

(2001) 12 DEL CK 0109

Delhi High Court

Case No: C.W.P. No. 2879 of 2001

Parivar Seva Sanstha

APPELLANT

Vs

Director of Income Tax
(Exemption)

RESPONDENT

Date of Decision: Dec. 21, 2001

Acts Referred:

- Companies Act, 1956 - Section 25
- Income Tax Act, 1961 - Section 10, 10(23), 10(23C), 11, 12
- Income Tax Rules, 1962 - Rule 11AA, 11AA(6)

Citation: (2002) 174 CTR 62 : (2002) 255 ITR 132 : (2002) 122 TAXMAN 813

Hon'ble Judges: S.B. Sinha, C.J; D.K. Jain, J

Bench: Division Bench

Advocate: C.S. Aggarwal, for the Appellant; R.D. Jolly and Premlata Bansal, for the Respondent

Judgement

S.B. Sinha, C.J.

The petitioner in this writ petition has prayed for issuance of a writ of mandamus directing the respondents to grant continuation of approval under Section 80G(5)(vi) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). the petitioner has also prayed for quashing of an order dated 24.05.2001 passed by the respondent refusing to grant continuation of approval therein.

2. The brief facts, which are relevant to be noticed, are as follows:-

The petitioner is an institution, which was framed on 11.09.1978 for carrying on charitable activities. A Certificate of Registration under Societies Registration Act No. XXI of 1860 (hereinafter referred to as the "Societies Act") was issued to the petitioner on 11.09.1978 in the name of Marie Stopes Society. The name of the petitioner society was changed to Parivar Seva Sanstha and Certificate of Registration under the Societies Act was granted thereto on 24.11.1982. An

application for registration u/s 12A of the Act and approval was filed on 05.11.1978 before the Commissioner of Income Tax (in short, the "CIT"). Certificate of Registration u/s 12A and approval u/s 80G(5)(vi) of the Act was granted to the petitioner by the CIT on 09.11.1978. Continuation thereof was also granted till 31.03.2000. Thereafter, an application in the prescribed form No. 10G was filed on 02.02.2000 by the petitioner before the respondent for continuance of an approval u/s 80G(5)(vi) of the Act. Pursuant to the said application, the order dated 22.12.2000 was passed, which reads thus:-

"Please refer to your application filed in form No.10G on the above noted subject.

2. In continuation with the above, I am directed to inform you that an amount of Rs. 7,32,99,111/- is outstanding for the asstt. year 1997-98. You are requested to please make arrangements to clear the arrears outstanding against you. If the demand is paid, only then your application for renewal u/s 80-G will be considered."

3. A perusal of the aforementioned order and the reply affidavit would show that the benefit u/s 80G(5)(vi) of the Act has been refused allegedly on the grounds:-

(i) that the petitioner has deliberately furnished inaccurate particulars of its outstanding demand in the application form in order to wrongly obtain exemption certificate;

(ii) the demands for the assessment year 1997-98 were outstanding;

(iii) the petitioner has been continuously violating the provisions of Section 13(1)(c) of the Act.

4. Section 80(G)(5) of the Act and Rule 11AA of the Income Tax Rules (in short, the "Rules") read thus:-

Section 80-G (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 its is established in India for a charitable purpose and if it fulfills 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 (22A)] [or Clause (23)] {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 purpose of such business; and
- (c) the institution or fund issues 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 purpose 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 casts ;
- (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 u/s 25 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law, or is an institution approved by the Central Government for the purposes of Clause (23) of Section 10, or is an institution financed wholly or in part by the Government or a local authority:"

Rule 11AA : Requirement for approval of an institution or fund u/s 80-G:-

- (1) The application for approval of any institution or fund under Clause (vi) of Sub-section (5) of Section 80G shall in Form No. 10G and shall be made in triple .
- (2) The application shall be accompanied by the following documents, namely:-
- (i) Copy of registration granted under Section 12A or copy of notification issued u/s 10(23) or 10(23C):
- (ii) Notes on activities of institution or fund since its inception or during the last three years ,whichever is less:
- (iii) Copies of accounts of the institution or fund since its inception or during the last three years ,whichever is less.
- (3) The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund .

(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:

Provided that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.

(6) The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the date on which such application was made.

Provided that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under Sub-rule (3) shall be excluded "

5. Recognition for purpose of Section 80-G of the Act is available when an institution or the fund satisfies all the five conditions listed under Sub-section (5). the aforementioned Rule prescribed the procedure for obtaining the said benefit u/s 80(G)s of the Act. In terms of the said Rule, an application is required to be filed in Form No. 10-G whereupon the Commissioner is required to pass an order. The proviso appended to Sub-rule 6 of Rule 11AA shows that in computing the period of six months ,any time taken by the applicant in not complying with the directions of the Commissioner under Sub-rule (3) shall be excluded.

However, it has not been shown that there has been a delay on the part of the petitioner, but despite the same, order has been passed after a period of 15 months. But ,further, it appears that the demand for the assessment year 1997-98 was raised on 15.03.2000, whereas application in form No. 10-G was filed on 02.02.2000. The respondent ,Therefore, took into consideration a factor, which was extraneous and not germane for passing of the said order.

6. It is evident from the afore-extract relevant provisions of the Act and the Rules that these nowhere stipulates that the continuation of the benefit shall be granted only upon payment of the outstanding demand. According to the petitioner, said demand was the subject matter of consideration before the Tribunal and in fact the same has been cancelled .Furthermore, an appeal filed by the Revenue in this Court u/s 260A of the Act has been dismissed, and Therefore, benefit u/s 80-G of the Act could not have been denied even on that ground. It appears that the Tribunal by an order dated 29.09.2000 had also held that the petitioner was engaged in charitable activities and its income was fully exempt u/s 11 of the Act. The said fact has also not

been taken into consideration. Having regard to the orders passed subsequently, namely, appears in relation to the assessment year 1997-98 having been allowed, the impugned order must be set aside.

7. For the reasons aforementioned, we are of the opinion that the impugned order cannot be sustained, inasmuch as the grounds on the basis where of the impugned order has been passed do not have any factual basis and, thus, must be held to be perverse. The view taken by the Commissioner cannot be said to be justified on the material on record.

8. This writ petition is, Therefore, allowed. The impugned order is quashed. The Commissioner is directed to consider the application of the petitioner for grant of continuation of approval u/s 80-G(5) of the Act afresh, as expeditiously as practicable but not later than eight weeks from the date of the order. In the facts and circumstances of the case, there will be no order as to costs.