

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI H.L.KARWA, VICE PRESIDENT
AND MS. RANO JAIN, ACCOUNTANT MEMBER

ITA No. 687/Chd/2015
(Under section 12AA of the Act)

M/s Prabhat (A House of Hope for Vs CIT(Exemptions),
Special Children), Chandigarh.
H.No.1372, Sector 4,
Panchkula.
PAN No.: AACTP6147K

&

ITA No. 688/Chd/2015
(Under section 80G of the Act)

M/s Prabhat (A House of Hope for Vs CIT(Exemptions),
Special Children), Chandigarh.
H.No.1372, Sector 4,
Panchkula.
PAN No.: AACTP6147K

(Appellant)

(Respondent)

Appellant By : S/Sh.B.M. Monga
& Rohit Kaura
Respondent By : Shri Manjit Singh, DR
Date of hearing : 22.12.2015
Date of Pronouncement : 09.02.2016

ORDER

PER RANO JAIN, A.M.

Both the appeals filed by the assessee are directed against the separate orders of learned Commissioner of Income (Exemptions), Chandigarh,

each dated 20.5.2015, passed under sections 12AA and 80G of the Income Tax Act, 1961 (in short 'the Act') respectively.

2. Briefly the facts of the case are that the assessee filed an application in Form No. 10A before the CIT(Exemption), Chandigarh dated 2.12.2014, for registration under section 12AA of the Act. The CIT(Exemption) denied assessee the registration under section 12AA of the Act on the ground that on perusal of income & expenditure account for the year ended 31.3.2014, the gross receipts of the assessee were 27,163/- out of which an expenditure of Rs.22,189/- were incurred , which were general in nature. No major expenditure was incurred by the assessee society on account of charity. The learned Commissioner of Income Tax was of the view that most of the expenses debited to income & expenditure account are not covered within the meaning of section 2(15) of the Act. In this view, the application for registration under section 12AA of the Act was rejected.

3. Aggrieved by this order, the assessee has come in appeal before us, raising the following grounds of appeal:

"1. That the learned CIT (Exemptions) did not appreciate that all the conditions for the registration of the appellant trust, main being 'to work for the welfare of Mentally Retarded & Mentally ill individuals' which

is undoubtedly 'charitable', are duly fulfilled and as such the registration as claimed should have been allowed particularly when the activities are also genuine.

2. *That the learned CIT (Exemptions) erred in holding that the no major expenses have been incurred by the applicant society on account of charity without appreciating the fact that expenses incurred on advertisement and printing and stationery are incurred towards organizing exhibitions in various Sectors of Panchkula to create awareness about the Mental Retardation and Mental illness. The applicant society is regularly organizing press conferences etc. to educate the general public by creating awareness among the general public that their problems are treatable and generally curable.*
3. *That the learned CIT (Exemptions) failed to appreciate the details furnished before him at the time of hearing in the form of photographs, news-paper cuttings, certificate of Psychologist proving beyond doubt the existence, objects and activities of the appellant-trust.*
4. *For these and other reasons, that may be urged at the time of hearing, the appellant prays for relief.”*

4. Before us, the Ld. Counsel for the assessee submitted that the CIT(Exemption) has not drawn any adverse inference against the objects of the trust or that on the genuineness of activities carried on by the trust. The only reason given by the CIT(Exemption) in his order is that the assessee has not incurred any major expenses on account of charity. In this background, it was submitted that the CIT(Exemption) cannot deny assessee the registration under section 12AA of the Act. Reliance

was placed on the judgement of jurisdictional Punjab & Haryana High Court in the case of CIT Vs Surya Educational & Charitable Trust 203 Taxmann 53 (P&H) and CIT Vs. B.K.K. Memorial Trust (2013) 256 CTR 424 (P&H).

5. The learned DR relied on the order of the CIT(Exemption) and relied on the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Shri Guru Gorakhnath Charitable Educational Society (2015), 233 Taxman 189 (P&H).

6. We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. The undisputed fact is that the registration under section 12AA of the Act was refused to the assessee by the CIT(Exemption) by writing a few lines in para 4 of his order which read as under:

“4. A perusal of the income and expenditure account for the year ending 31.3.2014 of the applicant society shows that the gross receipts of the applicant were Rs.27,163/- out of which the applicant has incurred an expenditure of Rs.22189/- (Rs.4800/- towards accounting charges, Rs.3450/- towards advertisement, Rs.13939/- towards printing & stationary). All these expenses are general in nature. No major expenses have been incurred by the applicant society on account of charity. The most of the expenses debited to income & expenditure account are not covered within the meaning of Section 2(15) of the Income Tax Act. Section 2(15) of the Income-tax reads as under:

"charitable purpose" includes relief of the poor, education, medical relief, preservation of environment including watersheds, forests and wildlife and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility."

7. From the perusal of the income & expenditure account of the assessee for the year ended 31.3.2014, placed at Paper Book, page 11, we observe that during the year, the assessee has received Rs.26,300/- as donation and Rs.863/- as interest, out of which it has incurred an amount of Rs.27,079/- on administrative expenses such as accounting charges, advertisement, office maintenance, etc. Only an amount of Rs.84/- is the excess of income over expenditure. The objection of the CIT(Exemption) is that the assessee has not spent any major amount for charitable purpose. In this regard, we also observe that the assessee society was started only on 22nd March, 2013 and during the intervening period, it has received only Rs.26,300/- as donation. Though this amount has not been expended for charitable purposes, the expenditure incurred out of this are all expenses necessary to run the society. With this miniscule amount received as donations, what charity could have been done. However, even if no charitable activities could be done by the society in its initial years, the registration under section 12AA of the Act cannot be denied to it solely on this basis. This proposition has been upheld by the Hon'ble Jurisdictional Punjab & Haryana High Court in

the case of CIT Vs. B.K.K. Memorial Trust (supra) in following words :

“The Trust was created on 23.6.2010 and application under Section 12A(1) (aa) of the Act was moved on 19.7.2010 and the same was rejected on 26.11.2010. The application for registration is required to be made within one year of the creation of the Trust and there is no requirement that the Trust or the institution should have started all its envisaged activities in the first year itself. Under Section 12AA of the Act satisfaction regarding the genuineness of the activities of the Trust is to be seen and the stage for application of income is yet to arrive i.e. when such Trust or Institution files its return. Thus the contention that Trust was not set up for charitable purpose and it was utilizing its income not for the said purpose cannot be examined at this stage as only objects of the Trust had to be considered by the Commissioner. The Trust was in nascent stage and was yet to work towards its objects.”

9. As far as the merits of the issues raised by the CIT(Exemption), we have commented upon hereinabove, however, there is a more basic and germane issue to be decided in this case i.e. the powers of the CIT(Exemption) while granting or refusing registration under section 12AA of the Act. The two things which the CIT(Exemption) has to look after receiving an application for registration under section 12AA of the Act are whether the objects of the Trust are charitable in nature and whether the activities carried on by the assessee are genuine. This has been provided in the section 12AA of the Act itself. As per section 12AA of the Act, the commissioner has to satisfy himself about the objectives of the Trust and

genuineness of its activities and for such purpose he has the power to call for such documents or information from the assessee as he thinks necessary. The language used in the section only require that the activities of the Trust must be genuine, which would mean that they are in consequence with the objects of the Trust and not mere camouflage or against the objects of the Trust. The CIT cannot go beyond these two parameters while granting registration. The analysis of the income of Trust or its application is under the jurisdiction of the Assessing Officer while granting exemption under section 11 of the Act on year to year basis, in the assessment proceedings.

10. The reliance placed by the learned counsel of the assessee on the judgement of Punjab & Haryana High Court in the case of Surya Educational and Charitable Trust (supra) is not out of place, where the High Court held on under:

“Therefore, the object of s. 12AA of the Act, is to examine the genuineness of the objects of the trust, but not the income of the trust for charitable or religious purpose. The stage for application of income is yet to arrive i.e. when such trust or institution file its return. Therefore, we find that the judgements referred to by the learned counsel for the appellant are not applicable to the facts of the present case arising out of the question of registration of the trust and not of assessment.”

11. In the present case, we observe that the registration under section 12AA of the Act has been denied to the assessee only on some extraneous grounds,

which have no bearing on granting of registration. Nowhere in his order the CIT(Exemption) has made any adverse remarks as to the objects of the trust being not charitable or the activities of the Trust being not genuine. We have perused the aims and objects of the Trust as laid down in its Trust deed, filed in the Paper Book, which are as follows:

Aims & Objectives of the Society

- I. To work for the welfare of the Mentally Retarded & Mentally ill Individuals, males & females of all the ages.*
- II. To provide basic facilities for rehabilitation of Mentally Retarded & Mentally ill individuals, initially through Daycare Programmes & then residential facilities later on.*
- III. To provide free or subsidized medicines to the needy Mentally Retarded & Mentally ill individuals, as far as possible.*
- IV. To carryout awareness programmes to identify Mentally Retarded & Mentally ill individuals & initiate their treatment/rehabilitation process.*
- V. To guide & assist the families of Mentally Retarded Individuals in obtaining Legal Guardian Certificates through the concerned local level Committees.*
- VI. To guide & assist the families caretakers of Mentally Retarded & Mentally ill Individuals in obtaining the Disability Certificate of Mentally Retardation/Mental illness from the competent Medical Authorities.*

- VII. *To work for inclusion of Mental illness in National Trust Act 1999.*
- VIII. *To safeguard the Human Rights of Mentally Retarded & Mentally ill individuals.*
- IX. *To work for establishing homes for Mentally Retarded & Mentally ill Individuals, initially in Panchkula (Haryana) & then in other places, progressively.*
- X. *To work for communal harmony & National integration.*
- XI. *To organize sports & cultural activities for the Mentally Retarded & Mentally ill individuals.*

12. We see that all the aims and objects of the assessee trust are charitable in nature and no adverse remarks as to the genuineness of any of these activities have been made by the CIT(E).

13. The judgment in the case of Guru Gorakhnath (supra) relied on by the learned D.R. is not applicable to the present case, as in that case there were ample evidences to show that the assessee society was not carrying out any genuine charitable activity.

14. In view of the above, we hold that the objects of the trust are charitable in nature and activities are genuine. Therefore, the CIT(Exemption) is directed to grant registration under section 12AA of the Act to the assessee trust.

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15. On the basis of his finding given for denial of registration under section 12AA of the Act, the CIT(Exemption) has also denied the approval under section 80G of the Act to the assessee.

16. In addition to what we have held on the merits of the case while deciding ITA No. 687/Chd/2015, in this case also the CIT(Exemption) has to decide the issue of approval only as per the provisions of section 80G of the Act, which he has not done in this case. The jurisdiction of CIT, while granting approval under section 80G of the Act has been summarized in a recent order of Chandigarh Bench of ITAT in the case of Shri Krishna Kirpa Gaushala Samiti, Pehowa at page 9, which reads as under:

“9. On perusal of the above rules, it is quite clear that while granting the approval under section 80G, the only provision as per these rules is that the rejection can only be made if one or more conditions as laid down in clauses (i) to (v) of sub-section (5) of section 80G of the Act are not fulfilled. It is quite clear that the rules have given the instances of rejection of the said application in the form of non-compliance of provision of section 80G(5) clauses (i) to (v). Now, coming back to the provision of section 80G(5) of the Act, we see on reading of clauses (i) to (v), there is no clause which says that the said approval be rejected if any institution or fund accepts anonymous donation. In the present case, this was the only reason given by the learned Commissioner of Income Tax for rejection of said registration. The provisions of section

115BBC of the Act are not relevant for granting approval under section 80G of the Act. There is no mention of this section 115BBC or even of anonymous donation in any of the provision of section 80G of the Act or rules made for the purposes of this section. The taxability of anonymous donations under section 115BBC of the Act can always be taken care at the time of assessment by the Assessing Officer and are not relevant for granting registration under section 80G of the Act.”

17. In the present case also, we see that the only remarks made by the CIT(Exemption) are with regard to which he cannot do while considering the approval for section 80G. These are the matters to be consider by the Assessing Officer at the time of granting exemption under section 11 of the Act.

18. In view of the above, we directed the CIT(E) to grant assessee the approval under section 80G of the Act.

19. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on this 9th day of February, 2016.

Sd/-
(H.L. KARWA)
VICE PRESIDENT

Sd/-
(RANO JAIN)
ACCOUNTANT MEMBER

Dated : 9th February, 2016

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh