

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 1686/PUN/2019

Jhalana Wildlife Research Foundation, A/5/6, Swalp Gharkul Shree Housing Society, Ganeshmala, Pune – 411 030 PAN : AAECJ1973E	Vs.	CIT(Exemption), Pune
Appellant		Respondent

Assessee by
Revenue by

Shri C.H. Naniwadekar
Ms. Kesang Y. Sherpa

Date of hearing 04-09-2020
Date of pronouncement 04-09-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(Exemption), Pune on 31-08-2019 denying recognition u/s.80G(5) of the Income-tax Act, 1961 (hereinafter also called 'the Act').

2. Briefly stated, the facts are that the assessee is a company incorporated on 10-03-2018 u/s 8 of the Companies Act, 1956. Registration u/s.12AA of the Act was granted on 15-02-2019. The

assessee e-filed application in Form No.10G for grant of recognition u/s.80G of the Act on 20-02-2019. The Id. CIT (Exemption) required the assessee to furnish/upload certain information/clarifications for the purpose of verifying the genuineness of its activities carried out and utilization/application of proceeds towards the avowed charitable objects of the company. The assessee furnished certain information. The Id. CIT(E) found that the assessee did not submit any proof in respect of activities carried out. From the Profit and loss account for the year ending 31-03-2018, the Id. CIT(E) found that the assessee incurred Nil expenditure on objects of the company. No financial statements for the F.Y. 2018-19 were furnished. When confronted, it was submitted on behalf of the assessee that the founder of the company was making some Research in Jhalana Leopard Sanctuary, Jaipur on co-existence of leopards and humans. Certain photographs were submitted by the assessee in support of its contention. The Id. CIT(E) did not grant registration on the ground that the assessee failed to lead any evidence about having incurred any expenditure in the financial statements in respect of the above

stated activities. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. We have heard both the sides through Virtual Court and gone through the relevant material on record. Section 80G(5) provides for registration under the section. This sub-section in the opening part provides that: “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 it fulfils the following conditions”. Clause (i) of sub-section (5) states that ‘where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of section 11 and 12...’. This deciphers that in order to be eligible for registration u/s 80G, it is *sine qua non* that the assessee must be first registered, *inter alia*, u/s 12AA of the Act as a pre-condition so as to avail exemption u/s 11 etc. of the Act. Clause (vi) of section 80G(5) provides that : ‘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 made in this behalf’. Thus, it is essential that the fund or institution must be first

registered u/s 12AA etc. of the Act and then, in addition, should have been registered in terms of section 80G(5)(vi) of the Act so as to confer benefit of deduction u/s 80G to the persons making donations. The relevant rule referred to in sub-section (vi) of section 80G(5) is rule 11AA of the Income-tax Rules, 1962. This rule, in turn, embodies 'Requirements for approval of an institution of fund under section 80G'. Sub-rule (2)(i) of rule 11AA states that the application shall be accompanied, *inter alia*, by a copy of registration granted u/s 12A etc. Sub-rule (3) of Rule 11AA states that : "The Commissioner may call for such further documents or information from the institution or fund or cause such enquiries to be made as he may deem necessary in order to *satisfy himself about the genuineness of the activities of such institution or fund*'. On a harmonious reading of section 80G(5) and rule 11AA, it becomes crystal clear that for seeking an approval for the purposes of u/s.80G, the institution or fund must be registered u/s 12AA of the Act and then on filing the requisite application for registration u/s 80G, the Commissioner should satisfy himself about the genuineness of the activities of such institution or fund. The contention of the Id. AR that since the assessee was registered by

the CIT u/s 12AA of the Act, he could not have embarked upon further examination of activities carried out for granting registration u/s 80G of the Act, is ergo, meritless. It is quite clear that for registration u/s 80G, the assessee has to be first necessarily registered u/s 12A of the Act for satisfying the mandate of section 80G(5)(i) of the Act. It is only then that the proceedings for registration u/s 80G start. If the contention of the Id. AR that granting of registration u/s 12AA binds the CIT from making further examination for registration u/s 80G is taken to logical conclusion, it would mean that on grant of registration u/s 12AA etc., the registration u/s 80G(5) should automatically follow, which in our considered opinion is contrary to the directive of the provisions. It is quite clear that only after the institution or fund has been registered u/s 12AA etc. that, on an application made by it, the exercise of examination of the satisfaction of conditions of section 80G read with rule 11AA gets triggered.

4. Adverting to the facts of the instant case, it is noticed that the assessee was incorporated on 10-03-2008. From the Profit and loss account of the assessee for the year ending 31-03-2018, the Id. CIT(E) found that no activities were carried out. We gave also

gone through such P&L account and find that there is Nil expenditure on its Expenditure side. The assessee, in fact, filed application for recognition u/s.80G on 20-02-2019 and the impugned order came to be passed on 31-08-2019. It is the case of the assessee that when the Id. CIT(E) rejected the assessee's application u/s.80G, the accounts for the year ending 31-03-2019 were under preparation, which could not be filed and such accounts actually got finalized a little later. The Id. AR made a statement at the Bar that for the year ending 31-03-2019, the assessee received a sum of Rs.3.53 lakh as donation and incurred expenditure of Rs.4.04 lakh on the activities of the trust. Since such Profit and loss account showing expenditure on activities of the assessee was not available before the Id. CIT(E), without commenting on the merits of the matter, we set-aside the impugned order and remit the matter to the file of Id. CIT(E) for deciding the case afresh after considering the relevant evidence including Profit and loss account for the year ending 31-03-2019. Needless to say, the assessee will be allowed sufficient hearing opportunity before reaching any decision.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 04th September, 2020.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 04th September, 2020
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(E), Pune
4. The JCIT (E), Range, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	04-09-2020	Sr.PS
2.	Draft placed before author	04-09-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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