

**IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH,
MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 5240/MUM/2024
(A.Y. N.A.)
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Curiosity Gym Education Foundation Flat No. 22, 2 nd Floor, Sujata, Little Gibbs Road, Malabar Hill, Mumbai, Maharashtra-400006	v/s. बनाम	CIT(Exemption), Mumbai Room No. 601, 6 th Floor, MTNL, Tel. Ex. Building Pedder Road, Cumballa Hill Mumbai, Maharashtra-400026
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAKCC8374N		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri Kumar Kale,
Revenue by :	Shri Satya Pal Kumar

Date of Hearing	13.11.2024
Date of Pronouncement	29.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

Both these appeals have been filed by the assessee against the orders of the Learned Commissioner of Income-tax (Exemption), Mumbai [hereinafter referred to as “CIT(E)”] u/s 80G of the Income-tax Act, 1961 [hereinafter referred to as “Act”] on 13.08.2024 and u/s 12AB of the Act dated 23.08.2024.

2. The assessee has raised following grounds of appeal:

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“1. On the facts and in the circumstances of the case, and in law, the Ld. CIT(E) erred in rejecting the appellant's application u/s. 12A(1)(ac)(iii) of the Act seeking registration u/s.12AB of the Act, on the ground that some of the objects of the appellant as per its Memorandum of Association (MOA) provide for carrying out its activities in India or abroad. The appellant submits that the place of carrying out activities, or of application of income, outside India is not a relevant criterion for granting registration u/s. 12AB of the Act. Your appellant, therefore, prays that the Ld. CIT(E) be directed to grant registration u/s. 12AB of the Act to the appellant.”

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“1. On the facts and in the circumstances of the case, and in law, the Ld. CIT(E) erred in passing impugned order rejecting the appellant's application seeking registration under Clause (iii) of the first proviso to Section 80G(5) of the Act, ignoring the revised application in Form 10AB filed by the appellant on 25.06.2024 in response to the Ld. CIT(E)'s letter dated 10.06.2024, whereby the appellant was given liberty to file new Form 10AB if its earlier Form 10AB was filed under inappropriate section. Your appellant, therefore, prays that the Ld. CIT(E) be directed to consider the appellant's revised Form 10AB filed on 25.06.2024, and grant registration u/s. 80G(5) of the Act in accordance with the law.”

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3. Brief facts of the case are that the assessee filed an application in form 10AB seeking registration u/s 12AB Ld. CIT(E), Mumbai. On perusal of the details submitted by the assessee in response to the notice dated 02.07.2024, Ld. CIT(E) noticed that the objects of the assessee trust, included charitable activities outside India. Accordingly, Ld. CIT(E) rejected the application for grant of registration in view of the specific provisions of section 11(i) requiring application of income for charitable purposes ‘in India’ only.

4. Aggrieved with the said order dated 23.08.2024, the assessee is in appeal before us. During the course of hearings, Ld. AR pointed out that after receipt of show cause notice, the assessee has passed necessary resolution in its board meeting held on 09.10.2024 for altering the clause of Memorandum of



Association to align it with the provisions of section 11 of the Act. He has, further, pointed that even otherwise the issue is covered by the decision of the co-ordinate bench in the case of **Critical Art and Media practices v/s DIT(E), Mumbai (2015) 56 taxmann.com 118 (Mumbai)** wherein the identical issue has been decided in favour of the assessee. Relevant portion of this decision is reproduced below:

“Keeping in view the above submissions, the second ground on which the registration is rejected needs to be relooked by the DIT(E). If the activities otherwise are charitable and fall in the definition of 'charitable purposes' as defined under section 2(15) and property is held wholly and exclusively under trust for charitable and religious purposes as provided under section 11, then such a trust subject to the fulfilment of other conditions as laid down by the different provision of the Act, will be entitled to registration and it cannot be denied registration because of the fact that its activities are extended outside India. However, while computing the income as per the provisions of section 11, the income which is applied on such activities in India only, will be eligible for exemption and subject to the provisions of section 11(1)(c) wherein the income applied outside India is also eligible for exemption, if the activities tend to promote the international welfare in which India is interested and the approval has been granted by the Board for such application of income”

He has also cited decision of the Hon'ble Delhi High Court in the case of **M.K. Nambyar Saarf Law Charitable Trust v/s Union of India (2004) 269 ITR 556 (Delhi)** wherein it has been held that income applied by trust or institution outside India is not a relevant criterion to reject an application for registration u/s 12AB of the Act and if income is so applied then section 11(1)(c) would be applicable.

Ld. DR, on the other hand, relied on the order of the Ld. CIT(E).

5. We have heard the rival submissions and perused the material placed before us. In view of the facts stated hereinbefore, we deem it proper to restore



the matter to the Ld. CIT(E) for reconsideration of the application. The assessee is also directed to submit a copy of the Board resolution dated 09.10.2024 as well as proof of amendment in trust deed before the Ld. CIT(E).

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6. The assessee had also filed an application for approval u/s 80G in the prescribed form submitted online. However, the assessee's application was rejected vide Ld. CIT(E)'s order dated 13.08.2024 with the following observations.

"2 Under the relevant section 80G(5) (iv)(B) of the Act, in any other case, where activities of the trust or institution have:

(B) commenced and no income or part thereof the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, at any previous year ending on or before the date of such application, at any time after the commencement of such activity."

3. On verification of the facts and circumstances of the case, it is found that the trust was incorporated on 13.01.2023. The assessee has taken provisional approval u/s 80G. Further, the assessee has claimed exemption in previous years and filed ITR 7.

4. As per above mentioned provision of Income Tax Act, the assessee has to file Form 10AB u/s 80G(5)(iv)(B), if the assessee has not claimed exemption in previous year. Since the assessee has claimed exemption in previous years, therefore this application u/s 80G is not allowable. Further, the assessee is not fulfilling the stipulated conditions prescribed for filing application for approval in Form 10AB. In view of the above this application Form is hereby rejected."

7. Before us, it has been submitted by the Ld. AR that a revised application was filed on by the assessee rectifying defects in earlier application. However, Ld. CIT(E) adjudicated on the earlier application dated 05.02.2024 without taking into account the required application filed on 25.05.2024. In view of



these facts, we remand the matter to the Ld. CIT(E) for fresh adjudication on the basis of revised form 10AB filed.

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

Order pronounced in the open court on 29.11.2024.

Sd/-

ANIKESH BANERJEE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 29.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

