

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No. 4538/Mum/2012
Assessment Year : 2008-09

Khagol Mandal C/o S.R. Kerkar, 11/77 Godrej Colony, Creek Side Pirojsha Nagar, Vikhroli(E) Mumbai-400 079 [PAN : AAATK4876A]	Vs.	Director of Income Tax (Exemption) Room No.616, Piramal Chambers Lalbaug, Parel Mumbai-400 012
(Appellant)		(Respondent)

Appellant by	:	Shri. Nishant Thakkar
Respondent by	:	Shri. R.P.Meena & Harkamal Sohi

Date of Hearing : 02-04-2019	Date of Pronouncement : 07-06-2019
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ORDER

PER G.S. PANNU, VICE PRESIDENT:

The captioned appeal by the assessee is directed against the order dated 07.06.2011 passed by the Director of Income Tax (Exemptions) (in short 'the Director') rejecting the application of assessee dated 07.06.2008 seeking continuation of recognition under Section 80G of the Act.

2. The appellant before us is a Trust and a voluntary organisation engaged in conducting studies and programmes in the field of Astronomy. The assessee-trust was granted registration as a 'charitable institution' under Section 12A of the Act by CIT, Mumbai-4 vide order dated 15.06.1987. It has also been pointed out that the assessee-trust was also recognised under Section 80G of the Act right from Assessment Year 1997-98 till the last of the renewals dated 05.12.2005, which was upto 31.03.2008, i.e. upto Assessment Year 2008-09. Subsequently, vide application dated 17.06.2008, assessee made an application to the Director seeking continuation of recognition earlier granted under Section 80G of the Act. By way of the impugned order, the Director has rejected the application on the ground that the applicant-trust was not engaged in any charitable activity. As per the Director, *the Profit & Loss Account of the assessee-trust for the last three years shows that "no expenditure on account of the objects of the trust has been incurred/debited by the applicant-trust during the last three years period"*. Against such a decision of the Director, assessee is in appeal before us. The appellant has raised the following Grounds of appeal :-

"Ground I : The DIT(E) erred in rejecting the Renewal application dt. 17-06-2008 for approval of the Institution for the purposes of Sec. 80G long after the expiry of Six months stipulated in Sec. 80G(5) read with rule II AA.

The DIT(E) failed to appreciate that

- (i) All the requirements for Renewal applications were duly accompanied.*
- (ii) Having complied with all the requirements the order on the renewal application was required to be issued before 31-12-2008.*
- (iii) In the absence of any action within such period of six months the renewal was deemed to have been allowed the appellant therefore contends that*

the order of rejection made on 07-06-2011 beyond the statutory stipulation is without jurisdiction, in effective and bad in Law.

Ground II : *Without prejudice to the above contention the applicant further contends that :*

- (i) The DIT(E)'s, observations in Para 2 of the rejection order dt. 07-06-2011 is wholly unwarranted since the requirements mentioned there in were already placed before him and the appellant holds an acknowledgement dated 17-06-2008.*
- (ii) The notice dt. 07-01-2011 is beyond the stipulated statutory period and is therefore without jurisdiction and is ineffective and bad in Law.*

Ground III : *The appellant contends that the law as it stood before the amendment on 01-09-2009 was applicable to this case and therefore assumption made by DIT(E) in Para 5 are based on surmises and are unwarranted and the rejection based on these observations and the conclusion drawn therefrom is not justified."*

3. At the outset, it was brought out that there is a delay of 324 days in filing of appeal before the Tribunal. Explaining the delay, the Learned Representative referred to an Affidavit furnished by one Mr. Sagun Radhakrishna Kerkar, a Trustee of the assessee-trust. A copy of the said Affidavit dated 22.01.2014 has been placed on record. In terms of the averments contained therein, reasons for the delay have been explained on account of illness of one, Shri Sameer Kadam, Trustee of the assessee-trust during the relevant period. It has been pointed out that the said Shri Sameer Kadam was the Trustee looking after the income-tax matters of the trust and due to his recurrent illness, there was a delay in filing of the appeal. It has been contended that the delay is unintentional and it may be condoned,

especially considering the fact that it is a case of a charitable institution which is duly registered under Section 12A of the Act.

4. On the other hand, the Ld. DR has not assailed the *bona fides* of the reasons canvassed by the assessee for the delay, but has pointed out that the delay was quite inordinate.

5. Having considered the rival stands, in our view, the reasons for the delay explained by the assessee are not lacking in *bona fides* as there is nothing on record to controvert the averments made in the Affidavit filed before us. In any case, it is a settled proposition that it is not the length of the delay, but the quality of the reasons for delay, which shall prevail in order to adjudicate whether a condonation of delay is merited. The Hon'ble Supreme Court in the case of *Collector, Land Acquisition vs. Mst. Katiji & Ors.*, 167 ITR 471 (SC) held that the substantive cause of justice should prevail over technical considerations, while dealing with the condonation of delay applications. Therefore, considering the entirety of facts and circumstances of the instant case, we deem it fit and proper to condone the delay in filing of the appeal. The aforesaid decision was announced before the parties, and therefore both the counsels were heard with respect to the merits of the dispute.

6. The Learned Representative for the assessee pointed out that on point of law as also on facts, the impugned order of the Director was untenable inasmuch as the Director has exceeded his jurisdiction in denying the continuation of recognition under Section 80G of the Act merely on the ground of his perception that no expenditure was incurred towards the

objects of the Trust. While asserting that such an observation was factually incorrect, the Learned Representative pointed out that while evaluating assessee's application for recognition under Section 80G of the Act, the requirements contained in clauses (i) to (v) of Sec. 80G(5) of the Act are required to be satisfied, which in the present case, assessee has fully complied with. It is pointed out that the reasons brought out by the Director are, in any case, untenable given the fact that the registration under Section 12A of the Act continues to subsist and even in the assessments, there is no adverse view taken so as to jeopardise assessee's claim for exemption under Sections 11/12 of the Act. On the point of law, the Learned Representative relied upon the following judgments :-

- (i) Sonepat Hindu Educational & Charitable Society vs. CIT, 278 ITR 262 (P&H);
- (ii) CIT vs. Sewa Bharti Haryana Pradesh, 325 ITR 599 (P&H); and,
- (iii) Shri Chandrabhan Athare Patil Gram Navodaya Trust vs CIT-1, Pune, [2012] 22 taxmann.com 406 (Pune)

7. Insofar as the factual aspects are concerned, the Learned Representative referred to the Annual Accounts of the preceding three years to point out that substantial funds have been incurred towards the objects of the Trust. Furthermore, a Tabulation of the level of expenditure incurred vis-a-vis the income, for the period starting from Assessment Year 2004-05 to 2017-18 has also been furnished to support the claim that a substantial percentage of the income has been spent directly towards the attainment of objects of the Trust. In this manner, the impugned order of the Director is sought to be assailed by the appellant.

8. On the other hand, the Ld. DR appearing for the Revenue has defended the decision of the Director by placing reliance thereon and also reiterating the reference made by the Director to the following decisions :-

- (i) Ganjam Nagappa & Son Trust vs DIT, 269 ITR 59 (Karnataka);
- (ii) Vishal Khanna Public Charitable Trust vs UOI, 356 ITR 442 (Allahabad);
- (iii) Madani Musafir Khana Welfare Society vs CIT, 264 ITR 481 (Patna);
and,
- (iv) Vishwa Budha Parishad vs CIT, 264 ITR 357 (Patna)

9. We have carefully considered the rival submissions. As our discussion in the earlier paras show, the moot question is as to whether the Director was justified in denying the continuation of recognition under Section 80G of the Act. Sec. 80G of the Act enumerates clauses (i) to (v) which contains various conditions for allowing recognition under Section 80G of the Act. The scope and ambit of the inquiries that are permissible to be made by the Director at the stage of evaluating an application under Section 80G of the Act has been considered by the Hon'ble Punjab & Haryana High Court in the case of *Sonepat Hindu Educational & Charitable Society (supra)*. As per the Hon'ble High Court, the scope of inquiry by the Director while dealing with an application under Section 80G of the Act extends to eligibility to exemption under various provisions of the Act, referred to in Sub-section (5) thereof, but does not extend to the actual computation of income under the Act. Similarly, in the subsequent judgment in the case of *Sewa Bharti Haryana Pradesh (supra)*, the Hon'ble Punjab & Haryana High Court reiterated similar proposition. In this view of the matter, we may now

examine the objections raised by the Director in the present case in order to deny the recognition sought by the assessee under Section 80G of the Act. As per the Director, the assessee has not spent any money towards the objects of the Trust. In our considered opinion, the said objection is quite otiose to the requirements which are required to be evaluated by the Director at the stage of considering application under Section 80G(5) of the Act. Some of the germane issues in the present case which clearly stand out are as follows; that the assessee continues to be a charitable institution under Section 12A of the Act; that the assessee has been regularly filing its return of income and claiming exemption under Sections 11/12 of the Act; that there is no adverse order by the Assessing Officer with regard to assessee's claim for exemption under Sections 11/12 of the Act; and, that since Assessment Year 1997-98 and till Assessment Year 2008-09, assessee was granted recognition under Section 80G of the Act. In the background of the aforesaid features, and the fact that there is no allegation, much less a finding by the Director, that the activities of the assessee have undergone any change from the past years, we do not find any justification on the part of the Director in denying the recognition sought under Section 80G of the Act.

10. Even otherwise, we find that the observation of the Director that the assessee is not engaged in charitable activities or that money has not been spent towards attainment of the objects is quite misplaced. In the course of hearing, the Learned Representative for the assessee filed a Paper Book wherein is placed copy of the periodicals and other publications which are being published by the assessee-trust in the field of Astronomy. In particular, reference has been made to an article published in an

international magazine published by the International Astronomical Union, which brings out the role being played by the assessee-trust in popularising Astronomy in India. We have perused the said article, which exhaustively brings out the various activities being carried out by the assessee-trust, namely, weekly meetings and library, Sky observation programmes, exhibitions, slide shows, basic and advanced courses in astronomy for students, conducting of study tours, workshops, conference and special events, etc. It was also explained by the Learned Representative that since its inception 20 years ago, assessee-trust has been publishing a bulletin called '*Khagol Warta*' in Marathi, which is very well received by the researchers and students of Astronomy. Our attention has also been drawn to the list of publications since 1986, which has been brought out by the assessee-trust. All these aspects, in our view, do not lend support to the perception of the Director that the assessee-trust is not incurring expenditure towards its objects.

11. Even with regard to the level of expenditure incurred by the assessee, we have perused the Income & Expenditure statement enclosed by the assessee in the Paper Book for various years and find that the observation of the Director is devoid of factual support. In fact, a perusal of the Income & Expenditure Account reveals that the streams of income are on account of library subscription, sale of books, subscription towards its periodicals, donations and annual subscription fee, etc. All these goes to show that assessee is earning incomes from carrying on activities which are in the field of popularising Astronomy and, therefore, to say that there is no expenditure incurred towards the furtherance of its objects is obviously an incorrect assertion on the part of the Director. In any case, we find that the

Director has made only a bald assertion without referring to any specific material in support of his plea that assessee has not incurred any expenditure towards the objects of the trust. Therefore, on facts also, we are not inclined to uphold the stand of the Director.

12. Before parting, we may refer to the judgment of the Hon'ble Patna High Court in the case of *Madani Musafir Khana Welfare Society (supra)* which has been relied upon by the Director. We have perused the said decision and find that the same is wholly inapplicable to the facts of the instant case. In the case before the Hon'ble Patna High Court, there was a fact-situation that since inception assessee was incurring expenditure towards construction of a shopping complex, which was a non-charitable activity. Obviously, in the present case, there is no material brought out to say that assessee has spent any of its funds in any non-charitable activity.

13. Similarly, the reliance by the Director on the judgment of Hon'ble Patna High Court in the case of *Vishwa Budha Parishad (supra)* is also misplaced. The said decision has also been rendered in the context of its peculiar facts and is inapplicable to the fact-situation in the instant case wherein, on facts, we have found that assessee is indeed engaged in activities towards the furtherance of the objects of the trust.

14. Insofar as the reliance placed by the Ld. DR on the judgment of the Hon'ble Karnataka High Court in the case of *Ganjam Nagappa & Son Trust (supra)* is concerned, we find that therein also the fact-situation was quite different. In the case before the Hon'ble High Court, there was a finding of fact to the effect that funds of the Trust were being used for non-charitable

purposes. Obviously, in the instant case there is no such finding of the Director and nor is there any finding in the assessment stage so as to justify any misapplication of funds by the assessee-trust. Therefore, the ratio of the judgment of the Hon'ble Karnataka High Court in the case of *Ganjam Nagappa & Son Trust (supra)* does not help the case of the Revenue in the present case.

15. Insofar as the judgment of the Hon'ble Allahabad High Court in the case of *Vishal Khanna Public Charitable Trust (supra)* relied upon by the Ld. DR is concerned, the same, in our view, is also inapplicable in the instant case on account of difference in the fact-situation. In the case before the Hon'ble Allahabad High Court, the object of the Trust was to construct and maintain a charitable hospital, whereas factually it was found that the Trust was diverting monies for construction of a shopping complex. Under these circumstances, the Hon'ble High Court upheld the decision of the Commissioner in denying recognition to the Trust under Section 80G of the Act. Quite clearly, the fact-situation in the instant case stands on an entirely different footing inasmuch as there is no material to say that the activities of the assessee are for any non-charitable purposes.

16. In view of the above discussion, we set-aside the order of the Director with directions to allow the application of the assessee dated 17.06.2008 seeking continuation of recognition granted earlier under Section 80G of the Act.

17. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 07th June, 2019.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Mumbai, Date : 07th June, 2019

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar

I.T.A.T, Mumbai