

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

ITA No. 2004PUN/2019

Santshreshtha Gajajan Maharaj
Sevabhavi Sanstha
Borisavargao Kasij, Dist. Beed – 431 518
PAN:
AAMAS 7563 B

Appellant

Vs.

The Commissioner of Income-tax
(Exemption) Pune.

Respondent

Appellant by : Shri Hari Krishan
Respondent by : Shri Sardar Singh Meena

Date of Hearing : 01-12-2022
Date of Pronouncement : 06-12-2022

ORDER

PER SHRI PARTHA SARATHI CHAUDHURY, J.M.

This appeal preferred by the assessee emanates from order of Id. CIT (Exemption) dated 30-09-2019 as per the grounds of appeal on record.

2. That on perusal of grounds of appeal, it is seen that the grievance of the assessee is that the department has rejected the claim of assessee for grant of recognition u/s 80G of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). In this regard an application was made by the assessee-trust in Form No. 10G on 13-11-2017. The assessee is also registered u/s 12AA of the Act vide order No. PN/CIT(Exemp)/Tech/12AA/PuneReg/721/251/2016-17/1375 dated 20-06-2016. The office of Id. CIT (Exemption) had directed the assessee-trust to furnish various information/clarification for the purpose of verification regarding genuineness of the charitable activities carried out for utilizing the receipts of the trust towards charitable objects of the trust. In response to the notices, the Id. A.R of the assessee attended on various dates and had furnished documents/evidences in compliance with the notices. These facts are

not disputed. The assessee had applied for approval u/s 80G(5)(vi) of the Act and has given submissions dated 11-02-2019 wherein the assessee has given details of charitable and social welfare work that it undertakes such as school for poor children, gaushala, old-age home, upliftment of weaker section of the society etc. The assessee has further stated that since its inception the activities of the assessee were carried out by receiving donations for the fulfilment of the objects prescribed in the Memorandum & Articles of Association. Broadly, the reason for rejection for grant of exemption u/s 80G(5)(vi) of the Act by the Id. CIT (Exemption) was that the assessee received donations of Rs. 13,50,00,000/- from Shri Ganapati Devasthan Trust to be used inter-alia for construction and maintenance of temple of Gajanan Maharaj, but the construction and maintenance of temple is not included in the objects of the assessee trust and therefore, the assessee-trust has not carried out its activities as per its objects. The Id. CIT (Exemption) had observed at page 3 para 4.3 of his order that the administration and maintenance of temple of Gajanan Maharaj is a pure religious activity. That further, the assessee has not given complete head-wise details of the capital expenditure of Rs. 83,65,500/-, Rs. 33,20,214/- and Rs. 57,04,189/- incurred during the financial years 2015-16, 2016-17 and 2017-18. The Id. CIT (Exemption) held that the assessee failed to substantiate genuineness of charitable activities and therefore, did not fulfil the conditions as required u/s 80G(5) of the Act.

3. At the time of hearing, Id. Counsel for the assessee opening his arguments submitted that as per the decision of Hon'ble Supreme Court in the case of Surat City Gymkhana (2008) 170 Taxman 612 (SC) and Gemological Institute of India (2019) 105 taxmann.com 180 (SC), once the registration u/s 12A has been granted to a trust the approval u/s 80G cannot be rejected. The Id. Counsel further submitted that the amount of Rs. 13,50,00,000/- received from Ganapati Devasthan Trust of Baramati, Dist. Pune, were to be used as per

the order of Joint Charity Commissioner, Pune, dated 18-06-2015 as annexed in the paper book at page 102. Referring to the relevant page at para 3 of the order of the Jt. Charity Commissioner, Pune, the Id. Counsel brought to our notice that there is a categorical direction given by the said Jt. Charity Commissioner that out of total amount of Rs. 13,50,00,000/- an amount of Rs. 3,50,00,000/- shall be spent for the “purchase of land for the project, construction of the temple of Santshreshtha Shi Gajanan Maharaj, Goshala and Old Age Homes, and school for the poor students.....” Therefore, he submitted that it is only a part of the amount that is to be used for construction of temple and therefore, it cannot be said that the assessee-trust is only doing religious activities and is not doing any charitable activities. The Id. Counsel also emphasized the fact that there is no direct donation by one trust to another. It has been done with the authority of Govt. approval i.e. Charity Commissioner, Pune and he has directed and satisfied himself that the assessee to whom the amount is being donated is a charitable trust and along with the charitable activities, the said Commissioner had directed that a part of the amount can be spent for construction of the temple. In this regard, the Id. Counsel made a statement at Bar that till date the temple has not been constructed and if at all the temple is constructed, they would approach the Charity Commissioner for necessary amendment in the objects of the trust. Furthermore, it was contended that as per section 80G(5B) of the Act which is a non-obstante clause and it says that “notwithstanding anything contained in clause (ii) of sub-section (5) of and Explanation 3, an institution or fund which incurs expenditure, during any previous year which is of a religious nature for an amount not exceeding five per cent of its total income, shall be deemed to be an institution or fund to which the provisions of this section apply”. He submitted that as on date, there is no construction of the temple and if at all whenever it is done and the necessary expenses for its maintenance, etc. the assessee shall

comply with this provision and accordingly as on date the assessee is doing charitable activities as per the objects of the assessee-trust and the very fact that registration u/s 12AA has been granted to the assessee and before granting such registration, the Id. CIT (Exemption) has satisfied himself regarding the genuineness of the objects and charitable nature of the activities performed by the assessee-trust. So therefore, there is no reason for denial of grant of exemption u/s 80G(5)(vi) of the Act. Another argument put forward by the Id. Counsel regarding observations of the Id. CIT (Exemption) that the assessee has not given complete head-wise details of the capital expenditure of Rs. 83,65,000/-, Rs. 33,20,214/- and Rs. 57,04,189/- in the F.Ys. 2015-16, 2016-17 and 2017-18, this statement by the Id. CIT (Exemption) is not correct since the assessee trust has duly filed audited balance-sheets for the said financial years vide letter dated 11-02-2019 which is also annexed in the paper book at page 89. Head-wise details of the expenditure given in the schedules of the respective balance-sheets was very much there before the Id. CIT (Exemption).

4. Per contra, the Id. D.R supported the decision of the Id. CIT (Exemption) and contended regarding requirement of provisions of section 80G clause (5) sub-clause (ii) where it is stated "instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer of application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose." So therefore, the trust deed under which the trust is constituted it should not have any provision for application or transfer of the income or asset of the trust for any purpose other than charitable purposes. The Id. D.R also read out Explanation 3 which states as follows:

"In this section, "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature."

Then, he also submitted that as Rule 11AA of Income-tax Rules, 1962 the Id. CIT (Exemption) may call for any document/evidences for verification of the activities of the trust before granting approval u/s 80G of the Act. The Id. D.R supported his stand by placing reliance on the decision of Hon'ble Delhi High Court in the case of Kirti Chand Tarawati Charitable Trust (1999) 105 taxman 686 (Del) wherein it has been held that once it is found that the trust created for charitable purposes is engaged mainly in construction of the religious temple wherein no charitable activities are being carried out the department was right in denying renewal of recognition u/s 80G(5) of the Act.

5. We have perused case records, heard the rival contentions, analysed the facts and circumstances in this case. The relevant provision of the Act for which the assessee-trust has applied for exemption is sec. 80G(5)(vi) of the Act. Now, for approval as per provision of section 80G(5)(vi) the first and foremost requirement which the institution or fund has to satisfy is "if it is established in India for a charitable purpose". The conditions contemplated by clauses (i) to (iv) to section 80G(5) are the conditions which the institution was formed must additionally fulfil so as to be entitled to the approval by the Commissioner. In this case the assessee-trust is established in India and is for a charitable purpose, greatest evidence is that it has got registration u/s 12AA of the Act. It is settled legal position that once registration has been granted to a charitable trust u/s 12AA of the Act, the question whether the assessee-trust is for charitable purpose or not itself does not arise. This is so since the Id. CIT Exemption gets satisfied regarding the charitable objects of the trust and genuineness of the activities conducted for the charitable purposes and only then registration u/s 12A is accorded to a particular institution or trust. Once this is there, the question should not arise again for ascertaining the charitable purpose of the trust. The objection that has been raised by the Id. CIT (Exemption) as per para 4.2 of his order that one of the main objects of the

donations received by the assessee-trust from Shri Ganapati Devasthan Trust during F.Y. 2015-16 is to construct Gajanan Maharaj Temple. In this regard, the assessee has also submitted to the Id. CIT (Exemption) the details of proposed accumulation or setting apart of amounts regarding construction of temple, gaushala, old age home, school for poor children and upkeep and maintenance of temple, etc. Thereafter at para 4.3 of his order, the Id. CIT (Exemption) holds that as per the funds received as donation during F.Y. 2015-16 from the said Ganapati Devasthan Trust a substantial amount of fund the assessee intends to use for the purpose of construction of temple of Gajanan Maharaj and also intends to administrate and maintain the said temple which is the work of a pure religious activity. The Id. CIT (Exemption) opined that the object of the assessee-trust does not have any object regarding the construction and maintenance of the temple. In this regard, we would refer to the submissions made by the Id. Counsel for the assessee that as on date, the assessee has not constructed any temple. The assessee only intends to construct the temple and in such situation they would even approach the Charity Commissioner, Pune, for necessary amendments in the object clauses of the trust deed. Therefore, as on date, the assessee-trust has only performed activities of a charitable nature and the department is satisfied about the charitable nature of the assessee-trust because of which the Id. CIT (Exemption) has already granted registration u/s 12AA of the Act to the assessee. Even before us, Id. D.R did not raise any objection regarding non-charitable activities of the assessee-trust nor he could bring any evidence on record to demonstrate that the assessee trust is not doing any charitable activity. Regarding the objection raised by the Id. CIT (Exemption) that the assessee intends to utilise a substantial amount of funds received as donations during F.Y. 2015-16, for construction of temple of Gajanan Maharaj and for its maintenance, we have perused the entire order of the Jt. Charity

Commissioner, Pune and therein at para 3 he has assigned an amount of Rs. 3,50,00,000/- out of total donations received by the assessee and this has to be spent for purchase of land, construction of temple, goshala, old age home and school for the poor students. Therefore, it cannot be said that a substantial amount the assessee proposes to spend on construction of the temple since all the aforesaid expenses is to be incurred within the said amount. Furthermore, as on date, there has been no construction of the said temple. Therefore, the objection of the department that the assessee-trust intends to spend substantial amount of the said donation received for religious purpose is unsubstantiated and unfounded. The decision of Hon'ble Delhi High Court (supra) relied on by the Id. D.R is substantially different on facts as compared to the present case since therein the trust had mainly used the funds for construction of religious temple and no charitable activity was carried out. However, in the instant case of the assessee, the department has not disputed the charitable activities conducted by the assessee and as per the directions of the Jt. Charity Commissioner, Pune, the construction of the temple, if at all it would be constructed, would involve only part of the total expenditure within the designated amount which has been directed by the Jt. Charity Commissioner Pune being the appropriate authority. The Id. D.R had also referred to the provision of section 80G(5)(ii) along with Explanation 3 and in this regard it is worthwhile to refer to the provisions of section 80G (5B) which is as follows:

“Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.”

6. So therefore, it is a non-obstante clause taking care of section 80G(5)(ii) and the Explanation 3 and stating that the expenditure for a religious nature if it does not exceed five per cent of the total income then the said trust or institution shall be deemed to be an institution to which the provision of section 80G would apply. In this context, the assessee has given an undertaking that

whenever the construction of temple would take place and the maintenance fund for the said temple it shall be in accordance with section 80G (5B) of the Act. That, the assessee would even take necessary approval from the Charity Commissioner, Pune, before undertaking such activity. However, in the present context given the facts when the assessee is registered u/s 12AA of the Act and when the provision of section 80G(5)(vi) of the Act has been complied with, we do not see any reason for refusing the assessee the grant of exemption u/s 80G of the Act. The Department has also not brought out a case where they can prove through evidences that the assessee-trust has violated the stipulations contained in sec. 80G(5B) of the Act. In fact, the revenue authorities have not demonstrated anything showing substantial expenditures of the fund received in donation by the assessee for religious purposes and whether it is exceeding the permissible limit of 5%. It has also been mentioned by the Id. CIT (Exemption) that the assessee has not provided head-wise details of various expenditure as per para 4.3 of his order but all these details have been submitted before him and as annexed before us in the paper book. The Id. D.R did not refute these facts. In this scenario it will be also worth mentioning that while exercising the power to reject or accord approval u/s 80G(5) the Commissioner acts as a quasi-judicial authority. Therefore, the conclusion arrived at by him is expected to be supported by valid and cogent reasons. It is also expected that he should apply his mind to the facts of each case and give reasons either to grant or refuse recognition/approval. This requirement is very much imperative on the part of the Commissioner particularly having regard to the statutory provision under which he functions. This proposition has been observed and upheld by the Hon'ble Andhra Pradesh High Court in the case of Tirumala Tirupati Devasthanam Vs. Chief C.I.T. (2001) 251 ITR 849 (AP). In the case of CIT Vs. Christian Medical College (2015) 274 ITR 17, it was observed and held by the Hon'ble Punjab &

Haryana High Court that in a case where the assessee has been running and maintaining the Christian Medical college, Christian College of Nursing, where medical care and training the professionals were provided by the assessee-society to everyone irrespective of their caste, creed, race, religion etc. the assessee was held to be entitled for grant of exemption/approval u/s 80G(5) of the Act. So therefore, if Trust/Institution incurs expenses for religious purposes which is inclusive and is only a small part of the income, and if the substantial work done by the trust is charitable in nature benefitting the public at large then the institution or trust has to be granted exemption u/s 80G of the Act. In the present case of the assessee, the department has not been able to make out a case through facts that the assessee is substantially a religious trust. That on examination of the facts and circumstances we set aside the order of the Id. CIT (Exemption) and direct him to grant exemption/approval u/s 80G of the Act to the assessee-trust. Grounds of appeal are allowed.

7. In the result, **appeal of the assessee is allowed.**

Order pronounced in the open Court on this 06th day of December 2022

Sd/-
(R.S. SYAL)
VICE PRESIDENT

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 06th day of December 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The C.I.T. (Exemption)
4. D.R. ITAT 'B' Bench
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

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1	Draft dictated on	01-12-2022	Sr.PS/PS
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3	Draft proposed and placed before the second Member		JM/AM
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