

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Pune Bench A, Pune**

Before Shri I.C. Sudhir, Judicial Member  
and Shri G.S. Pannu, Accountant Member

I.T.A. No. 745/PN/2010

Shri Chandrabhan Athare Patil Gram,  
Navodaya Trust, Admednagar ... Appellant  
PA No.AAATC2422Q

Vs.

C.I.T. I Pune ... Respondent

Assessee by: Smt. Deepa Khare  
Revenue by: Shri Ramendra Kaushal

Date of hearing: 09-02-2012

Date of pronouncement: 03-04-2012

**ORDER**

**PER G.S. PANNU, AM**

This appeal filed by the assessee is directed against the order of the Commissioner of Income-I, Pune (in short 'the commissioner') dated 24-03-2010 whereby the application of the assessee seeking renewal of recognition u/s. 80G(5)(vi) of the Income-tax Act, 1961 (in short 'the Act') has been rejected.

2. In brief the facts are that the assessee is a trust registered u/s. 12A(a) of the Act with Commissioner of Income Tax, Nashik vide certificate of registration dated 16-01-1987. By way of application dated 08-09-2009, the assessee approached the commissioner for renewal of its recognition u/s. 80G(5)(vi) of the Act and the commissioner has since rejected the application vide impugned order dated 24-03-2010. In order to appreciate the reasons weighing with the commissioner, the following portion of his order is reproduced here under :

*“ The application in Form No. 10G was carefully scrutinized and it was found that, the applicant made investments/FDs in Senapati Bapat Nagri Sahakari Patsanstha which are clearly violative of Section 11 (5) of the Income Tax Act, 1961. . . . .*

*Further, after recasting the Income and Expenditure Accounts for the FYs 2006-07 to 2008-09 by including the earmarked fund other than the corpus, it is seen that, there is non-compliance with Section 11 (1) for all the three years”.*

On perusal of the aforesaid it transpires that the application has been rejected primarily for two reasons. Firstly, as per the commissioner, the assessee has made certain investments by way of FDRs in Senapati Bapat Nagri Sahakari Patsanstha, which was violative of section 11(5) of the Act. Secondly, as per the commissioner, after recasting the Income and Expenditure Accounts for the FYs 2006-07 to 2008-09 by including the earmarked funds other than corpus, there was a non-compliance with the provisions of Section 11(1) of the Act in terms of which the assessee was required to apply a prescribed percentage of its income for its stated objects. In sum and substance, considering the two reasons advanced it can be inferred that as per the commissioner the assessee did not comply with the provisions of Sections 11/12 of the Act and therefore the assessee was not eligible for renewal of recognition u/s.80G(5)(vi) of the Act.

3. Against the aforesaid, the Ld counsel for the assessee has pointed out that investment made in a cooperative society was not violative of the provisions of Section 11(5) of the Act and in this regard reliance has been placed on the decision of the Pune Bench of the Tribunal in the case of Maharashtra Arogya Mandal Vs. Income Tax Officer reported in 117TTJ(Pune)631. Furthermore, it is also pointed out that the objections raised by the commissioner are not relevant to be considered at the time of examining the

assessee's plea for recognition u/s. 80G(5)(vi) of the Act. In this connection, it is submitted that the scope of enquiry to be carried out by the commissioner at this stage does not require a conclusive proof that the assessee has complied with the provisions of Sections 11 and 12 of the Act and the commissioner is only required to examine the nature or character of the activities and to see as to whether the institution is eligible for exemption u/s. 11 or 12 and is registered u/s.12A(1) of the Act. In this case, the assessee was enjoying the registration u/s.12A(1) of the Act and that the same was a sufficient compliance with the requirement contained in 80G5(i) of the Act. In the course of submissions, Ld counsel also relied upon the following judgments :

1. N.N. Desai Charitable Trust Vs. Commissioner of Income Tax, reported in 246 ITR 452 (Guj).
2. Sonapat Hindu Educational and Charitable Society Vs. Commissioner of Income Tax and another reported in 278 ITR 262 (P &H).
4. On the other hand, Ld DR appearing for the Revenue, has defended the order of the commissioner on the reasoning contained therein, which we have already adverted to in earlier Para 2 of this order and the same is not being repeated for the sake of brevity.
5. We have carefully considered the rival submissions. The Commissioner is empowered to grant approval or renewal thereof to any institution or fund as per clause (vi) of sub-section 5 of section 80G of the Act. Further, in terms of Rule 11AA(2) of the Income-tax Rules, 1962 ( in short Rules) the application seeking approval or renewal thereof is required to be accompanied by the documents specified therein namely a copy of the registration granted u/s.12A or section 10(23) or section 10(23C), as the case may be; a note on activities of the institution or fund since inception or for last three years; whichever is less; and, a copy of financial accounts of the institution or fund since inception or for the last three years, whichever is less. Further, sub-rule (3) of Rule 11AA permits the

commissioner to call for such documents or information or cause such enquiries to be made as he may deem necessary to satisfy himself about the genuineness of the activities of the applicant before him. Sub-rule (4) of Rule 11AA of the Rules provide that where the commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval or renewal thereof to the applicant. Pertinently, sub-rule (5) of Rule 11AA of the Rules prescribes that where the commissioner is not satisfied that one or more of the conditions laid down in clause (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application only after recording reasons for such rejection in writing.

6. Now, in so far as the conditions prescribed in clauses (i) to (v) of sub-section (5) of section 80G of the Act are concerned, the same can be understood as follows. Clause (i) prescribes that the income of the institution or the fund is eligible for exemption under sections 11/12 or 10(23C) or 10(23AA) of the Act; clause (ii) prescribes that the instrument under which the applicant is constituted does not contain any rule providing for transfer or application of any part of the income or assets for any purpose other charitable purpose; clause(iii) prescribes that the applicant is not expressed to be for the benefit of any particular religious community or caste; clause (iv) prescribes that the applicant is to maintain regular accounts of the receipts and expenditure; and, clause (v) prescribes that the applicant is constituted as a public charitable trust or registered under Societies Registration Act, 1860 or under any other corresponding law or u/s.25 of the Companies Act, 1956 or is a university established by law, or is any other educational institution recognised by the Government or by a university established by law, or affiliated to any university established by law, or is an institution financed wholly or in part by the Government or Local authority.

7. In the light of the aforesaid scheme of the Act regarding seeking of approval or renewal thereby u/s.80G 5(vi) of the Act we may now examine the objections made out by the commissioner refusing to renewal or recognition to the assessee u/s.80G(5)(vi) of the Act. To recapitulate, the first objection of the commissioner is to the effect that the assessee has made an investment which is violative of section 11(5) of the Act. The second objection is to the effect that upon recasting of the Income and Expenditure Accounts for the three financial years 2006-07 to 2008-09 by including the earmarked fund other than corpus, assessee has not applied the prescribed percentage of its income towards the stated purposes and therefore it is a violative of section 11(1) of the Act. Initially without going into the merits of the objections raised, it would be sufficient to observe that both the objections raised by the commissioner are to be viewed in the context of requirements contained in clause (i) of sub-section (5) of section 80G of the Act. In terms of clause (i) of sub-section (5) of 80G, applicant is required to fulfil the condition that its income is not liable to be included in its total income interms of section 11 and 12 of the Act. As per the commissioner, assessee does not fulfil the requirements contained in clause(i) of sub-section (5) of section 80G to the effect that it is not eligible for the benefits of section 11 and 12 of the Act for the aforestated two reasons.

8. At this point of time, it would be appropriate to examine as to whether the commissioner is empowered to examine such situation while conducting enquiries to evaluate the assessee's application for renewal of its recognition u/s.80G5(vi) of the Act. The Hon'ble Gujarat High Court in the case of N.N. Desai Charitable Trust Vs. Commissioner of Income Tax (supra) while deliberating upon the scope of enquiry for the purpose of granting of recognition u/s.80G of the Act opined that it does not envisage the commissioner to act as an assessing authority because the actual assessment of institution would not ultimately effect the claim for deduction u/s.

80G qua the donors. As per the Hon'ble High Court, once it is established that the applicant is registered u/s.12 A of the Act then the enquiry qua the eligibility of exemption u/s. 11 and 12 of the Act cannot go beyond that. To the same effect is also the judgment of the Hon'ble Punjab and Haryana High Court in the case of Sonepat Hindu Educational and Charitable Society (supra). As per the Hon'ble Punjab and Haryana Court registration of an institution u/s.12A of the Act is sufficient proof of it being established for charitable purposes. It has been further explained by the Hon'ble High Court that the scope of enquiry by the commissioner, while dealing with an application u/s.80G5(vi) of the Act, is to examine its eligibility under various provisions of the Act referred in the subsection but not actual computation of income under the Act, particularly when the applicant is claiming exemption u/s. 11 and 12 and not u/s. 10 of the Act.

9. Considered in the light of the aforesaid reasoning laid down by the Hon'ble High Courts of Gurajat and Punjab & Haryana, which have been relied by the assessee before us and there being no contrary decisions brought out by the Revenue, it has to be held that having regard to the fact that the assessee continues to enjoy registration u/s. 12A(a) of the Act vide certificate of registration dated 16-01-1987 (Supra) the same would imply that assessee qualifies the condition prescribed in clause (i) of section 80G(5) of the Act and its objections raised by the commissioner are beyond the scope of enquiry at the present stage. Infact, both the objections raised by the commissioner may be relevant for the purposes of assessment of the income of the assessee in the respective assessment years by the assessing authority, but are certainly outside the purview of the scope of enquiry required to be carried out by the commissioner while granting approval u/s. 80G5(vi) of the Act.

10. Apart from the aforesaid objection, we find no other finding of the commissioner as to in what manner the conditions prescribed in clauses (i) to (v) of section 80G(5) are not fulfilled by the applicant and therefore in our considered opinion the commissioner erred in refusing to renew recognition u/s.80G (5)(vi) of the Act as sought by the assessee in terms of its application dated 08-09-2009. Consequently, we set-aside the order of the commissioner with directions to grant the renewal of recognition of the assessee u/s. 80G5(vi) of the Act in accordance with the law.

Resultantly, the appeal of the assessee is **allowed**, as above

Order pronounced in the open court on 3rd April 2012.

**Sd/-**

**(I.C. SUDHIR)**  
**Judicial Member**

**Sd/-**

**(G.S. PANNU)**  
**Accountant Member**

Pune Dated: 3<sup>rd</sup> April 2012  
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Copy of the order forwarded to :

1. Assessee
2. Department
3. CIT(A) I Pune
4. CIT II Pune
5. The D.R, Pune Bench

By order  
Private Secretary  
ITAT, Pune Bench, Pune