

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE**

श्री कुल भारत, न्यायिक सदस्य

तथा

श्री मनीष बोरड, लेखा सदस्य के समक्ष

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A. No. 92/Ind/2018		
निर्धारणवर्ष/ Assessment Year : 2017-18		
Glaucoma Society of India, Indore.	vs.	CIT(E), Bhopal
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AABTG1474H		

अपीलार्थी की ओर से/Appellant by	:	Shri Pawan Ved, Adv.
प्रत्यर्थी की ओर से/Respondent by	:	Shri Lalchand, CIT DR

सुनवाई की तारीख/Date of hearing	:	04.07.2018.
उद्घोषणा की तारीख/Date of pronouncement	:	18.07.2018

आदेश / O R D E R

PER KUL BHARAT, J.M. :

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income-tax (Exemption) dated 29.01.2018 relating to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal :-

1. The Ld. CIT(E) was not justified in rejecting the application for approval of appellant u/s 80G.
2. Without prejudice to the above, the Id. CIT (E) was not justified in ignoring the binding decision of Hon'ble M.P. High Court; and rejecting approval on irrelevant grounds of lack of reconciliation of certain accounts which were not relevant.
3. Without prejudice to ground no.1, the order passed by CIT(E) was time barred hence approval

should be declared to have granted w.e.f. the date of time barring that is 1st Jan., 1, 2018.

3. Briefly stated, the facts are that this is a second round of litigation. In earlier round, the Tribunal was pleased to set-aside the issue of granting of registration u/s 80G to the file of the Id. CIT in I.T.A.No. 236/Ind/2017 vide order dated 13.06.2017. The Id. CIT has again rejected the application of the assessee society. Aggrieved by this, the assessee is before this Tribunal.

4. Ground no. 3 of the assessee's appeal reads as under :-

3. Without prejudice to ground no.1, the order passed by CIT(E) was time barred hence approval should be declared to have granted w.e.f. the date of time barring that is 1st Jan., 2018.

5. The Ld. Counsel for the assessee vehemently argued that the order passed by the Id. CIT is barred by limitation, as the order has not been passed, within six months from the date of pronouncement of order. He submitted that the impugned order is dated 29th January, 2008.

6. The Ld. Counsel for the assessee submitted that the service of notice is to be construed from the date of pronouncement of the order. In support of this contention, the Ld. Counsel for the assessee placed heavy reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Odeon Builders (P) Limited, (2017) 80 taxmann.com 180 (Del). The Ld. Counsel for the assessee submitted that as per Rule 11-AA, the Id. CIT was required to pass order within six months from the date of pronouncement. He submitted that the date of pronouncement is to be construed as the date of application to the Id. CIT.

7. On the contrary, the Ld. Departmental Representative opposed the submissions and submitted that the limitation is not applicable as the Rule 11-B is in respect of the application made before the concerned authorities. It is not the case where the order is to be passed in pursuance of the order of the Tribunal.

8. We have considered the facts, rival submissions and perused the material available on record. We are unable to accept the contention of the assessee that the order passed by the Id. CIT is barred by time. We are in agreement with the submission of the Ld. Departmental Representative that the limitation prescribed under Rule 11-AA(1B) would not be applicable under the facts of the present case. For the sake of clarity, the direction of the Tribunal in I.T.A.No. 236/Ind/2017 embodied in para 7 is reproduced as under :-

“7. We have considered rival submissions

and perused the material on record. We find that the notices of hearing were issued at the address of AIIMS, Delhi which were apparently received late by the appellant society, hence, it appears that the assessee society could not make due compliance of production of books of accounts and other supporting documents thereon before the CIT(E). Further, we find that the application u/s 8OG (paper book page nos.3 & 4) has been filed with the CIT(E), Bhopal. The CIT(E), Bhopal has passed an order u/s 12AA(1)(b)(i) of the Act registered the trust under said Section on 25.04.2016 (paper book page no. 1). Therefore, the CIT(E) was having jurisdiction over the case, when the application for registration of 8OG was made

before him. However, it is the claim of the applicant that due to change of Secretary of the society the address of the assessee trust has been changed as the society is having floating business address on the basis of its secretary's residence, as per its bye laws. We also observed that the order u/ s SOG has been passed on 15.02.2017, which is well within time limit of six months period prescribed by Rule 11AA(6) of IT Rules, hence, this ground of appeal is devoid of any merit, hence, rejected. In these circumstances, we are of the considered opinion that the original jurisdiction is vested with the CIT(E), Bhopal and who has also passed the order u/ s 80G as well as u/ s 12AA of the Act in respect of assessee

society, therefore, in the interest of justice and fair play we deem it fit to restore the matter to the file of the CIT(E) to decide the matter afresh without any prejudice in accordance with law on production of books of accounts and required documents. The assessee society is also directed to cooperate with the proceedings and produce necessary books of accounts and other documents as contemplated under Rule 11AA(3) of I.T. Rules, 1962 and as are the necessary for grant of approval u/ s 80G of the Act within the reasonable time. In the light of aforesaid fact the entire issue in respect of all grounds of appeal is set aside to the file of CIT(E) with de novo consideration and in accordance with law.

9. From the above direction, it is clear that the society was directed to produce necessary documents before the Ld. CIT(A) by the order of the Tribunal within the reasonable time. It is uncontroverted fact that the assessee society itself sought adjournment for filing of the necessary documents. The Id. CIT has, thus, passed the impugned order on 29.1.2018 and , in our considered view that the Id. CIT has disposed of the issue of granting registration u/s 80G within the reasonable time. Thus, this ground of the assessee's appeal is dismissed.

10. Ground nos. 1 & 2 are interconnected.

11. The Ld. Counsel for the assessee vehemently argued that there is no dispute with regard to the fact that the assessee society was registered u/s 12A of the Act. This registration is not disturbed by the authority below. He submitted that the condition for registration u/s 12A and registration u/s 80G are same and similar. He submitted

that once the Id. CIT himself has satisfied in respect of registration u/s 12A, the Id. CIT ought not to have rejected the registration u/s 80G of the Act. He submitted that registration u/s 80G after grant of registration u/s 12A is consequential. He placed reliance on the decision of the Tribunal in the case of Shri Gian Ganga Vocational & Educational Society v. CIT, Rohtak, (2013) 35 taxmann.com 17 (Del.Trib.).

12. The Ld. Departmental Representative has also placed reliance on the decision of Coordinate Bench of this Tribunal in the case of Anand Incubation Centre v. CIT (E), Jaipur, (2017) 86 taxmann.com 250 (Jaipur-Trib).

13. The Ld. Counsel for the assessee placed reliance on the judgement of the Hon'ble Gujarat High Court in the case of Hiralal Bhagwati v. CIT, (2000) 246 ITR 188 (Guj). The Ld. Counsel for the assessee has also relied on the judgment of the Hon'ble Supreme Court in the case of

ACIT vs. Surat City Gymkhana, (2008) 300 ITR 214 (S.C.), IN Civil Appeal Nos. 4305 and 4306 of 2002 dated 4th March, 2008. The Ld. Counsel for the assessee has taken us through the relevant provisions of law to buttress the argument that the assessee is entitled for registration u/s 80G. He further contended that the assessee society has all over India different chapters, who are registered separately and have separate entity. They are merely affiliated with the Society. He submitted that anything adverse found in the functioning of those entities, cannot be the reason or denying registration to the assessee society.

14. On the contrary, the Ld. Departmental Representative opposed the submissions and supported the orders of the lower authorities.

15. We have considered the facts, rival submissions and perused the material available on record. It is contended on behalf of the assessee that Id. CIT while granting

registration u/s 12A of the Income-tax Act, 1961, has satisfied about entitlement of deduction. He submitted that the provisions of Section 12A and 80G are similar. The conditions as embodied in those provisions are identical. The registration u/s 12A was granted during the financial year in which the application for registration u/s 80G was made. It is vehemently argued that once the Id. CIT is satisfied about registration u/s 12A, then the rejection of registration u/s 80G is not justified. For the sake of clarity, we reproduce the relevant provisions of Section 12AA and Section 80G conditions :-

Conditions of Section 12A:

“12A. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:— (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Principal

Commissioner or Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA :

Provided *that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—*

- (i) from the date of the creation of the trust or the establishment of the institution if the Principal Commissioner or Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;*
- (ii) from the 1st day of the financial year in which the application is made, if the Principal Commissioner or Commissioner is not so satisfied:*

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;

Following clause (ab) shall be inserted after clause- (aa) of sub-section (1) of section 12A by the Finance Act, 2017, w.e.f. 1-4-2018 :

(ab) the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)], and, subsequently, it has

adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form⁸ duly signed and

verified by such accountant and setting forth such particulars as may be prescribed. Following clause (ba) shall be inserted after clause (b) of sub-section (1) of section 12A by the Finance Act, 2017, w.e.f. 1-4-2018 :

*(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. (c) [***]*

(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

Section 80G(5) Conditions:

“ (5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub- section (2), only if it is established in India for

a charitable purpose and if it fulfills the following conditions, namely:-

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (22) or clause (22A)] or clause (23)] or clause (23AA)] or clause (23C)] of section 10:

Provided *that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if,-*

(a) the institution or fund maintains separate books of account in respect of such business;

(b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issues to a person making the donation a certificate

to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;]]

[\(ii\)](#) the instrument under which the institution or fund is constituted- does not, or the rules governing the institution or fund do not, contain any provision for the transfer of application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

[\(iii\)](#) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

[\(iv\)](#) the institution or fund maintains regular accounts of its receipts and expenditure; ⁷]

[\(v\)](#) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25 of the

Companies Act, 1956 (1 of 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 approved by the Central Government for the purposes of clause (23) of section 10,] or is an institution financed wholly or in part by the Government or a local authority; and]

(vi) in relation to donations made after the 31st day of March, 1992 , the institution or fund is for the time being approved by the Commissioner in accordance with the rules 3 made in this behalf:

Provided *that any approval shall have effect for such assessment year or years, not exceeding five] assessment years, as may be specified in the approval.]*

(vii) *Where any institution or fund had been approved under clause (vi) for the previous year beginning on the 1st day of April 2017 and ending on the 31st day of March, 2008, such institution or fund shall, for the purposes of this section and notwithstanding anything contained in the proviso*

to clause (15) of Section 2,. Be deemed to have been, -

(a) established for charitable purposes for the previous year beginning on the 1st day of April, 2008, and ending on the 31st day of March, 2009; and

(b) approved under the said clause (vi) for the previous year beginning on the 1st day of April, 2008, and ending on the 3rd day of March, 2009.]”

16. The submission of the assessee is to be examined in the light of the above provisions of law. The Ld. Counsel for the assessee laid great stress on the argument that each chapter is a separate entity. The assessee is nothing to do if any discrepancy is found in their respective accounts. Secondly, when the assessee society fulfils all the conditions under Section 80G(5) of the Income-tax Act, 1961, the assessee cannot be declined registration u/s 80G. We find that in earlier round of litigation, the assessee society was directed to furnish books of account etc. before

the Ld. CIT(A) by this Tribunal. The relevant direction of this Tribunal in I.T.A.No. 236/Ind/2017 are reproduced as under :-

“In these circumstances, we are of the considered opinion that the original jurisdiction is vested with the CIT(E), Bhopal and who has also passed the order u/ s 80G as well as u/s 12AA of the Act in respect of assessee society, therefore, in the interest of justice and fair play we deem it fit to restore the matter to the file of the CIT(E) to decide the matter afresh without any prejudice in accordance with law on production of books of accounts and required documents. The assessee society is also directed to cooperate with the proceedings and produce necessary books of

accounts and other documents as contemplated under Rule 11AA(3) of I.T. Rules, 1962 and as are the necessary for grant of approval u/ s 80G of the Act within the reasonable time. In the light of aforesaid fact the entire issue in respect of all grounds of appeal is set aside to the file of CIT(E) with de novo consideration and in accordance with law. ”

17. From the above, it is evident that the assessee was directed to file documents as contemplated under Rule 11AA(3) of the Income Tax Rules, 1962 (hereinafter referred to as “Rule”). For the sake of clarity, we deem it proper to reproduce Rule 11AA(3) :-

“ (3) The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may

deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.”

18. In this background, the Ld. CIT(E) has given finding of fact in para 5 to 9 of his order, which reads as under :-

“5. It is stated an above by the assessee that if any surplus arises from conference, the same is handed over to the assessee society for being used on the objects of the society. It is not clear if these chapters are separate entities, why their surplus handed over to the assessee society? Also Whether these entities are entirely separate and whether they are separately Registered and filing I. T. Return or not. If they are separate why the receipts & Expenses of Palanpur, and particulars of Mumbai are clubbed with assesses accounts. Also the receipts /surplus of Mumbai are not taken in the accounts as pointed out above in Para 1. It

is also not explained whether the affiliates are collecting funds in the name of assessee and if so whether their receipts and expenses are as per the objects of the assessee society. It is seen from the copy of I&E of Palanpur (2016-17) and Mumbai (connect 2015-16) that huge amounts are collected and spent only for organizing conference of its members. The major collection being sponsorship Rs. 85,90,980/- out of total receipts by Palanpur. Similarly Mumbai unit shown sponsorship of Rs. 25,80,000/-, Trade money Rs. 19,80,000/- + Rs. 34,69,000/- i.e. Rs. 54,49,000/-and service Tax of Rs. 7,30,388/out of total receipts of Rs. 1,16,28,488/-. This shows that the conference are being sponsored by some commercial entity whose details not produced as stated in Para 3 above. Since the members of the society are professional being specialist doctors, it is prima facie against the objects if

their conferences are being sponsored by commercial entities. The receipt of Trade money with Service Tax is also shows some commercial activities.

6. Vide para 5 of the reply dt. 1610 I 120 18, it is contended that there is no condition u/s 80G to examine accounts while granting approval. In this context, it is pertinent to mention that Hon'ble ITAT Indore Bench Indore vide its order dated 13/06/2017 restore the matter to the file of the CIT(E) to decide the matter afresh without any prejudice in accordance with law on production of books of accounts and required documents. The Hon'ble ITAT has directed the assessee in Para 7 of the ITAT order to cooperate with the proceedings and produce necessary books of accounts and other documents as contemplated under Rule 11 AA(3) of I.T.Rules, 1962 and as are the necessary for grant of approval u/s 80G of the Act

within the reasonable time.

Further as regards above, it is worthwhile to reproduce the requirements for approval of an institution or fund under Section 80G:-

“ (3) The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.”

7. Vide para 6 of the reply dated 16.01.2018, it is contended that the queries raised do not relate to applicant society. It is clarified further here that the details of conferences as per query 1 & 2 stated in Para 3 and I&E was required to submit on the assessee itself has reflected these items in its accounts. Therefore, these are very much relevant in view of discussion at paras above.

8. It may also be mentioned that the assessee had

produced copy of ledger accounts along with accounts but the ledger accounts appears to be pertaining to accounts of GSI, Chennai, another Chapter of the GSI.

9. As discussed above, the activities are substantiated to the effect that the receipts/expenses are for the purpose of objects of the society. Since some of the vital details and explanations not produced as discussed in earlier paras, also from the whatever details produced it is found to be commercial receipts as discussed in Para 5 above. The assessee submission that the accounts of the affiliate Chapters are maintained by them, is also not found acceptable as discussed in Para 4 above. Therefore, the activities cannot be stated to be for charitable u/s 80G of the Act. At this stage the justification to seek exemption u/s 80G by the applicant Society could not be ascertained.”

19. From the above, it is evident that the Id. CIT(E) in the absence of the details related to other chapters of society, declined to grant registration under section 80G of the Act. We are of the view that Id. CIT(E) ought to have made enquiries from the Jurisdictional Assessing Authority, where other chapters of society are registered and assessed. We, therefore, direct the assessee to furnish complete details of other chapters of Society and its financial and administrative relations with such chapters. Hence, we set aside the impugned order and restore the issue of registration u/s 80G to the file of Id. CIT(E) for decision afresh. It is also clarified that the issue is set-aside on the submissions of the Ld. Counsel for the assessee that the other chapters of the society are independent entities and the assessee has nothing to do with their financial affairs. The Id. CIT(E) would make enquiry for the limited purpose with regard to the

administrative and financial relation of the assessee with other chapters. If it is found that the assessee has any control in respect of financial affairs, the Id. CIT(E) would take decision accordingly. This ground of the assessee's appeal is partly allowed for statistical purposes.

20. In the result, the assessee's appeal is partly allowed.

The order pronounced in the open court on 18.07.2018.

Sd/-

(मनीष बोरड)

लेखा सदस्य

(MANISH BORAD)

ACCOUNTANT MEMBER

Sd/-

(कुल भारत)

न्यायिक सदस्य

(KUL BHARAT)

JUDICIAL MEMBER

Indore; दिनांक Dated : 18/07/2018

CPU*/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore