

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

**BEFORE: SHRI P.K. BANSAL, ACCOUNTANT MEMBER
AND
SHRI D.T. GARASIA, JUDICIAL MEMBER**

ITA No.223/Nagpur/2009

Assessment Year : NA

**Shiv Mandir Devsttan
Panch Committee Sanstan
Nagpur
(Appellant)**

Vs.

**CIT-1
Nagpur
(Respondent)**

Appellant By: **Shri P.R. Gandhi, Advocate**
Respondent By: **Shri Suresh R. Kirtane, JCIT**

Date of hearing: **09.10.2012**
Date of pronouncement: **11.10.2012**

ORDER

Per P.K. Bansal, Accountant Member:-

The only issue involved in this appeal filed by the assessee relates to the grant of approval u/s 80G(5)(vi) of the Income-tax Act, 1961. The brief facts of the case are that Shiv Mandir Devsttan Panch Committee Sanstan, Nagpur filed an application in form no.10G on 9.7.2008 seeking approval u/s 80G(5)(vi) of the Income-tax Act. The copy of the accounts for the year 31.3.2008 was also filed. As per this, the assessee has incurred total expenditure amounting to Rs.82,977/-, which consist of building maintenance expenses – Rs.23,530/-; Free food expenses – Rs.34,399/-; Festival prayer & daily expenses – Rs.18,328/-; Tailoring training expenses – 1,225/-; Yoga training expenses – Rs.2,475/- and Free distribution of opticals – Rs.3,020/-.

2. The CIT took the view that the expenses for building maintenance, free food expenses and festival prayer & daily expenses related to the religious object. Only balance sum of Rs.6,700/- were incurred for non-religious objects. In view of explanation 3 to section 80G read with sub-section 5B, he took the view that since

the expenditure on religious object exceeds 5% of the total income of the assessee trust, therefore, he did not approve the assessee u/s 80G(5)(vi).

3. The Ld. A.R. before us contended that the assessee is carrying on yoga training, tailoring training and free distribution of opticals to the poor and needy people. The building is required for the training, yoga etc. The maintenance expenses incurred over the building relate to the charitable activities and not the religious activities. Food distributed to the needy may be called as maha prasad and distribution of the food to the poor people is not a religious expenditure. Similarly, the expenses incurred on festival prayer & daily expenses represent Rs.3,600/- paid to safai worker, Rs.1,080/- for news papers, Rs.1,136/- for cleaning the cloths and Rs.5,373/- for miscellaneous purchases for day to day consumption. It is only a sum of Rs.7,139/- which is less than 5% can be regarded to have been spent for the religious purpose even if it is treated that maintenance of the temple is a religious purpose. He contended that the temple is open to everybody without caste and creed. Anybody who have faith or not in Shiva, Hanuman, Durga may come or even the person who does not have faith in these deities, can also come. The temple does not belong to a particular religion. The expenditure so incurred are not of religious nature. Even the objects of the assessee are not the religious nature. Putting the idols is not a religious activity. The CIT has not stated how the activity so carried are religious. The assessee has duly been registered u/s 12A of the Income-tax Act.

4. The Ld. D.R. on the other hand contended that the CIT(A) has rightly denied the approval u/s 80G. The assessee was carrying on religious activities and has spent money for the maintenance of the temples.

5. We have heard both the parties and have carefully perused the entire material available on record along with the order of CIT. The provisions of section 80G sub-section (5) of the Income-tax Act lays down as under :

“(5). This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), on 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 section 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 issues to a person making the donation a certificate to the effect that it maintains separate books or 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 253 of the Companies

Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised 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; and

- (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:

Provided that any approval shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval."

6. From the perusal of the aforesaid section, it is apparent that section 80G of the Act provides for deduction in respect of the donations made by the tax payers to certain trust or institution. These trusts or institutions have to comply with the condition as laid down u/s. 80G(5)(i) to (v) of the Income-tax Act. By Finance Act, 1991, the deduction under the provisions of section 80G for any fund or Institution not specifically mentioned is allowed if it is approved by the Commissioner of Income-tax in accordance with section 80G(5)(vi). The approval has to be made in accordance with the Rules made in this behalf. Rule 11A under the Income-tax Rules has been inserted w.e.f. 21.09.1992. This rule requires an institution or fund to make an application for approval under section 80G(5)(vi) in form No. 10G. The application was to be submitted in triplicate. This Rule further requires that the application shall be accompanied with the following documents namely :

- (i). Copy of registration granted u/s. 12A or copy of the notification issued u/s. 10(23) or 10(23C);
- (ii). Notes on activities of the institution or fund since its inception or during the last three years, whichever is less;
- (iii). Copies of account of the Institution or fund since its inception or during the last three years, whichever is less.

7. Sub-rule (3) empowers the Commissioner to call for such documents or information from the institution or fund or cause such enquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the

activities of such Institution. Sub-rule (4) lays down that if all the conditions as enumerated in clause (1) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, CIT 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. Sub-rule (5) empowers the CIT to reject the application for approval after recording the reasons for such rejection in writing where the CIT is satisfied that one or more conditions laid down in clause (i) to (v) of section 80G(5) are not fulfilled. This rule also states that no order rejecting the application shall be passed without giving an opportunity of hearing to the institution or trust. Sub-rule(6) requires the CIT to pass an order granting or rejecting the application within 6 months from the date on which the application is made. We noted that in the case of the assessee-trust, the CIT was of the opinion that the assessee-trust has not complied with the conditions No. (ii) and (iii) of section 80G(5). He is of the opinion that the trust is expressed for the religious object and has applied the fund for the purpose other than charitable as contemplated in Explanation 3 to section 80G(5) in contravention of section 80G(5)(ii) of the Income-tax Act. The Explanation 3 to this section lays down that charitable purpose does not include any purpose the whole or substantially whole of which is of a religious nature. The main objection of the CIT is that the objects as enumerated in the trust deed are religious and the expenditure has been incurred for religious purposes. He has also noted that a trust or institution is permitted to incur an expenditure not exceeding to 5% of his total income in the previous year for religious purpose so that it may not contravene the condition No. (ii), as stipulated u/s. 80G(5) of the Act.

8. We have gone through the relevant clauses which have been regarded to be religious in nature by the CIT(A). The object clause of the trust reads as under:

"Worship of Lord Shiva , Hanumanji, Goddess Durga and maintaining of temple. To celebrate festivals like Shivratri, Hanuman Jayanti, Ganesh Uttasav, Makar Sankranti, renovation and maintenance of temple. To make available temple for general public and to provide facilities for the public visiting temple. Balance fund, if any after utilizing for the above mentioned objects, may be utilized for education, social and the cultural activities. To conduct nursery school, library, sports club, hostels and other activities. To help poor children for education. To provide medical aid for poor. To help the peoples affected by natural calamity."

Now the question arise whether these objects can be regarded to be of religious nature and the expenditure incurred for the fulfillment of these objects can be said to have been incurred for the benefit of particular religion.

9. The charitable purpose has been defined u/s. 2(15) of the Act. The definition of charitable purpose is inclusive one. It includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility. The objects as enumerated above held on by the assessee trust are charitable within the meaning of section 2 of sub section 15. Some of the objects fall within the "advancement of any other object of general public utility". Proviso to section 2 sub section 15 restricts the meaning "advancement of any other objects of general public utility". But CIT(A) has not stated that proviso to section 2 sub section 15 is applicable in the case of the assessee.

10. Now coming to the question whether the assessee trust has violated the conditions as laid down in clause (iii) of section 80G(5), we reproduce this clause which reads as under :

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

This clause stipulates that the Institution or the Trust must not be for the benefit of any particular religious community or caste. The words "religious community" means the group of people having a common religion or faith. The word "religion" means the belief in and worship to a superhuman controlling power, specially the personal god or gods, a particular system of faith and worship. It means the trust should not be for the benefit of any particular group of persons having the common belief in worshipping of superhuman controlling power or having common system & faith and worship. If the trust is for the benefit of any particular religious community, it would include the advancement, support or propagation of a religion and its tenants, it could be said that a trust has violated the condition No. (iii) of section 80G(5). The objects as has been pointed out by CIT, nowhere talks of advancement, support or propagation of a particular religion, worshipping of Lord shiva, hanumanji , goddess

Durga and maintaining of temple, in our opinion, cannot be regarded for the advancement support or propagation of a particular religion. No evidence or material was placed on record or brought before us by the learned DR which may prove that these object relate to a particular religion. No doubt the DR argued that it relate to Hindu Religion but in our opinion it is not so. Lord shiva, Hanumanji, goddess Durga does not represent any particular religion, they are merely regarded to be the super power of the universe.

11. In the case of Commissioner of Hindu Religious and Charitable Endowments Madras vs. Sri Lakshmindra Thirtha Swamiar 1954 SCJ335, Religion has been expressed to mean a matter of faith with individuals or communities and it is not necessarily theristic. There are well known religions in India, like Buddhism and Jainism, which do not believe in God or in any intelligent first cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it will not be correct to say that religions is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, but it might prescribed rituals and observances, ceremonies and modes of worship which are regarded as integral parts of a religion, and these forms and observances might extend even to matters of food and dress. No material or evidence has been brought on record by the department which may prove that any person coming, worshipping and maintaining the temple has to follow a particular code of ethical rules and has to carry out the prescribed rituals and observances, ceremonies and modes of worship. The entry is not restricted to a particular group of persons. Any body whether want to worship or not and want to maintain or not can come to the temple and avail of all the facilities available to the public at large. Therefore, these objects cannot be regarded to be the religious objects. In our opinion, until and unless the activities for which the trust is established, involve the activity religious purpose, it cannot be said that the assessee has not complied with the condition No. (iii) enumerated u/s. 80G(5) of the Act.

12. Even we noted that all the building maintenance expenses, free food expenses and festival , prayer and daily expenses cannot be regarded to be the one incurred for religious object ,even if the object is regarded to be religious one. It is not denied that in the building the assessee was carrying yoga centre , tailoring training centre as well as food for the needy and optical centre for the poor.

13. Explanation 3 to section 80G(v) states that "*in this section, "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature.*" This explanation takes note of the fact that an institution or fund shall be for a charitable purpose and may have a number of objects. If any one of these objects is wholly or substantially wholly of a religious nature, the Institution or Funds falls outside the scope of section 80G and the donation to it will not make the donor entitled for the deduction u/s. 80G. The objects as per Explanation 3 must be wholly or substantially whole of which must be of religious nature. The assessee has submitted all the evidence including the objects and how the expenditure has been incurred by it. The onus, in our opinion, gets shifted on the Revenue to prove that the assessee-trust is wholly or substantially for the religious purpose. There is no allegation on the part of the revenue that the whole or substantially whole of the object of the trust is to propagate or advance support to a particular sect. We may observe that Hinduism is a way of life of a civilized society. It as such is not a religion. In this regard we rely on the case of T T Kuppaswamy Chettiar Vs. State of Tamil Nadu (1987) 100 LW 1031 in which it was held " The word "Hindu" has not been defined in any of the texts nor in judgment made law. The word was given by British administrators to inhabitants of India, who were not Christians, Muslims, Parsis or Jews. The alleged Hindu religion consists of four castes Brahmins, kshatriyas, vaishyas and sudras belonging ultimately to two schools of law, mitaksharas and dayabhaga. There is, however, no religion by the name 'Hindu'. It only shows that so called Hindu religion has been called for convenience." CIT must be aware of that the Hindu consists of a number of communities having the different gods who are being worshipped in a different manner, different rituals, different ethical codes. Even the worship of god is not essential for a person who has adopted Hinduism way of life. Thus, Hinduism holds within its fold men of divergent views

and traditions who have very little in common except a vague faith in what may be called the fundamentals of the Hinduism. The word 'community' means a society of people living in the same place, under the same laws and regulations and who have common rights and privileges. This may apply to Christianity or moslem but not to Hinduism. Therefore, it cannot be said that Hindu is a separate community or a separate religion. Technically Hindu is neither a religion nor a community. Therefore, expenses incurred for worshipping of Lord Shiva, , Hanuman, Goddess Durga and for maintenance of temple cannot be regarded to be for religious purpose. Under these facts and circumstances, we are of the view that the CIT is not correct in law in not allowing the approval to the assessee trust u/s. 80G of the Act. We accordingly, set aside the order of the CIT and direct the CIT to grant approval to the assessee-trust u/s. 80G(5)(vi) of the Act.

14. In the result, the appeal of the assessee is **allowed**.

Pronounced in the open Court on **11.10.2012**

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Sd/-
(P.K. BANSAL)
ACCOUNTANT MEMBER

VG/SPS
Nagpur
Dated 11th October, 2012
Copy to

- 1 Shiv Mandir Devsttan Panch Committee Sanstan, Tailor Lane, Chaoni, Nagpur
- 2 The CIT-1, Nagpur
- 4 The CIT(A), Nagpur
- 5 The DR, ITAT, Nagpur
- 6 Guard file.

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Nagpur