

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A' LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.570/Lkw/2019
A.Y. N.A.

Ratan Chand Chhattibhai Seva Samiti, 55/57, Kahoo Kothi, Kanpur PAN AABAR 9447G	Vs.	Commissioner of Income Tax(Exemption), Lucknow
(Appellant)		(Respondent)

Appellant by	Shri S.C. Agarwal And Shri Ashish Agarwal, Advocates
Respondent by	Shri S.K. Madhuk, CIT DR
Date of hearing	05/11/2020
Date of pronouncement	16/12/2020

ORDER

PER T.S. KAPOOR, A.M.:

This is an appeal filed by the assessee against the order of Id. CIT(E) for refusal to grant registration u/s. 80G(5) of the Income Tax, 1961.

2. The Id. AR at the outset submitted that assessee was granted registration u/s. 12A of the Act on 08.02.2019 and in this respect our attention was invited to PB pages 20 to 22 where a copy of certificate issued by Id. CIT(E) u/s. 12A was placed. The Id. AR submitted that the Id. CIT(E) refused to

grant registration to the assessee u/s. 80G of the Act, in view of his objection that the assessee was granted registration u/s. 12A for religious or general public utility purposes and the registration was not granted for charitable purposes i.e. relief of poor and medical relief and whereas the assessee had spent amount on healthcare education and relief to poor. It was stated that therefore Id. CIT(E) held that assessee has not undertaken any activities towards attainment of objects of general public utility for which the registration was granted. The Id. AR submitted that the Id. CIT(E) himself has noted in his order that assessee had spent on education, help to poor, yoga etc, which were part of main objects of the society. The Id. AR in this respect invited our attention to the main objects as contained in memorandum of association placed at P.B. Pgs. 8 to 19 and our specific attention was invited to P.B. Page 8 where the main objects of the society were mentioned. Inviting our attention to objects listed at Sr. Nos. 2 and 3, the Id. AR submitted that these two objects are for promotion of hospital, medical and for maintaining and running of schools and colleges and therefore, the objection of Id. CIT(E) that assessee had not undertaken activities in furtherance of achievements of its objects is not correct. The Id. AR submitted that the second objection of the Id. CIT(E) is that assessee had carried out activities at a very nominal scale. It was submitted that the Hon'ble Supreme Court in the case of M/s Ananda Social and Educational Trust vs. CIT & Anr. in Civil Appeal Nos. 5437-5438/2012 has held that non carrying on of activities cannot be a ground to reject registration u/s. 12A of the Act. The Id. AR also invited our attention to an order of ITAT, Lucknow Bench in ITA No. 666/Lkw/2012 where the Tribunal vide order dated 16.11.2018 had directed the Id. CIT(E) to grant registration u/s. 80G of the Act because of the fact that assessee was holding registration u/s. 12A of the Act. Therefore, it was prayed that the Id. CIT(E) be directed to grant registration u/s. 80G of the Act.

3. The Id. DR on the other hand vehemently argued that the assessee was granted registration for the purposes as religious or for general public utility

objects and therefore, expenditure on achievement of other objects cannot be said to be expenditure for achievement of its main objects for which the registration was granted. Therefore, it was submitted that Id. CIT(E) has rightly rejected the application.

4. We have heard the rival parties and have perused the material available on record. We find that it is undisputed fact that the assessee was enjoying the registration u/s. 12A of the Act vide order dated 08.02.2019 and a copy of such order is placed at P.B. pg. 20. The copy of such registration states that the society has been registered u/s. 12A for religious and other objects of general public utility. The Id. CIT(E) on the basis of this clause as contained in the registration certificate u/s. 12A held that assessee had not carried out any activities relating to achievements of the objects for which it was granted registration u/s. 12A of the Act. From the perusal of main objects of the assessee as contained in memorandum of association at Sr. Nos. 2 and 3 we find that these are for establishment and promotion of hospitals medical and healthcare institutions and to establish maintain and run colleges and schools for primary and technical scientific institutions. The Id. CIT(E) while rejecting the application u/s. 80G of the Act ignored the objects as contained in the object clause of memorandum of association whereas he himself has noted that the assessee had spent an amount of Rs.1,44,000/- towards health and further an amount of Rs.22,300/- was spent on education and Rs.58,540/- as help to poor. These all expenditure represents expenditure for charitable purposes which is mentioned in the object clause of the assessee. Though the registration granted u/s. 12A mentions the purpose of registration as religious or general public utility but the object clauses of the assessee clearly shows that main object of the assessee were promotion of health and imparting of education. Therefore, we do not agree with the findings of Id. CIT(E) in dismissing the application of the assessee. Moreover, we find that once registration u/s. 12A is given the registration u/s. 80G can be denied if the activities are not genuine. The Id. CIT(E) nowhere has doubted the

genuineness of activities of assessee. The ITAT Lucknow Bench in the case of Samekit Mahila Evam Bal Vikas Sansthan vs. CIT(E) (Supra) vide order dated 16.11.2018 has held para 7 as under:

"7. Heard. In 'Hiralal Bhagwati' (Supra), rightly relied on by the assessee, it has been held that once registration 12A of the Act stands granted, the application u/s 80G(5) cannot be rejected. The Agra Bench of the ITAT has followed this legal position vide order dated 08.03.2018, passed in 'Dr. Gyanendra Goel Foundation, Maa Saraswati Hospital Vs. CIT(Exemptions)', in ITA No. 173 /AGR/2017, (authored by one of us, the Vice President). Therein, it has been held as under:

"5. We have heard the parties and perused the material on record. At the outset, it is seen that registration u/s 12AA(1)(b)(i) of the I.T. Act was granted to the appellant Institution vide order dated 05.04.2016 (APB, 16-18). It is not disputed that this registration has hitherto not been revoked or cancelled. The Id. CIT(E) has observed, inter alia, that approval u/s 80G(5) of the Act is not a mechanical process, wherein the according of registration u/s 12AA of the Act at one end would result in the issuance of approval u/s 80G(5) at the other. Consistent judicial opinion in this regard, however, is otherwise. The issue is, as such, no longer res integra.

6. In "Hiralal Bhagwati vs. CIT", 246 ITR 188 (Guj.), while holding that once registration u/s 12AA of the Act was granted, the order rejecting the application u/s 80G(5) of the Act was liable to be quashed, the Hon'ble High Court observed that the registration of a charitable trust u/s 12A of the Act is not an idle or empty formality; that this is apparent from the provisions of Section 12A; that it requires that not only an application should be filed in the prescribed form, setting out the details of the origin of the trust, but also the names and addresses of the trustees and/ or Managers should be furnished; that the CIT has to examine the objects of creating the trust as well as an empirical study of the past activities of the applicant; and that the CIT has to examine that it is really a charitable trust or Institution eligible for registration. The Hon'ble High Court took into account the submission that once registration u/s 12A of the Act is granted, a grant of benefits under the act cannot be denied; that the ITO was not justified in refusing the benefits under the act which would otherwise accrue under the registration; that if there was no registration, the Revenue would have been justified in submitting that the benefit cannot be granted, but where the application for registration is submitted and the registration has been granted, the benefit cannot be denied.

7. "Hiralal Bhagwati" (Supra) was followed by the Agra ITAT in "Maa Bhagwati Samagra Utthan Trust vs. CIT" vide order (APB, 72-75) dated 18.03.2011, in ITA No. 293/Agr/2009, holding that when the CIT has granted registration u/s 12AA of the Act after

examining the genuineness of the activities of the Trust, it is not proper for the CIT to reject the application of the trust for the benefit of exemption u/s 80G(5) of the Act by holding that the activities of the trust are not genuine.

8. *In “N.N. Desai Charitable Trust vs. CIT”, 246 ITR 452 (Guj), it was held, inter alia, that while considering the certification of the Institution for the purpose of Section 80G, inquiry should be confined to finding out if the Institution satisfies the prescribed conditions as mentioned in Section 80G; that it is well settled that at the time of granting the application u/s 80G, what is to be examined is whether the trust is registered u/s 12A and the objects of the trust; that so far as the aspect of income is concerned, the same can be very well examined by the Assessing Officer at the time of framing assessment; and that the Authority examining the question whether a trust/Institution is eligible to be certified for the purposes of Section 80G is not to act as an AO.*

9. *“N.N. Desai”, (Supra) was followed by the Pune ITAT in “B.P.H.E. Society vs. ITO”, in ITA No. 111/PN/2010, vide order dated 30.08.2011, holding that when the CIT is to examine an application seeking recognition u/s 80G, he is not required to act as an AO and decide upon the claim of the assessee in respect of his assessment of income; that the actual assessment of the assessee and its actual liability to tax are matters to be decided only in the assessment proceedings; and that since the assessee was (in that case, as herein also) registered u/s 12A of the Act and such registration continued, the assessee fulfilled the conditions prescribed u/s 80G(5)(i) of the Act.*

10. *“N.N. Desai” (Supra) has also been followed in “Marathi Vidyan Parishad Nashik Vibhag vs. CIT, Nashik”, (APB, 95-102), by the Pune Tribunal, vide order dated 20.05.2016, in ITA No. 1465/PN/2014.*

11. *“N.N. Desai” (Supra) was also followed in “CIT vs. Pujya Jalarambapa & Matushri Virbaima Charitable Trust” (APB, 84-88), by the Rajkot Tribunal in ITA No. 249/Rjt/2014, vide order dated 30.05.2014. This order of the Tribunal stands approved by the Hon’ble Gujarat High Court in “CIT vs. Pujya Shri Jalarambapa & Matushri Virbaima Charitable Trust” 55 taxmann.com 52 (Rjt).*

12. *“Pujya Shri Jalarambapa”(Supra) rendered by the Hon’ble Gujarat High Court has been followed by this Bench in “M/s Samajik Pragya Prasar Samiti, Agra vs. CIT(E)” (APB, 76-83) vide order (authored by one of us, the Id. AM) dated 16.01.2018, in ITA No.343/Agr/2016.*

13. *No decision contrary to the above case laws has either been referred by the Id. CIT(E) in the impugned order, or cited before us.”*

5. In view of the above facts and circumstances and in view of the judicial precedent, we direct the Id. CIT(E) to grant registration to the assessee u/s. 80G(5) of the Act.
6. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 16/12/2020 in accordance with Rule 34(4) of I.T.AT. Rules.)

Sd/-
(A.D. Jain)
Vice President

Sd/-
(T.S. Kapoor)
Accountant Member

Aks -
Dtd. 16/12/2020

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

PRIVATE SECRETARY