

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “C”, BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.274/Bang/2021

Sri Saravu Mahalinga Bhat Foundation, V-11, Peenya 2 nd Stage Bangalore – 560 058. PAN : AAXTS7520F.	v.	The Commissioner of Income- tax (Exemption) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Narendra Sharma, Advocate
Respondent by : Sri.A.Srinivas Rao, CIT-DR

Date of Hearing : 06.10.2021	Date of Pronouncement : 06.10.2021
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(Exemptions)’s order dated 27.03.2021.

2. The ground raised reads as follows:-

1. The order of the learned CIT in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities facts and circumstances of the case.

2. The learned CIT is not justified in refusing to grant recognition u/s 80G of the Income-tax Act, 1961, on the ground that the genuineness of the activities for grant of approval u/s 80G[5][vi] of the Act cannot be verified under the facts and in the circumstances of the appellant's case.

3. The learned CIT[E] ought to have appreciated that the objects of trust are charitable in nature and that the appellant had filed all the details called for by the learned CIT [Exemptions], Bangalore and therefore, the learned CIT is not justified in refusing to grant recognition u/s 80G of the Act on the unsustainable ground that the genuineness of the activities for grant of approval u/s 80G(5) [vi] of the Act cannot be verified and consequently, the impugned order passed by the learned CIT[E] deserves to be cancelled and the

appellant requires to be granted recognition u/s.80G of the Act.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

3. The brief facts of the case are as follows:

The assessee is a public charitable trust constituted under the Trust deed dated 22.03.2019. The objects of the assessee are as under:-

- (a) To provide financial assistance to deserving students from the financially weak families for their educational and other incidental expenses;
- (b) To establish and run educational institutions, orphanages and old age homes for the needy;
- (c) To mobilize and use necessary financial and other resources with a view to achieve the above objectives; and
- (d) Any other legally accepted act for fulfilling the above objectives.

4. After formation of the Trust, as aforesaid, the assessee trust had applied the Registration u/s 12AA of the I.T.Act before the Commissioner of Income-tax (Exemption) and the same was granted on 16.12.2019 vide order No.ITBA/EXM/S/12AA/2019-20/1022453772(1).

5. Thereafter the assessee on 06.01.2020 applied for recognition u/s 80G of the I.T.Act vide application filed in Form No.10G of the I.T.Act. The CIT(E) vide letter dated 15.10.2020 called for certain details and particulars from the assessee and in response to the same the assessee vide letter dated 18.10.2020 furnished the details and particulars called for.

6. The CIT(E) passed the impugned order u/s 80G(5)(vi) of the I.T.Act by refusing to grant recognition under the said section. The relevant finding of the CIT(E) reads as follows:-

“the details submitted are verified. As verified from the documents and financials submitted, there are no noticeable charitable activities as on date from the date of formation of trust. Hence, in the absence of no noticeable charitable activities, the genuineness of the charitable activity could not be examined to decide to grant recognition u/s 80G of the I.T.Act. Hence there is no option but to reject the application for grant of recognition u/s 80G(5)(vi) of the I.T.Act, 1961, as not eligible. In this connection reliance is placed on the following decisions:-

Hon’ble Kerala High Court in the case of Self Employers Institution v. CIT reported in 247 ITR 18 has held that where there is no material before the Commissioner to be satisfied of the genuineness of the activities of the trust is a valid reason for rejection.”

Accordingly, the application u/s 80G(5)(vi) of the Income tax Act, 1961 is hereby rejected.”

7. Aggrieved, the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee submitted that on identical facts, the Tribunal in the case of M/s.Chiranthana v. CIT(E) in ITA No.2014/Bang/2019 (order dated 02.01.2020) had restored the case to CIT(E) for *de novo* consideration. The learned AR submitted that the sole reason

given by CIT(E) for refusing to grant recognition u/s 80G(5)(vi) (reason given by CIT(E) is that in absence of any charitable activities, the genuineness of the charitable activity could not be examined) is not mandated as per the provisions of the Act.

8. The learned Departmental Representative strongly supported the order of the CIT(E).

9. We have heard rival submissions and perused the material on record. The assessee trust was granted registration u/s 12AA of the I.T.Act vide order of CIT(E) dated 16.12.2019. The Department has not doubted the charitable nature of objects of the assessee for which it is established. The grant of approval / recognition u/s 80G of the I.T.Act, acts as catalyst and results in donations which in turn results in charitable activities. In other words, in many cases for the charitable activities to begin, the money required is received through donation and there encouragement for donors to donate when the trust is recognized u/s 80G of the I.T.Act. Therefore, grant of recognition u/s 80G of the I.T.Act may be condition precedent for achieving the objects for which the trust is established. On identical factual situation, the Bangalore Bench of the Tribunal in the case of M/s.Chiranthana v. CIT(E) (supra) had held that rejection of assessee's application for the sole reason that no activities has been started by the assessee is not correct and not mandated as per the provisions of the Act. The Co-ordinate Bench of the Tribunal after holding that the reasons stated by the CIT(E) cannot be a ground to deny the benefit of recognition u/s 80G(5)(vi) of the I.T.Act, restored the matter to the CIT(E) for

de novo consideration. The relevant finding of the Co-ordinate Bench of the Tribunal, reads as follows:-

“5. Undisputedly, assessee has been granted registration under section 12AA of the Act, and that there is nothing on record brought out by authorities below, or Ld.CIT DR regarding violation of objects of Trust. In support of the contentions assessee placed reliance upon following decisions of coordinate bench of this Tribunal on identical issue:

- *M/s Bharat Ratna Sir M Vishweshwarayya Educational Society vs CIT (E) in ITA No. 732/B/2018, vide order dated 12/04/19 for assessment year 2013-14;*

- *M/s.Indic Science Research Trust vs. CIT(E) in ITA No. 1077/B/2018 vide order dated 20/07/18 for assessment year 2018-19;*

- *Vimalalaya Hospital Trust vs CIT (E) in ITA No. 1435/B/2019 vide order dated 29/11/19 for assessment year 2019-20.*

5.1. In our view, grant of approval/recognition under section 80 G of the Act, can act as catalyst to encourage prospective donors to look at intended activities/objects and possibly provide financial support through donations/contributions. In the facts of present case, assessee was holding valid registration under section 12 AA of the Act, as on date of impugned order, which conversely means that Ld.CIT (E) was satisfied with objects of assessee in not disputing the registration under section 12 AA.

5.2. Ld.AR placed reliance upon decision of M/s.Indic Science Research Trust vs. CIT(E), (supra), wherein relying on decision of coordinate bench of this Tribunal in case of M/s.Manipal Alumini of Nephrology Trust in ITA No. 548 and 549/B/2013, this Tribunal remanded the issue to Ld.CIT(E), for fresh consideration.

5.3. In our view reasons cited by Ld.CIT(E)(supra), are not the requirements mandated by provisions of the act, and cannot be the basis for rejection of assessee's application for recognition under section 80G. We also noticed that Ld.CIT(E) has not examined the application of assessee in terms of section 80 G (5) of the Act. Thus, respectfully following the view taken by

coordinate benches of this Tribunal in above referred decisions, we remand the question of grant of approval under section 80 G (5) (vi) of the Act to Ld.CIT (E) ITA No. 2014/B/2019 7 for fresh consideration the light of decisions referred to herein above. Needless to say that Ld.CIT(E) will afford proper opportunity of being heard to assessee in accordance with law. Accordingly grounds raised by assessee stands allowed for statistical purposes.

9.1 In view of the Co-ordinate Bench order of the Tribunal, which is identical to the facts of the instant case, we restore the case to the files of CIT(E). The CIT(E) is directed to consider the assessee's application for recognition u/s 80G(5)(vi) of the I.T.Act afresh. The CIT(E) shall afford a reasonable opportunity of hearing to the assessee and shall take a decision in accordance with law. Hence, the ground raised is allowed for statistical purposes.

10. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced on this 06th day of October, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 06th October, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT (Exemptions), Bangalore.
4. The CIT, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore