024 wherein, vide Para 3(i) and 4.1, the time-limit for application u/s 80G has also been extended till 30.06.2024 and further the assesseees have been authorized to file a fresh application even when the CIT(E) has already rejected earlier application on the ground of late filing. Therefore, the assessee has already filed a fresh application to CIT(E).

10. Ld. DR supported the impugned order passed by CIT(E) on first reasoning but, however, did not make any submission *qua* the second reasoning.

11. We have carefully examined the submissions. In so far as first reasoning for denial of approval u/s 80G is concerned, we have already directed the CIT(E) to grant registration u/s 12AB to assessee in foregoing part of this order. Therefore, the first reasoning for denial of approval u/s 80G does not survive. The second reasoning that the application filed by assessee was belated, is already addressed by CBDT Circular No. 7/2024 and the Ld. AR has also informed that the assessee has already filed a fresh application to CIT(E) before the designated deadline of 30.06.2024 which is pending before CIT(E). In that view of matter, we remand this matter back to the file of CIT(E) for an appropriate adjudication alongwith the fresh application filed by assessee. Accordingly, this appeal is allowed for statistical purpose.

12. Resultantly, the ITA No. 398/Ind/2024 is allowed and ITA No. 399/Ind/2024 is allowed for statistical purpose.

Order pronounced in open court on 11.12.2024

Sd/-  
(VIJAY PAL RAO)  
VICE PRESIDENT

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

**Indore**

दिनांक /Dated : 11.12.2024  
CPU/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