

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE „A“ BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON.VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON.JUDICIAL MEMBER &

ITA No.123/PUN/2023

Shri Kalaram Sansthan, Panchavati, Nashik. PAN: AADTS 7000 F	vs	CIT (Exemption), Pune.
Appellant		Respondent

Assessee by	:	Shri Pramod S. Shingte, CA
Revenue by	:	Shri Keyur Patel, CIT-DR
Date of hearing	:	31/05/2023
Date of pronouncement	:	08/06/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax (Exemption), Pune, dated 30.11.2022 as per the grounds of appeal on record.

2. The solitary grievance of the assessee is that denial of granting of exemption u/s. 80G of the Act. On perusal of the order of Id.CIT(E), it is evident that in order to verify the genuineness of the activities of the assessee, whether they are fulfilling the conditions laid down in clauses (i) to (v) of section 80G(5), notice was issued through ITBA portal requesting the assessee to upload certain information/details regarding the commencement of activity; details of any other law applicable for achievement of objectives and the proof of compliance regarding the said law; year-wise list of donations received and note

on activities carried out along with supporting credible evidence etc. In response, the assessee in the note on activities stated that the trust could not conduct activities in the F.Ys. 2019-20 and 2020-21 due to Covid-19 restrictions, but in the next para, it is stated that trust provided food packets to sweepers, security guards and needy poor people during these financial years free of cost. The Id.CIT(E) observed that both the statements were contradictory. For F.Y. 2021-22, the assessee claimed to have carried out activities, such as, health seminar, cultural programmes, music concert, Ramjanmotsav, Ramrath yatra etc. Thereafter, Id. CIT(E) culled out the objects of the trust and observed that the primary objective of the assessee-trust was purely religious in nature, therefore, assessee was requested to furnish copies of financial statements for the last three years, but it was not submitted. However, as per the submission of the assessee dated 10/10/2022, it was evident that assessee has made substantial expenditure for religious purposes. The main fact is that these classification of expenses were provided voluntarily by the assessee, and therein itself it was observed that substantial expenses on the basis of percentage as per the total income were incurred for religious purposes only. For F.Y. 2021-22, the percentage of expenses of religious nature was 7.94%, for F.Y. 2020-21 it was 10.30% and similarly for F.Y. 2019-20, the percentage of religious expenses was 21.68%. On the basis of this voluntary categorization of percentage of religious expenses by the assessee, it was held by the Id. CIT(E) that

the assessee-trust has violated the provisions of sec. 80G(5B) of the Act, whereby the expenditure during any previous year for religious purpose should not exceed 5% of its total income whereas, as per the self-declaration by the assessee regarding the total income vis-à-vis percentage of religious expenses for the F.Y. 2019-20 to 2021-22 i.e. for relevant three years, it is clear that assessee has made religious expenses much more than the prescribed limit of 5% of the total income. Therefore, the application of the assessee for grant of exemption u/s. 80G of the Act was rejected.

3. At the time of hearing, Id.AR of the assessee conceded that expenses shown before the Id. CIT(E) has been done voluntarily by the assessee, but however tried to bring out a case, out of these expenses submitting that the expenses on electricity, which were substantial in nature, if subtracted, then they would fall within the permissible limit of percentage as per s. 80G(5B) of the Act. Ld.AR also submitted that as per the objects of the trust the assessee is doing not only religious activities, but also other charitable activities, which were conducted by the applicant-trust for the benefit of the society at large.

4. *Per contra*, Id.DR submitted that there cannot be any segregation of the electrical expenses as it was tried to be demonstrated by the Id.AR of the assessee, since without such expenses on electricity being incurred, no religious functions or activity was possible, and therefore all these expenses are very much intricately woven to constitute, in

totality, the religious expenses undertaken by the assessee and there cannot be any segregation. Ld.DR further demonstrated from the objects of the trust in clause-6A therein that, out of 5 objects, sub-clauses (2) to (4) are for religious objects directly, they are:-

- (2) To carry on „Trikal“ puja of the deity in the temple
- (3) To offer Naivedya to the deity and maintain Nandadeep
- (4) To celebrate annual Utsavas and other religious festivals....

Therefore, as is evident, the substantial objects of the trust are to perform religious practices and activities. The Id.DR further submitted that in clause-6B, it is specified that after spending for all these religious activities, if some surplus is there, then that has to be utilized in the charitable objects i.e. secular education, scholarships to the poor and deserving students and medical relief etc. Therefore, it was contended by the Id.DR that in entirety and the primary main object of the trust is only to perform religious activities. Further as is evident in the order of the Id. CIT(E) that such expenses on religious activities as per details voluntarily submitted by the assessee, are in contravention to the limit prescribed u/sec. 80G(5B) of the Act and, therefore, Id. CIT(E) was correct in not providing applicant-trust with exemption certificate u/sec. 80G.

5. We have analyzed the facts and circumstances, heard the submissions of the parties herein and have given considerable thought to the said submissions as well as the relevant documents placed

before this Bench.

5.1. It is evident from the order of the Id. CIT(E) that assessee had voluntarily submitted the percentage-wise expenses details incurred for religious purposes vis-a-vis its total income from F.Ys. 2019-20 to 2021-22 and therefrom, it is absolutely clear that the percentage of expenses of religious nature incurred by the assessee for each individual year is more than 5%, which is in contravention and violative of sec.80G(5B). It is also observed as demonstrated by the Id.DR that in object clauses, majority of the objects are pertaining to religious activities and even there is a specific clause for spending of surplus, where it is written, if any surplus arises after spending on these religious activities, then that can be used for other charitable activities like providing financial aid to the needy and poor students, medical relief etc. Meaning thereby the religious activities and expenses incurred therein has taken the front seat whereas the charitable activities and expenses which benefits the society in totality has been placed at the rear seat of the applicant trust. We observe that the provisions of sec. 80G(5B) is unambiguous and precise that expenses for religious purposes should not exceed 5% of the total income of the applicant-trust in a given year. In this case, assessee has voluntarily submitted the calculation which is part of the order of the Id. CIT(E) and it is clearly evident that for each year there has been a violation of sec.80G(5B), wherein assessee had incurred

expenses which are religious in nature beyond the prescribed limit of 5% of its total income. Even, on perusal of the objects of the trust and the clauses on applicability of surplus income, it cannot be said that the activities of the assessee-trust is for public charity and welfare. We are not in conformity with the Id.AR regarding the stand taken for segregation of electrical expenses from the entire set of the religious expenses since it is not possible to conduct any religious activity programmes without electricity. Therefore, all these expenses are to be considered as one single expense incurred for religious purposes and there is no scope of segregation.

Another argument taken by the Id.AR was that since the applicant trust has already got registration u/s. 12AA, therefore, in automatic and in normal course 80G exemption should also be granted to the assessee. We are again not in conformity with this argument of the Id.AR, since the legislature in its wisdom has brought out these two specific provisions i.e. 12AA & 80G for distinct purpose and object. In order to grant registration under 12AA, the Id. CIT(E) must look into the genuineness of the activity and objects of the trust and also look into whether the trust is complying with other laws applicable at the relevant time, so that the trust can fulfill its objects. Once the Commissioner is satisfied in these areas, then registration u/sec. 12AA is granted. Thereafter, if any income is to be assessed in the hands of the said trust, those are all questions to be determined only at the time of assessment. On the other hand, sec.80G is a provision

providing for exemption to the assessee who gets this certificate from the Department and the benefit is whatever donation is received by the assessee from any other person or persons, those donars in their respective income tax returns would get applicable deduction in respect of the donations made to such trust having the registration u/s. 80G of the Act. While granting this exemption, the Commissioner looks into whether the trust is performing its activities as per the objects of the trust and what are the exact activities in which the said trust is making the expenses. Sec. 80G(5B) provides a limitation that even if a trust incurs expenses of religious in nature, it shall not exceed 5% of its total income for that particular year. Therefore, sec. 80G ultimately brings donations for the trust because the persons making such donations knows that they would get necessary deductions from the Income-tax Department since they are contributing to this trust. It is a facility provided by the Govt. of India to the trust doing charitable activities for the benefit of the society. Therefore, it is all the more necessary for the Commissioner to look into the areas of expenses incurred by such applicant-trust before granting exemption u/sec. 80G of the Act. In the instant case, applicant-assessee trust has clearly violated the provisions of sec. 80G(5B) and the Id. CIT(E) was correct in law and in facts for rejecting the application of the assessee regarding grant of exemption u/s. 80G of the Act. Again, we reinforce this proposition that there is no automatic grant of exemption u/sec. 80G even if the trust is registered

u/sec. 12AA of the Act. The Hon'ble Supreme Court in the case of *CIT(E) v. Sant Girdhar Anand Parmhans Sant Ashram* [2023] 452 ITR 52 (SC) has held that while there is no dispute that the assessee asserts that it continues to hold exemption u/sec.12AA, nevertheless, for the benefit u/s.80G(5B), the requirements of that provisions have to be satisfied separately. In view of the fact that Id. CIT(E)'s order as well as the order of the Tribunal were bereft of any factual details as to the nature of activities which the assessee carried on and the accounts involved, the matter required to be considered afresh by the Id. CIT(E), in view thereof, the impugned order therein, was set aside to the file of the Id. CIT(E) to examine the matter afresh.

Therefore, the proposition of law emerges is that even if a trust is having registration u/sec. 12AA still, in order to get exemption u/sec. 80G, the conditions in this provision needs to be complied with also along with the conditions specified in sec. 80G(5B) of the Act separately. In the referred judgment, the details of percentage of expenses incurred for religious purpose vis-a-vis the total income were not appearing in the order of the Id. CIT(E) nor in the order of the Tribunal and, therefore, the matter was remanded back for fresh adjudication, but in the instant case of the assessee before us, in the order of the Id.CIT(E) itself specifically mentioned that for all the three F.Ys.2019-20 to 2021-22, assessee had spent more than 5% for religious purpose from its total income which details where voluntarily

submitted by the assessee trust itself. As, there is a clear violation of sec. 80G(5B) of the Act, we do not find any infirmity with the findings of the Id.CIT(E), which is hereby upheld. The grounds of appeal are dismissed.

6. In the result, appeal of the assessee stands dismissed.

Order pronounced in open Court on 08th June, 2023.

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

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 08th June, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "A" Bench Pune.
6. Guard File.

By Order

// TRUE COPY

Senior Private Secretary
ITAT, Pune.