

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री डि. मनमोहन, उपाध्यक्ष एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI D. MANMOHAN, VICE PRESIDENT &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.234/Vizag/2017
(निर्धारण वर्ष / Assessment Year: 2017-18)

Mattapalli Chalamayya
Charitable Trust
Visakhapatnam
[PAN No.AAETM5260C]

CIT(Exemptions),
Hyderabad

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri C.R. Hemanth Kumar,
AR
प्रत्यार्थी की ओर से / Respondent by : Shri B.C.S. Naik, DR
सुनवाई की तारीख / Date of hearing : 04.12.2017
घोषणा की तारीख / Date of Pronouncement : 06.12.2017

आदेश / ORDER

PER D. MANMOHAN, Vice President:

This appeal by the assessee trust is directed against order of the Commissioner of Income Tax (Exemptions), wherein the approval claimed u/s 80G(5) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was not accorded on the ground that the assessee has not

undertaken much activity in accordance with the objects. The precise reason given by the Ld. Commissioner reads as under:

"Since the trust has not undertaken much activities in accordance with the objects and has recently started operations, it is not eligible for approval u/s 80G(5)(vi) of the Act, having regard to the provisions of Sub-Rule (2) to Rule 11AA of Income Tax Rules, 1962. Thus, it cannot be granted approval u/s 80G(5)(vi) of the Act. Hence, the said application in Form 10G filed by the applicant is rejected."

2. Ld. Counsel for the assessee submitted two paper books consisting of copy of trust deed and income & expenditure statement, declarations filed u/s 13(1) & 11(5) of the Act, etc.

3. Brief facts of the case are that the assessee trust had come into existence by virtue of a trust deed dated 13th day of April, 2016 and it was aimed at carrying on charitable activities such as providing medical aid, to impart education, provide food and shelter to the poor & needy. It has filed an application for registration u/s 12AA of the Act and also seeking approval u/s 80G of the Act along with relevant declarations. The Ld. Commissioner granted registration u/s 12AA of the Act. However, with regard to the grant of approval u/s 80G of the Act, he observed that the assessee did not carry much of its activity since inception. In fact, the application for approval was made 3 months after its inception and it cannot expect miracle in carrying out its activity within such a short span. Assessee relied upon a decision of the ITAT, Kolkata Tribunal reported in 53 ITR 629 (Trib.), wherein the bench

observed that so long as the objects are charitable in nature, registration u/s 12AA of the Act cannot be refused and carrying out of charitable activity at the stage of commencement of institution was not relevant.

4. On the other hand, the Ld. D.R. submitted that there should be a gap between seeking approval u/s 12AA of the Act and for seeking approval u/s 80G of the Act as per ITAT Lucknow bench order reported in 2015 Tax Pub (DT) 5082 (Luck-Trib) as otherwise claim of approval u/s 80G of the Act can be rejected.

5. We have carefully considered the rival submissions and perused the records. The decision of the ITAT, Lucknow bench is not applicable to the case on hand since, in the aforementioned case, the claim of the assessee was rejected by the Tribunal on the ground that for grant of approval, copy of registration granted u/s 12AA of the Act has to be annexed and for such purpose, registration on an earlier date is obligatory. However, in the instant case, the Ld. Commissioner has already granted registration u/s 12AA of the Act and approval u/s 80G was not rejected on the ground of not obtaining registration u/s 12AA of the Act but only on the limited ground that no activity has been carried out. The decision of the ITAT Kolkata Bench, as rightly been pointed out by the Ld. Counsel, supports the stand of assessee that if the

activities of the trust are genuine, at the stage of commencement of institution, registration has to be granted automatically and claim u/s 80G of the Act can be followed with grant of registration. Ld. Commissioner (Exemptions) did not reject the request of the assessee for approval u/s 80G of the Act on the ground of not annexing the registration certificate u/s 12AA of the Act but on the limited ground that it has not undertaken much activity. At the inception of the institution, one cannot expect serious activities, since it needs funds and to obtain funds, the trust needs approval u/s 80G of the Act. Thus, the activities are interlinked with obtaining approval. Hence, mere fact that the assessee could not undertake much activity within the short span of 3 months, the Commissioner (Exemptions) should not have refused the claim of approval u/s 80G(5) of the Act. Under the peculiar circumstances, we direct the Ld. Commissioner to consider the issue pragmatically and grant approval u/s 80G(5) of the Act, if all other conditions are fulfilled.

6. In the result, the appeal filed by the assessee trust is allowed.

The above order was pronounced in the open court on 6th Dec'17.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(डि. मनमोहन)
(D. MANMOHAN)
उपाध्यक्ष /VICE PRESIDENT

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 06.12.2017

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The Mattapalli Chalamayya Charitable Trust, 37A, Pandurangapuram, Visakhapatnam
2. प्रत्यर्थी / The Respondent – The CIT (Exemptions), Hyderabad
3. आयकर आयुक्त (अपील) / The CIT (A), Visakhapatnam
4. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
5. गार्ड फ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM

