

(2005) 11 UK CK 0007

Uttarakhand High Court

Case No: Writ Petition No. 799 of 2004 (M/B)

The Board of Directors
of Woodstock School

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Nov. 19, 2005

Acts Referred:

- Income Tax Act, 1961 - Section 12AA, 80G, 80G(5)
- Income Tax Rules, 1962 - Rule 11AA(4), 11AA(5)

Hon'ble Judges: Cyriac Joseph, C.J; Rajesh Tandon, J

Bench: Division Bench

Advocate: C. Mukund and Beena Pandey, for the Appellant; Pitamber Maulekhi, for the Respondent

Final Decision: Allowed

Judgement

Cyriac Joseph, C.J.

The challenge in this writ petition is against an order dated 15-06-2004 passed by the Respondent-Commissioner of Income Tax, Dehradun-rejecting an application for renewal of exemption u/s 80G of the Income Tax Act, 1961. The said application was rejected on the ground that the Petitioner is not an institution established for charitable purposes.

2. The contention of the Petitioner is that so long as the registration u/s 12AA of the Income Tax Act stands in favour of the Petitioner, the Respondent cannot enter a finding that the institution is not established for charitable purposes. According to the Petitioner, the application for renewal of exemption u/s 80G can be rejected only if any of the conditions laid down in Clauses (i) to (v) of Sub-section 5 of Section 80G, is not fulfilled. It is pointed out by the Petitioner that the Commissioner has no case that any of the conditions laid down in Clauses (i) to (v) of Sub-section 5 of Section 80G is not fulfilled. It is also pointed out by the Petitioner that as per Annexure P8, the Assessing Officer had

accepted that the Petitioner's income for the year ending 31-03-2001 was Nil, thereby, implying that the institution is a charitable institution. Though the said assessment order was cancelled by the Commissioner, the order of the Commissioner was set-aside by the Income Tax Appellate Tribunal and therefore, the order of the Assessing Officer stood revived. On the above-mentioned grounds, the Petitioner prays for quashing the impugned order dated 15-06-2004.

3. Mr. Pitamber Maulekhi, learned Counsel for the Respondent fairly submitted that so long as the registration u/s 12AA of the Income Tax Act stands in favour of the Petitioner, the Commissioner may not be justified in rejecting the application for renewal of exemption u/s 80G on the ground that the Petitioner is not an institution established for charitable purposes.

4. We also find force in the contention of the Petitioner that since the Respondent has no case that any of the conditions mentioned in Clauses (i) to (v) of Sub-section 5 of Section 80G is not fulfilled, the Respondent could not have rejected the application for renewal of exemption u/s 80G in view of Sub-rules 4 and 5 of Rule 11AA of the Income Tax Rules, 1962. The stand of the Petitioner is supported and strengthened by the fact that, as per Annexure P8 order, the Assessing Officer had accepted that the Petitioner's income for the year ending 31-03-2001 as nil, thereby, implying that the institution is a charitable institution. We do not find any justification for the action of the Respondent in taking a contrary view in the impugned order. It is to be noted that though the Respondent had issued a show-cause notice to the Petitioner proposing to withdraw the registration u/s 12AA of the Income Tax Act, the said show-cause notice was challenged by the Petitioner in Writ Petition No 798 of 2004 (M/B) and the said writ petition was allowed by this Court on 19-10-2005 quashing the show-cause notice on the ground that the said show-cause notice was issued by the Respondent without jurisdiction.

5. In the above circumstances, the Petitioner is entitled to succeed. The impugned order dated 15-06-2004 passed by the Respondent is quashed. The Respondent is directed to reconsider the application of the Petitioner for renewal of exemption u/s 80G of the Income Tax Act, 1961 and to pass fresh orders in accordance with law as early as possible and at any rate, within a period of one month from the date of receipt of a copy of this judgment.

6. The writ petition is allowed as above.