

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1911/Mum./2023

Huhtamaki Foundation
C/o 12A-06, 13TH Floor, Parinee Crescenzo
C-38/39, G-Block, Bandra Kurla Complex Appellant
Bandra (East), S.O. Mumbai 400 051
PAN – AACTH2382L

v/s

Commissioner of Income Tax
(Exemption), Mumbai Respondent

Assessee by : Shri Vijay Mehta a/w
Shri Ashish Agarwal and
Shri Harsh Bafna
Revenue by : Shri Biswanath Das

Date of Hearing – 06/09/2023

Date of Order – 29/11/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 30/03/2023, passed in Form No.10AD by the learned Commissioner of Income Tax (Exemption), Mumbai [*learned CIT(E)*] rejecting the assessee's application for grant of approval under section 80G of the Income Tax Act, 1961 (*the Act*).

2. In its appeal, the assessee has raised the following grounds:-

"The below mentioned Grounds of Appeal are independent and without prejudice to each other:

1. The learned Commissioner of Income-tax (Exemptions), Mumbai [learned CIT] has erred in summarily rejecting the application filed by the Appellant Trust (in Form 10AB) for grant of approval under section 80G(5) of the Act.

2. The learned CIT has erred in holding that the Appellant Trust is engaged in commercial activity not falling within the purview of 'charitable purpose' as required under section 80G(5) of the Act.

3. The learned CIT has erred in passing the impugned order without granting effective opportunity of hearing to the Appellant Trust.

The Appellant Trust craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."

3. The only dispute raised by the assessee, in the present appeal, is against the denial of approval under section 80G of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee filed an application in Form 10AB seeking approval under section 80G of the Act. Form 10AC in this case was issued by the CPC granting provisional approval under section 80G of the Act. Vide order dated 30/03/2023 the learned CIT(E) rejected the prayer of the assessee for grant of approval under section 80G of the Act on the basis that the assessee is established for spending Corporate Social Responsibility ("CSR") funds of Huhtamaki India Ltd. Further, it was held that the material produced by the assessee is again sold in the market which is a commercial activity and thus it doesn't come under the purview of charitable activities. The relevant findings of the learned CIT(E), vide impugned order, are reproduced as under:-

"4. The assessee has made submission on 23.03.2023. It was observed that Huhtamaki Foundation is established for expending CSR funds of Huhtamaki India Limited. M/s Huhtamaki India Limited is in the business of manufacturing of plastic and moulded fibre packaging products. The waste created after the

use of these products by the end user when thrown in the environment is collected by various agencies and brought to the premises of Huhtamaki Foundation where, the plastic granules are made from this waste material and again sold as a raw material for production of other plastic products. The assessee has claimed that by collecting the waste material and converting it into raw material is a way of protection of environment and claiming exemption for this purpose. The material produced by the Huhtamaki Foundation is again sold in the market which is a commercial activity. It does not come into the purview of charitable activities."

Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*") by referring to the Trust Deed submitted that the object of the assessee is the preservation of environment and it aims to achieve the same by recycling post-consumer plastic waste. The learned AR further submitted that under section 2(15) of the Act preservation of environment is included within the definition of "*charitable purpose*", therefore the activities of the assessee fall within the ambit of charitable purpose. It was also submitted that the assessee has built the building and has installed the required machinery to process the plastic waste. In this regard, the learned AR referred to the financial statement of the assessee forming part of the paper book. The learned AR submitted that the assessee recycles multi-layer plastic ("*MLP*"), which includes ink, fibre, and foil, and the output in the form of granules derived from recycling of MLP waste is of low quality and does not have much market value. It was further submitted that the assessee does not sell these granules to Huhtamaki India Ltd. as they require different quality of plastic raw material.

6. On the other hand, the learned Departmental Representative ("*learned DR*") submitted that CSR funds from the company were transferred to the

assessee and therefore there is a nexus between the company and the assessee. It was further submitted that the assessee is engaged in the commercial activity, since as per its one of the objects it can provide integrated recycling and waste management services, ranging from simple recycling collections to full recycling and waste management solutions to businesses of all sizes. The learned DR submitted that the activities carried out by the assessee fall under the residual category of advancement of any other object of general public utility.

7. We have considered the submissions of both sides and perused the material available on record. The assessee was settled as an irrevocable trust, vide Trust Deed dated 09/10/2019, with the main object to work in the area of preservation of environment. The assessee is registered under the Bombay Public Trusts Act, 1950. Further, the assessee has also received a Registration Certificate for recycling plastic waste issued by the Maharashtra Pollution Control Board under the Environment (Protection) Act, 1986 read with the Plastic Waste Management Rules, 2016.

8. As per the aforesaid Trust Deed dated 09/10/2019, forming part of the from pages 1-10, the aims and objects of the assessee are under:

"4. OBJECTS OF THE TRUST:

The aims and objects of the Trust are as under:-

To work in the area of preservation of environment, but not limited to:

- a. *To work & contribute in the area of environmental sustainability and recyclability and set up Sustainability facilities for post-consumer use flexible packaging material;*

- b. *To work towards creating a system for wastage gathering, segregation and treatment solutions, providing integrated recycling and waste management services, ranging from simple recycling collections to full recycling and waste management solutions;*
- c. *To educate & address environmental concerns by improving the post-consumer- use flexible packaging waste management eco-system;*
- d. *To establish, promote units/plants in processing of post-production and post- industrial recyclable plastic & converting such wastes into environmental sustainable products;*
- e. *To recycle plastic waste and feed back the same into the supply chain, where it belongs;*
- f. *To identify, incubate, and invest in opportunities designed to intercept plastics at the source by collecting, sorting, processing, and recycling waste, so that waste gets diverted from the environment into the recycling value chain, furthering the circular economy;*
- g. *To promote, work in the area of connecting the world-wide supply and demand of recyclable plastics;*
- h. *To work in the area of changing the perception of the Society towards plastic waste, by educating/sharing our expertise through promotional campaigns, consulting, training and education and also to organise/participate in the seminars, conferences etc. in respect of the same;*
- i. *To invest in ground-breaking technologies of the future, and change the way the society thinks about post-consumer recycled plastics;*
- j. *To partner, collaborate, tie-up with individual collectors, as well as organisations, Corporations, from across the global plastics and consumer goods value chain: chemical and plastic manufacturers, fast moving consumer goods companies, retailers, manufacturers, converters, waste management companies' municipal Corporations, NGOs and small businesses across different countries;*
- k. *To provide integrated recycling and waste management services ranging from simple recycling collections to full recycling and waste management solutions to businesses of all sizes;*
- l. *To work in close association with government bodies, inter governmental organizations, academia, Municipal Corporations, Housing Society and to invest in joint projects to eliminate & recycle plastic waste from the environment.*
- j. *To provide financial aid/ assistance to any other individual working in the related field or institutions having similar objects as mentioned herein above;*

- k. *To publish pamphlets, magazines and/or books or literature related to recycling of plastic wastes*
- m. *To undertake any such project, program, activities, campaigns, related to the area of conversation of environment and pollution abatement."*

9. As per the assessee, the majority of the plastic waste generated in India pertains to MLP waste and since MLP material consists of layers of different polymers as well as metallised or paper-based layers, recycling such waste is difficult and uneconomical as compared to recycling other waste materials (such as rigid/single-layered plastic waste). Further, the output, i.e. granules derived from recycling of MLP waste is of low quality, as they are made of multiple polymers and consequently, the said granules do not have much market value as compared to granules derived from recycling single-layered plastic waste. Thus it was submitted that in the absence of recycling of post-consumer use MLP waste, the said waste would otherwise either be dumped in landfills or it would be sent for co-processing (i.e., burning in factories which will result in the generation of hazardous emissions/combustions), ultimately leading to polluting the environment. Therefore, it is the claim of the assessee that in order to preserve the environment, the assessee has installed a recycling plant, which undertakes recycling of the post-consumer MLP waste.

10. In this regard, it is the claim of the assessee that it is associated with a not-for-profit organisation ("*Swach PlusSeva Sahakari Sanstha Maryadit*") for the purpose of collection of post-consumer MLP waste and currently, the MLP waste which is recycled by the assessee is collected by rag-pickers engaged by the non-for-profit organisation from Pune as well as other nearby areas.

11. Before proceeding further, it is pertinent to note certain relevant provisions of the Act. As per the second proviso to section 80G(5) of the Act, upon receipt of an application, the Principal Commissioner or Commissioner may call for the documents or information from the assessee or make such inquiries as may be necessary in order to satisfy about the genuineness of activities of the assessee and the fulfilment of conditions laid down in clause (i) to clause (v) of section 80G(5) of the Act. Further, from the perusal of clause (i) to clause (v) of section 80G(5) of the Act, it is evident that the following conditions are required to be fulfilled for grant of approval under section 80 G of the Act:-

- (a) Income derived by the institution or fund is not liable to be included in total income under the provisions of sections 11 and 12 or section 10(23AA) or section 10(23C) of the Act;
- (b) The instrument under which the institution or fund is constituted or the rules governing the same do not contain any provision for transfer or application at any time of the whole or any part of the income or assets of the institution of fund for any purpose other than charitable purpose;
- (c) The institution or fund is not for the benefit of any particular religious community or caste;
- (d) The institution or fund maintains regular accounts of its receipts and expenditure; and

- (e) The institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860, or under any other law corresponding to that Act.

12. We find that vide Finance (No.2) Act, 2009 with retrospective effect from 01/04/2009, preservation of environment (including watersheds, forests, and wildlife), was included in the definition of "*charitable purpose*" under section 2(15) of the Act. From the perusal of the memorandum explaining the provisions in the Finance (No.2) Bill, 2009, forming part of the paper book from pages 77-79, we find that such an amendment was made so as to exclude the preservation of environment from the applicability of the conditions which are applicable to the "*advancement of any other object of general public utility*". From the perusal of the record, in the present case, we find that it is undisputed that the assessee has been involved in the recycling of plastic waste and therefore the same falls under the category of preservation of environment, rendering it to be an activity for the charitable purpose. In any case, we find that the assessee has been registered under section 12AA of the Act vide order dated 09/02/2021, forming part of the paper book from pages 15-17, as it has been involved in the Preservation of Environment (including watersheds, forest, and wildlife), and thus the provisions of section 11 and 12 of the Act shall apply in the case of the assessee from the assessment year 2021-22. Insofar as the provisions of sections 10(23AA) and 10(23C) of the Act are concerned, we are of the view that the same are not relevant to the present case. Accordingly, the assessee satisfies the condition of section 80G(5)(i) of the Act.

13. Further, clause 12 of the aforesaid Trust Deed dated 09/10/2019 provides that the trust is created as an irrevocable trust, and in the event of the trust failing to function for any reason or in the event of the trustees being of the unanimous opinion that this trust should be dissolved and/or amalgamated then same can only be with the trust having objects more or less similar to the assessee or any other public charity trust. Thus the condition of section 80G(5)(ii) of the Act is also satisfied in the present case. It is also undisputed that the assessee is not for the benefit of any particular religious community or caste and it maintains regular accounts of its receipts and expenditure as evident from the paper book submitted by the assessee. Further, it is also undisputed that the assessee is registered under the Bombay Public Trust Act, 1950. Therefore all the conditions as laid down in clause (i) to clause (v) of section 80G(5) of the Act are fulfilled in the present case.

14. We find that the coordinate bench of the Tribunal in Punjab Plastic Waste Management Society v/s CIT(E), in ITA No. 17/CHD/2020, vide order dated 14/07/2023 held the multi-layer plastic waste management undertaken by the taxpayer to be an activity forming part of the charitable purpose of the protection of environment, as envisaged under section 2(15) of the Act.

15. As regards the objection of the learned CIT(E) that the assessee is established for the spending CSR funds of Huhtamaki India Ltd, we find that the Hon'ble Gujarat High Court in CIT v/s Naroda Enviro Projects Ltd., [2019] 419 ITR 482 (Guj.) held that just because the members of the taxpayer are being benefited and their statutory liability is being discharged by the

assessee, by itself, would not be sufficient to hold that the assessee could not be said to have been set up for charitable purpose. In the present case, it is also pertinent to note that the MLP waste which is recycled by the assessee is collected from Pune and other nearby areas by NGOs and Huhtamaki India Ltd is not the direct source of such waste. Therefore, in view of the aforesaid decision, we find no merits in the aforesaid basis of the learned CIT(E) in rejecting the approval under section 80G of the Act.

16. Further, the assessee has submitted that Huhtamaki India Ltd does not purchase any product manufactured by the assessee nor use it as raw material. In support of this submission, the assessee has placed on record the list of parties to whom granules produced after recycling MLP waste were sold during the financial years 2021-22 and 2022-23. Further, the assessee has submitted that Huhtamaki India Ltd manufactures high-end flexible packaging materials such as pouch, label, specialised cartons, promotional materials, etc. for food products, confectionery items, beverages, healthcare items, etc. It is further submitted that the products are distributed all over India to manufacturers of FMCG, healthcare products, etc. whereas the MLP waste which is recycled by the assessee, is collected from Pune and other nearby areas. Therefore, it is the submission of the assessee that the granules derived from the recycling of MLP waste are of low quality and therefore the same do not have much market value.

17. It needs to be appreciated that in today's world, plastic waste constitutes a major component of the total waste generated and tons of plastic waste go uncollected every day which ultimately flows through streets, roads, rivers,

sea, and beaches thereby polluting our environment. In the recent past, various steps have been taken by the Government to stop the usage of single-use plastic. However, even then there are various items in which plastic is used in one form or another and MLP is one such product, which comprises not only ink, fibre, and foil, but also plastic. Pertinently, recycle, reuse, and reduce are important aspects of sustainable development, as they reduce the amount of waste generation. Therefore, we are of the considered view that the assessee is performing an important role by recycling the post-consumer MLP waste, which otherwise would have polluted the environment. Thus, we are of the view that considering the need of the hour to reduce waste, particularly plastic waste for protecting the environment, the various facets of environment protection need to be understood, and the role of various individuals/entities like the assessee in this entire process is required to be appreciated and promoted. We are further of the view that merely because the assessee has earned revenue from this entire activity cannot lead to the conclusion that recycling of plastic waste does not fall within the purview of preservation of environment and thus is not a charitable activity. In any case, there is no dispute that the revenue earned by the assessee is further used for the only activity conducted by it, i.e. plastic waste management.

18. During the hearing, much emphasis was laid on clause (k) of the Trust Deed dated 09/10/2019 by the learned DR to submit that the assessee is undertaking commercial activity as it provides integrated recycling and waste management services, ranging from simple recycling collections to full recycling and waste management solutions to businesses of all sizes. From the

perusal of the financial statements of the assessee for the financial years 2020-21, 2021-22, and 2022-23, we find that the assessee earned income only from donations, sale of scraps, and sale of finished goods and no such service was rendered to any entity. In any case, it is to be noted that such a service even if it is rendered by the assessee, the same will only be for the preservation of environment and thus is a charitable activity. It is evident from the record that no other objection was raised by the learned CIT(E) while denying the approval under section 80G of the Act to the assessee. Further, no doubt has been raised by the Revenue regarding the genuineness of the activity conducted by the assessee. Accordingly, we are of the considered view that the assessee satisfies all the conditions for the grant of approval under section 80G of the Act. Therefore, the impugned order dated 30/03/2023 denying the grant of approval under section 80G of the Act is set aside and the grounds raised by the assessee are allowed.

19. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 29/11/2023

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

MUMBAI, DATED: 29/11/2023

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Mumbai; and*
- (5) Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai