



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 885/2010

DIRECTOR OF INCOME TAX (EXEMPTION) Appellant
Through: Mrs. Prem Lata Bansal, Adv.

versus

THE GITA EDUCATION SOCIETY Respondent
Through: None

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

ORDER
19.07.2010

%

In this appeal preferred under Section 260A of the Income Tax Act, 1961, the following substantial questions of law have been raised by the revenue:

- “(a) Whether ITAT was correct in law in directing the AO to grant renewal of approval under Section 80G of the Act?
- (b) Whether ITAT was correct in law in holding that the assessee had been moving towards setting-up of educational facility?
- (c) Whether order passed by ITAT is perverse in law and on facts when it granted approval under Section 80G of the Act to the assessee ignoring the material fact that the assessee society had not satisfied all the conditions prescribed in Section 80G(5) of the Act as no charitable



activities were carried out by the assessee during the relevant year?"

2. To appreciate the controversy involved, it is necessary to refer to the factual matrix in brief. The assessee – respondent is an Education Society which was formed on 23.2.2004 and initial approval under Section 80G of the Act was granted for the period commencing 3.3.2004 to 31.3.2006. The application for renewal was filed on 18.11.2007. The Director of Income Tax (Exemptions) issued a letter dated 25.1.2008 requiring the assessee – society to submit certain documents / explanations on or before 11.2.2008. The documents that were required to be filed by the authority are a note on the activities of the Trust during the last three years along with supporting documentary evidence; a certificate from the Managing Trustee that there is no change in the objectives or activities of the Trust and in case there has been any change in the objectives/activities, the same to be pointed out, an affidavit from the Managing Trustee that there is no infringement of the provisions of Section 13 of the Act since the inception of the Society or during the last three years, whichever is applicable; details of donations / corpus fund received and spent during the last three years, and proof of filing returns of income for the last three years and to justify the claim for exemption.



3. On 11.2.2008, the representative of the society appeared before the DIT and contended that the activities of the society are under process and the society is expecting to start charitable activity, i.e., educational institution for the poor / scheduled caste / handicapped students within the next six months. The authority granting exemption noted that the balance sheet of the society as on 31.3.2005 revealed that the applicant had collected donation amounting to Rs.1,55,00,200/- by way of corpus donation towards building fund and a sum of Rs.10,00,000/- was shown as loan and advance to the Ghaziabad Development Authority. The income and expenditure for the year ending on 31.3.2005 reflected expenses on bank charges, printing & stationery and legal expenses. The balance sheet as on 31.3.2006 reflected receipt of corpus donations amounting to Rs.18,08,000/- which was noticed by the DIT and the loan and advance to the Ghaziabad Development Authority amounting to Rs.10,00,000/- had not been reflected in the balance sheet of the applicant as on 31.3.2006. It was also noted that the balance sheet as on 31.3.2007 showed that the applicant had given the accumulated capital funds as loan and advances amounting to Rs.1,70,19,500/- to the Durga Charitable Society.



4. Regard being had to the aforesaid discussion, the DIT came to hold that the assessee – society had not possessed land and building; that there was no evidence from any authority such as CBSE, AITCE, etc; that no expenses had been made relating to educational and / or other charitable activities since its inception; that whatever funds the applicant had accumulated, the same had been given as loan and advances to another society and, hence, it could not be established that the society was planning to run the educational institution. Being of this view, the DIT came to hold that the assessee – society did not satisfy the conditions as laid down in Section 80G(5) of the Act and, accordingly, rejected the application for renewal of exemption.

5. Being dissatisfied, the assessee preferred an appeal before the Income Tax Appellate Tribunal Delhi Bench 'C' (for short 'the tribunal) forming the subject matter of ITA No.1427/Del/2008. The tribunal appreciated the factual scenario and recorded the contentions of the assessee which are as follows:

“2.1 Before us, the learned counsel for the assessee submitted that the society was registered under the Societies Registration Act, 1860 and also under the Income-tax Act. It had been granted approval u/s 80G for the period 3.3.2004 to 31.3.2006. The assessee applied for renewal of the aforesaid approval u/s



80G, which was denied by the ld. DIT (Exemptions). The assessee had applied for land to the GDA and also deposited amount with it for this purpose. However, the GDA returned the money and did not allot the land. Thereafter, the assessee sought to purchase land from another charitable institution and deposited a sum of about Rs.1.7 crore with them. This money was also returned. Finally, the assessee approached the Development Authority of Gwalior for allotment of land, who allotted the land and also handed over the possession to the assessee on 3.12.2008. Therefore, his case was that the assessee had been trying to obtain land for setting up educational facilities and, therefore, it could not be said that the assessee had not set in motion any activity towards attainment of its object. Further, it was submitted that section 80G(5) lays down six conditions to be satisfied for obtaining the approval. The learned DIT(E) has not pointed out anywhere that any of those conditions is not satisfied by the assessee. Therefore, it was urged that the order of the DIT(E) may be reversed and approval u/s 80G may be granted.”

6. The said stand and stance of the assessee was controverted by the revenue contending, inter alia, that the assessee had failed to prove that the society was established for charitable purpose.

7. The tribunal took note of the fact that the assessee – society has been registered on 25.8.2004; that the registration has not been cancelled; that the initial approval under Section 80G was granted for the period commencing 30.3.2004 to 31.3.2006 and, hence, it could not be held that the society was not established for charitable purposes; that the society had not undertaken



any charitable activity or the substantial amount has been collected by way of corpus donation for any other purpose; that the assessee had been trying to obtain the land so that the school could be set up and two attempts in this regard had failed; that the assessee - society has finally been able to get the allotment of land from the Development Authority of Gwalior and possession of the land has been handed over to the assessee on 3.12.2008; that the society has been moving towards setting up of an educational society and that under the circumstances, the assessee is entitled to exemption.

8. We have heard Mrs. Prem Lata Bansal, learned senior standing counsel for the revenue on the question of admission. Regard being had to the questions framed, we think it appropriate to reproduce Section 80G(5):

“(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 :-

[(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) or clause (23C) of section 10 :

[**Provided** that where an institution or fund derives any income, being profits and gains of business, the condition that such



income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—

(a) the institution or fund maintains separate books of account in respect of such business;

(b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issued to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;]]

(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution reorganised by



the Government or by a University established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority;

(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 made in this behalf; and

(vii) where any institution or fund had been approved under clause (vi) for the previous year beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2008, such institution or fund shall, for the purposes of this section and notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been –

(a) established for charitable purposes for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009; and

(b) approved under the said clause (vi) for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009]”

9. On a scanning of the aforesaid provision, it is quite vivid that the enquiry has to have nexus with the factum whether it is registered under Section 12A, whether it is a trust wholly meant for charitable or religious purposes, and whether income tax received by it is liable to be considered under Section 11. There is a limited scope of enquiry under the said



provision. Referring to the aforesaid provision, it is submitted by Mrs. Prem Lata Bansal that the tribunal has erred in law by ignoring the material fact that the assessee had not satisfied the conditions under the said provision as no charitable activities were carried out by the assessee during the relevant year.

10. On a perusal of the order passed by the tribunal, it is perceptible that the character of the society has not changed. Its purpose has remained the same as it was at the time of grant of exemption. The enquiry as envisaged under Section 80G(5) is to be restricted whether the trust is wholly for charitable purposes or religious purposes when the assessee has been able to prove its bona fides that its activities remain the same and it has been able to get the allotment of land from Development Authority of Gwalior and taken possession on 3.12.2008. It is in the process of achieving the goal to set up an educational society and, therefore, the removal of exemption would not have been denied by the DIT(Exemptions). The tribunal has taken note of the fact that the assessee had made an effort to purchase the land from another charitable institution and deposited the money with it which was eventually returned.



11. In view of the aforesaid, we perceive no reason that any error has crept in the order of the tribunal reversing the decision of the DIT(Exemptions). Thus, we find no substance in the submission of the learned counsel for the revenue. In the result, the appeal, being devoid of merit, stands dismissed in limine.

CHIEF JUSTICE

MANMOHAN, J

JULY 19, 2010
dk