

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI H.L.KARWA, VICE PRESIDENT
AND MS. RANO JAIN, ACCOUNTANT MEMBER

ITA No.103/Chd/2015
(Under section 80 (G) of the Act)

Shri Krishna Kirpa
Gaushala Samiti
Pehowa.

Vs.

The C.I.T.(Exemption),
Chandigarh.

PAN:AAMTS9203P

(Appellant)

(Respondent)

Appellant by : Shri Ajay KumarJain

Respondent by : Shri D.S. Sidhu, DR

Date of hearing : 10.09.2015

Date of Pronouncement : 21.09.2015

ORDER

PER RANO JAIN, A.M. :

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Exemption), Chandigarh dated 24.12.2014, whereby an application under section 80G (5)(vi) of the Income Tax Act, 1961 (in short 'the Act') filed by the assessee was rejected by the learned Commissioner of Income Tax (Exemption).

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

“1. The Ld. CIT(E) has grossly erred in rejecting the application U/S 80G(5) merely on the basis of frivolous grounds of not showing the sale of milk, when there is no saleable milk with the Society.

2. The Ld. CIT(E) has further erred in law by observing that Section 115BBC applies to anonymous donation when the society is for religious and charitable purposes.

3. The applicant craves for permission to add, alter or delete any or all the grounds of Appeal.”

3. The facts of the case are that the assessee is a society registered under section 12A of the Act. It filed an application under section 80G(5)(vi) of the Act before the learned Commissioner of Income Tax (Exemption), Faridabad as on 24.6.2014, which was transferred to Commissioner of Income Tax (Exemption), Chandigarh on change of jurisdiction. The learned Commissioner of Income Tax (Exemption), Chandigarh rejected the said application of the assessee by his order dated 24.12.2014 observing as follows :

“3. The society is alleged to run a Gaushala in which there are more than 1,100 cows as per the details submitted. Perusal of the income and expenditure account filed for the ending 31.3.2014, 31.3.2013 and 31.3.2012 shows income of Rs.4,65,570/-, Rs. 1,17,000/- and Rs. 62,570/- respectively on sale of manure. It is however, quite astonishing to see that there is no income shown on sale of milk and other milk products in any of these years even though a massive herd of 1,100 cows is housed in the Gaushala. Another striking feature of the income and expenditure accounts filed for all these years is that almost all the donations have been shown to be received from anonymous donors. The following chart would aptly describe the financial affairs of the society;

<i>F.Y.</i>	<i>Total Donations</i>	<i>Anonymous donations (In Rs.)</i>
2013-14	87,79,376	81,64,376

2012-13	44,95,560	43,95,560
2011-12	34,36,600	31,56,600

As activities of trust can be said to be covered in "any other object of general public utility" the anonymous donations received are liable to be assessed to tax u/s 115BBC of the Act. In the back ground of these facts, there appears to be no ground for any approval u/s 80G of the Act. The application filed u/s 80G (5)(vi) is thus liable to be rejected."

4. Now, the assessee has come up in appeal before us against the said order of the Commissioner of Income Tax (Exemption). The learned counsel for the assessee submitted before us that the only reason on which the learned Commissioner of Income Tax (Exemption) has rejected the application under section 80G(5)(vi) of the Act is that the assessee has received anonymous donations, which cannot be a valid reason for rejecting the application under section 80G(5)(vi) of the Act in view of the fact that the assessee is already registered under section 12A of the Act. Reliance was placed on a judgment of Lucknow Bench of the ITAT in the case of Kalyanam Karoti Vs. CIT in ITA No.682/LUCK/2008 dated 7.11.2008. It was also submitted that in this case, it has been held that the learned Commissioner of Income Tax (Exemption) cannot refuse to grant registration under section 80G of the Act only on the pretext that the particulars of the donors are not provided by it. The provisions of section 115BBC of the Act are not relevant for deciding whether continuation of recognition under section 80G is to be granted or not. In view of the same, it was prayed that the order of

the Commissioner of Income Tax (Exemption) be set aside and the approval under section 80G be granted.

5. The learned D.R. relied upon the order of the learned Commissioner of Income Tax (Exemption) and submitted that the assessee is not eligible for grant of registration under section 80G of the Act.

6. We have heard the rival contentions and perused the material available on record. On perusal of the order of the learned Commissioner of Income Tax (Exemption) rejecting the application of the assessee made under section 80G, we find that the only reason for which the learned Commissioner of Income Tax had not granted the approval to the assessee is that the donations shown to have been received by the assessee are all anonymous donations. According to him, since the anonymous donations received are liable to be assessed to tax under section 115BBC, there appears to be no ground of approval under section 80G of the Act. However, we do not find ourselves in agreement with this logic of the learned Commissioner of Income Tax.

7. The claim of registration under section 80G of the Act to any institution or funds is provided under section 80G(5)(vi) of the Act which reads as under :

“Section 80G(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 fulfils the following conditions, namely:--

(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.”

8. As per this provision, the approval of the Commissioner has to be made in accordance with the rules made in this regard. The rules referred in this section are provided under rule 11AA of the Income Tax Rules. Sub-rule (1) of rule 11AA prescribes form No.10G to be filed in triplicate in this regard. Sub-rule (2) provides the documents to be filed with the said application. Sub-rule (3) provides for further documents or information as asked for by the Commissioner. Sub-rules (4) and (5) which are relevant for our consideration reads as under :

“(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:”

9. On perusal of the above rules, it is quite clear that while granting the approval under section 80G, the only

provision as per these rules is that the rejection can only be made if one or more conditions as laid down in clauses (i) to (v) of sub-section (5) of section 80G of the Act are not fulfilled. It is quite clear that the rules have given the instances of rejection of the said application in the form of non-compliance of provision of section 80G(5) clauses (i) to (v). Now, coming back to the provision of section 80G(5) of the Act, we see on reading of clauses (i) to (v), there is no clause which says that the said approval be rejected if any institution or fund accepts anonymous donation. In the present case, this was the only reason given by the learned Commissioner of Income Tax for rejection of said registration. The provisions of section 115BBC of the Act are not relevant for granting approval under section 80G of the Act. There is no mention of this section 115BBC or even of anonymous donation in any of the provision of section 80G of the Act or rules made for the purposes of this section. The taxability of anonymous donations under section 115BBC of the Act can always be taken care at the time of assessment by the Assessing Officer and are not relevant for granting registration under section 80G of the Act.

10. Reliance placed by the learned counsel for the assessee on the order of the Lucknow Bench of the ITAT in the case of Kalyanam Karoti (supra) is not out of place. In this case also, the registration under section 80G of the Act was rejected on the same grounds. After analyzing in detail the

relevant sections and rules, the Coordinate Bench of the ITAT observed as under :

“For granting recognition under s. 80G(5) or continuation thereof, it is only to be seen whether the conditions laid down under cls. (i) to (v) of s. 80G(5) are fulfilled or not. Further, r. 11AA also does not indicate that nature or type of donation received by the fund or institution would be relevant for granting recognition under s. 80G(5) or continuation thereof. Rule 11AA provides power to CIT to carry out enquiries as he considers necessary and call for documents or information from the institution/fund for satisfying himself about the genuineness of its activities. Further, cl. (5) of r. 11AA authorizes CIT to refuse recognition or continuation thereof only when the conditions laid down in cls. (i) to (v) of sub-s. (5) of s. 80G are not fulfilled. Thus neither in the main sub-s. (5) of rules made thereunder, there is any provision to refuse recognition or continuation thereof only or the ground that the particulars of donors are not provided by institution or fund. Non-availability of particulars may empower the AO to invoke s. 115BBC r/w s. 13(7) which are effective from 1st April, 2007 while making the assessment of the society but so far as recognition under s. 80G(5) is concerned, they have no role to play. The provisions of s. 115BBC and s. 13(7) are applicable for the purposes of considering the anonymous donations as income of the assessee while making the assessment. But such anonymous donations are not relevant for deciding whether continuation of recognition under s. 80G(5) is to be granted or not unless there is other material to justify that the assessee society is engaged in the activities which are not charitable activities and are only a camouflage and such anonymous/voluntary donations are a consequence of such uncharitable activities or activities which are not genuine. The only effect of not furnishing particulars by the anonymous donors or in case of donors who do not furnish full particulars including PAN is that certificate under s. 80G may not issued to them and hence deduction under s. 80G cannot be given to them in their own assessment. But in respect of other donors who are

furnishing their particulars including PAN/ certificate and hence, deduction under s. 80G could not be denied by not giving recognition to the society under s. 80G(5) or continuation thereof. In any case, there is no change in the facts and circumstances of the case as in the earlier years and there is no cogent material reason for refusing continuation of recognition.— Radhasoami Satsang vs. CIT (1991) IOC CTR (SC) 267 : (1992) 193 ITR 321 (SC) applied.”

11. Respectfully following the order of the Coordinate Bench of the ITAT, we direct the learned Commissioner of Income Tax to grant registration to the society under section 80G of the Act.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 21st day of September, 2015.

Sd/-
(H.L.KARWA)
VICE PRESIDENT

Sd/-
(RANO JAIN)
ACCOUNTANT MEMBER

Dated : 21st September, 2015

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh

