

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।
BEFORE SHRI SANJAY ARORA, AM AND SHRI AMIT SHUKLA, JM

आयकर अपील सं./I.T.A. No. 7279/Mum/2011

(निर्धारण वर्ष / Assessment Year: N.A.)

Seth Chunilal Memorial Trust 31, Vijay Deep, 31, B. G. Kher Marg, Mumbai-400 006	बनाम/ Vs.	Director of Income Tax (Exemption) Room No. 616, 6 th Floor, Piramal Chambers, Parel, Mumbai-400 012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAATS 0283 M		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Satish R. Modi
प्रत्यर्थी की ओर से/Respondent by	:	Shri Girija Dayal
सुनवाई की तारीख / Date of Hearing	:	13.03.2014
घोषणा की तारीख / Date of Pronouncement	:	02.05.2014

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee directed against the Order u/s. 80-G r/w s. 254 of the Income Tax Act, 1961 (‘the Act’ hereinafter) by the Director of Income Tax (Exemption), Mumbai (‘DIT(E)’ for short) dated 28.9.2011, rejecting the assessee’s application dated 04.11.2009 for grant of approval u/s.80-G of the Act.

2.1 The issue arising in the instant case is whether the approval u/s.80-G stood rightly denied to the assessee or not, i.e., in law and in the facts and circumstances of the case. This is the second round before the Tribunal; it deciding the matter in the first round thus (in ITA No. 4151/Mum/2010 dated 08/10/2010/copy on record):

‘5. We have considered the rival submissions carefully and find that it was stated before us that assessee has already constructed a School and Hospital which were handed over to the Government. This shows that the assessee had carried out charitable activities.

6. Therefore, we set aside the order of the learned DIT(E) and remit the matter back to his file for reconsideration of the issue. If assessee has really constructed the School and Hospital which were ultimately handed over to the Government then certificate u/s.80G should be granted.’

Subsequently, an application under section 254 (2) was moved by the assessee, stating that while the ‘School’ was handed over to the Government, the ‘Hospital’ was in fact given to a Trust for running. The tribunal, admitting the mistake to that extent, vide para 4 of its order under section 254 (2) (in MA No. 637/Mum/2010 dated 01/7/2011/copy on record), modified para 6 of its order, which now reads as under:

‘6. Therefore, we set aside the order of the learned DIT(E) and remit the matter back to his file for reconsideration of this issue particularly after verifying the fact that assessee has really constructed the school which was given to the government for running and also the hospital which is claimed to have been given to a trust for running. After verification of this facts, certificate u/s.80G should be granted.’

2.2 The Id. DIT(E), however, denied approval on the ground that no charitable activity had been carried out by the appellant-trust for a period of over a decade, i.e., prior to the application dated 04/11/2009. The assessee had been granted section 80-G approval for the period 01/04/1995 to 31/03/1998. The construction of the School, for which section 80-G certificate had been granted, was in fact completed during f.y. 1995-96. No charitable activity has admittedly been carried out during the period 01/04/1997 onwards. Section 80-G is a benevolent provision, with a view to encourage charitable activity. No charitable work having been admittedly undertaken since 01/04/1997, i.e., up to 04/11/2009, the date of the application, the genuineness of the trust itself is in doubt. Accordingly, the approval or its renewal was denied. Aggrieved, the assessee is in appeal.

3.1 Before us, the assessee’s case was that the limited issue before the Id. DIT(E) in the set aside proceedings was as to if the assessee had indeed constructed the School and Hospital and, further, handed it over to Government and a charitable trust respectively for

running, so that, where so, it be granted approval under sec.80-G. The Revenue had, accordingly, exceeded its jurisdiction in examining other aspects of the matter; its purview being governed/restricted by the terms of the set aside.

3.2 The Revenue's case, on the other hand, was that the activity, with reference to which the inference of the assessee being a public charitable trust is drawn by the tribunal, i.e., construction of a school, extends to the period up to 31/03/1997. The said order therefore cannot be construed as having the effect of restraining the Revenue from looking at other aspects germane to the matter and decide the issue on merits.

4. We have heard the parties and perused the material on record, giving our careful consideration to the matter.

The order by the tribunal has to be read in full, in light of the arguments made before it, and only in view whereof the impugned order construed. The Revenue's sole case before the tribunal was that no charitable activity having been undertaken during the preceding three years, the approval under section 80-G could not be renewed. The tribunal was therefore conscious that no charitable activity had been undertaken over the three year period preceding the year in which application for renewal was made, i.e., the period for which audited accounts are required to be submitted to the competent authority in terms to rule 11 AA, which prescribes the relevant procedure/considerations for the grant of approval under section 80-G (5). However, it did not find the same as determinative of the issue in-as-much as the assessee had in the past constructed a school and hospital, giving it to another for running though. Accordingly, subject to verification *qua* the same, approval u/s. 80-G ought to be granted to the assessee - nothing more, nothing less.

It was certainly open for it (the Revenue) to bring facts on records, disturbing the finding of the appellant being not a genuine trust. We are therefore not prepared to accept the assessee's claim that the Revenue was, post the order by tribunal, required to proceed with closed eyes in-as-much as it could not take cognizance of any fact other than assessee having built a school and hospital in the past. Its' order, or any other judicial

order for that matter, is required to read as whole, holistically, and not pedantically or in fact not even in a manner as one would read a statue. Why, we find variation in the language of para 6 in the original and the rectification order itself, i.e., other than the substitution of word 'trust' for 'government', which was the only prayer by the assessee before the tribunal. To this extent we are in agreement with the arguments made by the ld. DR before us.

At the same time, however, apart from seeking to elicit the true import of an order, it was not permissible to in its' garb proceed *de hors* the same, as the Revenue has. An aspect considered by the tribunal has to be accorded the status of its finding, and given effect to. The same cannot be questioned except through a judicial review by a higher authority, so that the same binds us as well. It was permissible for it (the Revenue) to, while reconsidering the assessee's case, bring additional facts on record, considering which may render the earlier finding, based as it was on the material on record and the case of the parties before it, as not valid. Whether, for example, the hospital, which would continue to appear on the assessee's books and, thus, form a part of the property held by it under trust, is being run by the other trust on charitable lines, or is on a profit making basis, as are various private hospitals. *How does the assessee ensure this? What are the objects of the said trust? Whether the assessee is in fact geared to undertake charitable work, or all that it does is to construct buildings for being taken over and managed by others? Is there any profit element or otherwise commercial aspect to the transaction?* We say so as, as is apparent, this is all that the assessee has undertaken in the past, and throughout the many years of its existence. Mobilizing funds for and actually constructing buildings, even if it is a school building or a hospital, could only be regarded as charitable activity if there is actually a user of the building as a school or hospital, else not.

All the Revenue, however, harps on in the set-aside proceedings, is the non-undertaking of any charitable work by the assessee-trust for the several years preceding its application u/s. 80-G; something, which the tribunal is already aware of in-as-much as the original order under section 80-G (5) dated 10/03/2010 clearly states of no such work

having been executed for the preceding three years, i.e., represents an aspect considered by the tribunal. Increasing the number of the said years would be of little consequence as it is the latest years that would be the most relevant. The approval, it is to be noted, is to be granted only for the period subsequent to the application, and the reference to such activity is only toward ascertaining and an assessment of the credibility of the assessee's case, and no more, in-as-much as the grant of an approval under section 80-G is an official recognition of an entity as a public charitable body, i.e., operates as an official communication to that effect to the public at large. The tribunal, as it appears to us, considered the assessee's past conduct as a reasonable assurance towards its credibility. In our view, this could be contested only by bringing facts suggesting otherwise on record, and not otherwise.

It is not the Revenue's case that the assessee had taken money from the public which was not utilized for charitable purposes. Non-undertaking of charitable work is by itself no measure or barometer that it will not do so also in future, particularly considering that it had undertaken such work in the past. In fact, section 80-G is a good incentive for mobilizing money (resources) in-as-much as it at once gives a tax break to the donor as also instills confidence in him *qua* the donee institution. Non-mobilization of funds for undertaking charitable work could rather itself be a reason for not undertaking charitable activity. Why, the impugned order itself states of s. 80-G having been granted in the past to enable the assessee undertake its project of construction of a school. It is perhaps for this reason that the law has provided definite, objective criteria for accord/denial of approval, i.e., in terms of the conditions of clauses (i) to (v) of section 80-G(5), non-fulfillment of which has not been alleged or claimed by the Revenue. True, a finding as to non-genuineness could also operate to deny approval, but the non-undertaking of charitable activity cannot by itself lead to the finding of the institution being not genuine, particularly considering that registration as a charitable trust stands granted by the Revenue, and which is not sought to be disturbed. In fact, this is what had led the hon'ble court to in *Sonepat Hindu Educational and Charitable Society vs. CIT* [2005] 278 ITR 262 (P&H) to hold that approval u/s. 80-G could not be denied where

registration stands granted in-as-much as the same is a sufficient proof of it being established for charitable purposes. We are conscious as well as aware that the approval, though normally follows registration, cannot however be considered as consequential. The Revenue has also relied on decisions, as in the case of *Madani Musafir Khana Welfare Society vs. CIT* [2003] 264 ITR 481 (Pat) and *Vishwa Budha Parishad vs. CIT* [2003] 264 ITR 357 (Pat). We have already clarified that this is the second round before the tribunal, so that we are being guided principally by the earlier order by the tribunal, which has since attained finality; further only meeting the Revenue's case as sought to be made before us. The application being moved on 04/11/2009, the grant of approval would only be for the period subsequent thereto, so that the non-undertaking of charitable activity in the past is of limited significance. In fact, the tribunal having expressed its view, which stood accepted, the same would hold, unless, as afore-stated, additional facts impinging on the matter are brought on record.

Before us, much was made *qua* the grant of approval being in/for perpetuity. We can hardly agree. Even as clarified during hearing, registration under section 12A/12AA is a prerequisite for the grant of approval under section 80-G, which could be withdrawn under section 12AA (3). In fact, as afore-noted, according registration or not withdrawing the same, as the case may be, is itself inconsistent with the non-grant of approval under section 80-G in-as-much as a satisfaction as to the genuineness or otherwise is also a criteria for according or, as the case may be, withdrawing registration. In fact, any authority granting an approval has an inherent power to withdraw it if the condition/s of the approval are no longer met or stand violated at any stage. Section 292C, brought on the statute with effect from 01/10/2009, specifically provides for power of such withdrawal. Rather, all that the Legislature, in so doing, has done is to bring the law as to the grant of registration under the Act and approval u/s. 80-G at par, so that, once granted, the same would continue to obtain unless the condition/s of its grant are found to be violated or breached. Further, the hon'ble jurisdictional high court in *Sinhagad Technical Education Society vs. CIT* [2012] 343 ITR 23 (Bom) has clarified that only because a power operates with respect to past transactions does not imply that the

relevant provision is retrospective. Accordingly, post 01/10/2009, subject to the satisfaction of s. 292C, section 80-G approval could also be withdrawn for a period prior to 01/10/2009, i.e., where the activities leading thereto, i.e., the said withdrawal, stand undertaken prior the said date. In the present case, in fact, the approval would only be operative w.e.f. 04/11/2009, so that the said decision would be of little consequence.

5. In view of the foregoing, therefore, in our view, the Revenue is not justified in not granting approval under section 80-G(5) to the assessee in the facts and circumstances of the case. We, accordingly, direct the competent authority to grant approval u/s. 80-G(5) to the assessee forthwith, i.e., with effect from 04/11/2009. We decide accordingly.

6. In the result, the assessee's appeal is allowed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on May 02, 2014

Sd/-
(Amit Shukla)

न्यायिक सदस्य / Judicial Member

Sd/-
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 02.05.2014

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai