

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19<sup>th</sup> DAY OF JANUARY 2015

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR

AND

THE HON'BLE MR. JUSTICE B.VEERAPPA

**I.T.A. NO.807/2009**

**BETWEEN :**

M/s.Maheshwari Foundation,  
Represented by its  
Managing Trustee,  
Sri.Rajgopal Bhutada,  
No.336, Ideal Homes Society,  
17<sup>th</sup> Cross, Rajarajeshwari Nagar,  
Bangalore – 560 098.

...APPELLANT

(By Sri.A.Shankar, Adv.)

**AND :**

The Director of Income-Tax,  
(Exemptions), 3<sup>rd</sup> Floor,  
C.R.Building, Queens Road,  
Bangalore – 560 001.

...RESPONDENT

(By Sri.K.V.Aravind, Adv.)

. . . . .

This I.T.A. is filed under Section 260A of the Income Tax Act, 1961, arising out of order dated 07.08.2009 passed in ITA No.1456/BNG/2008, for the Assessment Year 2009-2010, praying to :

- (i) formulate the substantial questions of law stated therein,
- (ii) Allow the appeal and set-aside the order passed by the Income Tax Appellate Tribunal, Bangalore in I.T.A. No.1456/BNG/2008, dated 07.08.2009 in the interest of justice and equity.

This I.T.A. coming on for *hearing*, this day, **N.Kumar J.**, delivered the following:

### **J U D G M E N T**

The assessee has preferred this appeal against the order passed by the Tribunal upholding the order passed by the Commissioner holding that the assessee is not entitled to the benefit of renewal of recognition under Section 80G of the Income-Tax Act, 1961(for short, hereinafter referred to as 'the Act').

2. The assessee is a Trust formed on 12.07.2000. It filed an application for renewal of the recognition granted under Section 80G of the Act on 31.03.2008. The authorities called for certain details in connection with the renewal of the recognition and the same was furnished. The assessee was running a Hostel for students, for which charges were collected for both boarding and lodging. According to the assessee it was treated as a charitable purpose and Section 80G benefit was given up to 31.03.2008. Even after the amendment to Section 2(15) of the Act without prejudice to its applicability, in view of the provisos, the position will be the same if the gross revenue from business was less than Rs.25 lakhs. The Director of Income tax (Exemptions) was not convinced. Therefore, he rejected the renewal on the ground that the activity does not come within the scope of Section 2(15) of the Act as amended from 01.04.2009.

3. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal also held that running of a hostel would not fall within the definition of a charitable purpose and therefore, upheld the order of the Director of Income Tax.

4. Aggrieved by the said order, the present appeal is filed. The appeal was admitted to consider the following substantial questions of law:

*a) Whether on the facts and in circumstances of the case, the Tribunal was justified in upholding the order of learned Director of Income Tax (Exemptions) that the appellant activity is in the nature of trade, commerce or business and hence is not entitled to renew the recognition under Section 80G of the Act?*

*b) Whether the Authorities below were justified in law in not granting of renewal of recognition on the ground that the*

*activity of the appellant are hit by the amendment to section 2 (15) of the Income-tax Act?*

*c) Whether the learned Director of Income-tax(Exemptions) was justified in law in passing rejection order beyond the time prescribed under rule 11AA?*

5. The learned counsel for the assessee, assailing the impugned order contended that if the third substantial question of law is answered in favour of the assessee, the question of going into the other two questions of law would not arise, as the order passed by the authorities would be one without jurisdiction. His case is that, the application for renewal was made on 31.03.2008. The order rejecting or granting the benefit should have been passed on or before 30<sup>th</sup> September 2008. The order is passed on 06.10.2008 beyond the period prescribed under the law and therefore, he

submits that the impugned order requires to be set-aside.

6. Per contra, the learned counsel appearing for the revenue submitted that if an order is passed within the prescribed period, it does not mean that permission is granted. There is no such deemed permission. Therefore, he submits that the impugned order is valid and illegal.

7. The question is not whether a deemed permission is granted or not. The question is whether an order passed beyond the period prescribed under the law is valid? The reliance is placed on Rule 11AA of the Income Tax Rules which reads as under:

***Requirements for approval of an institution or fund under section 80G.***

***11AA.*** (1) *The application for approval of any institution or fund under clause (vi) of sub-*

*section (5) of section 80G shall be in Form No. 10G and shall be made in triplicate.*

*(2) The application shall be accompanied by the following documents, namely :*

*(i) Copy of registration granted under section 12A or copy of notification issued under section 10(23) or 10(23C) ;*

*(ii) Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;*

*(iii) Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.*

*(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.*

*(4) Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v)*

of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid.

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

**Provided** that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.

(6) The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the date on which such application was made:



***Provided*** that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded.]

8. A reading of the aforesaid provisions makes it clear that the Commissioner shall pass an order either granting the approval or rejecting the application within six months from the date on which such application was made. Therefore, it is mandatory that if the application is not disposed of within six months from the date on which the application is made, the Commissioner has no jurisdiction either to pass an order granting the approval or rejecting it.

9. It is not in dispute that the Commissioner did not pass any order within the period prescribed. He has passed an order on 06.10.2008 i.e., beyond the period prescribed under the aforesaid rule. Therefore, on the

date the order was passed, the Commissioner had no jurisdiction. Therefore, it is an order passed without jurisdiction. This aspect has not been properly considered and appreciated by the authorities. Therefore, the third substantial question of law is answered in favour of the assessee and against the Revenue. Hence, we pass the following order:

- (a) Appeal is **allowed**.
- (b) The impugned order passed by both the authorities are hereby set-aside.
- (c) The third substantial question of law is answered in favour of the assessee and against the revenue.
- (d) Liberty is reserved to the assessee to make a fresh application for benefit of Section 80G of the Act.
- (e) If such an application is made, the authority shall consider the said application on merits

and in accordance with law without being influenced in any way, by the finding recorded by the Director of Income-tax (Exemptions) or the Tribunal.

- (f) The finding recorded by the authorities is set-aside in this order.

Ordered accordingly.

Sd/-  
JUDGE

Sd/-  
JUDGE

**SPS**