

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND Ms. SUSHMA CHOWLA, JUDICIAL MEMBER**

**ITA Nos.549 & 1294/PN/2009
(Order under sections 80G & 12AA)**

Ashoka Education Foundation
Ashoka House, S.No.861,
Ashoka Marg, Wadala,
Nashik – 422011

PAN: AABTA3323M

.... Appellant

Vs.

The Commissioner of Income Tax-1,
Nashik

.... Respondent

Appellant by : Shri Sunil U Pathak
Respondent by : Smt. M.S. Verma, CIT
Date of hearing : 01-12-2014
Date of pronouncement : 31-12-2014

ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by the assessee are against two different orders of CIT-I, Nashik, dated 15.04.2009 and 09.10.2009 passed under sections 80G(5) and 12AA(3) of the Income Tax Act, respectively.

2. The assessee in ITA No.549/PN/2009, has raised the following grounds of appeal:-

1. *The learned CIT-I, Nashik, erred in rejecting the appellant's application for renewal of Certificate issued in terms of provisions u/s 80G(5)(vi) of the I.T. Act, 1961.*
2. *The learned CIT-I, Nashik erred in invoking the provisions of sec.13(1)(c) of the I.T. Act, 1961, for the purposes of issue of certificate u/s 80G(5)(vi) of the I.T. Act, 1961.*

3. *The learned CIT-I, erred in holding that, the provisions u/s 13(1)(c) of the I.T. Act, 1961, stood violated for the reasons stated in his order dt. 15.04.2009.*
4. *The learned CIT-I, erred in not appreciating the submissions made with reference to the applicability of provisions u/s 13(1)(c) r.w.s. 13(2)(b) of the I.T. Act, 1961.*
5. *Appellant craves leave to add / amend / alter any grounds of appeal before or at the time of hearing.*

3. The assessee in ITA No.1294/PN/2009, has raised the following grounds of appeal:-

1. *The learned CIT-I, Nashik erred in canceling the Certificate issued u/s 12AA(1), without any specific Show Cause Notice for cancellation u/s 12AA(3) and without reference to the trust's reply dt. 15.07.2009. Therefore, it is prayed to annul the proceedings for cancellation u/s 12AA(3).*
- 2.1 *The learned CIT-I, Nashik, fails to appreciate that on the appointed date of hearing assessee's representative C.A. Shri Praveen Rathi went to CIT's office but the learned CIT was out of Nashik and Shri Praveen Rathi was informed that he would be given next date of hearing but without such hearing the learned CIT erred in passing the Order u/s 12AA(3) of the Income Tax Act,1961. (To substantiate the claim C.A. Shri Praveen Rathi is ready to submit an affidavit during the hearing before ITAT, Pune.)*
- 2.2 *The Order u/s 12AA(3) is null & void and be declared as bad in law, as it violates the principles of natural justice by not allowing a real opportunity of hearing.*
3. *Under the facts, circumstances of the case and the provisions of law, the learned CIT – I erred in canceling the certificate issued in the name of appellant trust u/s 12AA(1) by use of powers vested in him u/s 12AA(3) of the IT. Act, 1961. Therefore, it is prayed to cancel the order passed by the CIT-I, Nashik, u/s 12AA(3).*
4. *The learned CIT- I, erred in holding that, the provisions u/s 13(1)(c) of the IT. Act, 1961, stood violated for the reasons stated in his order dt. 09 10.2009. Therefore, it is prayed to cancel the order passed by the CIT u/s 12AA(3)*
5. *The learned CIT - I, erred in not appreciating the submissions made with reference to the applicability of provisions u/s 13(1)(c) r.w.s. 13(2)(b) of the IT Act, 1961, in the proceedings before him in relation to the matter of renewal of certificate u/s 80G.*

6. *Appellant craves leave to add / amend / alter any grounds of appeal before or at the time of hearing.*

4. Both the appeals relating to same assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

5. The assessee in ITA No.549/PN/2009 is aggrieved by the denial of grant of renewal under section 80G(5)(vi) of the Act. Further, the assessee in ITA No.1294/PN/2009 is aggrieved by the order passed by the CIT cancelling the registration granted to the assessee under section 12AA of the Act.

6. The assessee in ITA No.549/PN/2009 has also raised an additional ground of appeal, which reads as under:-

1. *The order passed by the learned CIT u/s 80G is beyond the time limit prescribed in Rule 11AA(6) and thus, the approval u/s 80G should be allowed to be continued.*

7. The brief facts of the case are that, the assessee trust had filed an application under section 80G of the Act in Form No.10G on 31.03.2008 seeking extension of exemption under the said section. The assessee foundation was registered under section 12AA of the Act w.e.f. 14.07.2005. The CIT, Nashik in view of the provisions of Rule 11AA of I.T. Rules, 1962 observed that the CIT before granting the registration under section 80G(5) of the Act has to satisfy himself about the genuineness of the activities of the trust by calling for documents / information from the trust or by making enquiries. The fulfillment of the conditions laid down in clauses (i) to (vi) of section 80G(5) is to be seen by the CIT in order to decide the issue of grant of exemption to the assessee trust. On enquiries, the CIT found that the assessee foundation

had given its land situated at Gangapur Road, Nashik to M/s. Ashoka Buildcon Ltd. (in short 'ABL'), a leading contractor and infrastructure developer. The CIT also noted as per the report of the Assessing Officer that six trustees / members of the assessee foundation held positions of Directors in M/s. ABL. During the course of enquiry, it was further noticed that M/s. ABL was awarded contract work order from Nashik Municipal Corporation on 22.02.2007 for Rs.5.67 crores for construction of college road in Nashik. Thereafter, a Ready Mix Concrete (in short 'RMC') Plant was set up on 6000 sq. mtrs. of land belonging to the assessee. The RMC Plant started supplying material for the construction of college road which was to be completed within time schedule. The Assessing Officer further reported that the RMC Plant was still operational even after the expiry of two years from the date of installation. The RMC Plant established on the trust land, was found to be supplying Ready Mix Concrete to M/s. ABL and also for sale of concrete to outside parties. The Assessing Officer of the assessee foundation took the photos of RMC Plant which have been scanned and made part of the order of CIT at pages 4 and 5. The CIT vide para 4 noted that the objects of the assessee trust were for the promotion of educational activities and nowhere in the Memorandum of Association, there was any mention of an object for promoting industrial activities like installation of RMC Plant.

8. The CIT further observed that the Memorandum of Association does not allow the trustee to facilitate setting up of RMC Plant on school land. Further, in the course of enquiry, the Assessing Officer also had found and reported that the assessee trust had not obtained permission of charity commissioner under section 36 of the Bombay Public Trust Act

for leasing out the land or building to outside parties. Further, no permission was obtained from Nashik Municipal Corporation before allowing M/s.ABL to set up the RMC Plant. Also necessary clearance from the environmental authority was not obtained and there was litigation with the aforesaid authorities on the issue of installation of RMC Plant on school land. The CIT was of the view that where the assessee trust had used or applied, directly or indirectly the property of the trust for the benefit of the person(s) referred to in section 13(3) r.w.s. 13(1)(c), section 13(2) of the Act, whether in such cases, the assessee was entitled to the claim of exemption to be granted under section 80G(5) of the Act. The fact of use of school land for industrial and commercial purposes by the company M/s. ABL, which was run by the trustees was not reported in the audit report furnished by the auditor and also no information in this regard was given in the statement of accounts. It was questioned whether in the background of suppression of income in the audit report and the statement of accounts, the trust could be perceived as truly maintaining regular accounting of its receipts and expenditure, as per section 80G(5) of the Act. The CIT observed that the answer to the question was no since the assessee trust had used its immovable property for the benefit of specified persons referred to in section 13(3) of the Act under the circumstances, defined in section 13(2) of the Act, thereby rendering itself in-eligible for exemption under section 11 r.w.s. 80G(5) of the Act. The assessee was show caused in this regard and also report of Assessing Officer obtained. The CIT held that the case of the assessee was directly hit by section 13(1)(c) of the Act and hence, the conditions prescribed under section 80G(5) of the Act were not satisfied, because of the following reasons:-

(a) *The Trust Deed (MO) does not permit the Trustees to deal with the Trust land in the above manner and that too, without Charity Commissioner's Permission,*

(b) *The agreement since not registered under state law, is neither valid nor reliable,*

(c) *The dominant purpose in allowing M/s ABL to set up RMC was not educational but for facilitating M/s. ABL's contract work awarded by NMC as would be apparent from the hurried conduct of the Trustees to jump all proceedings of obtaining charity Commissioner's approval, what to speak of NMC and environmental clearance,*

(d) *Construction of school building had started in phases long before February 2007. Installation of RMC plant in February / March, 2007 on school land coincides with the award of contract to M/s. ABL, the company in which the Trustees are interested. The very timing of award of contract to M/s ABL and setting up of RMC Plant is a sordid reminder that the Trustee's sole intention was to benefit their company M/s. ABL.*

(e) *No publicity / advertisement calling for the highest bidder for lease of land was given, and no permission is taken from the Authorities concerned. The provisions of The Bombay Public Trust Act are directly impinged upon,*

(f) *The Nashik Municipal Corporation, a statutory local Authority is taken to Court for having issued notice for removal of RMC plant.*

(g) *Neither the Trustees nor the Chartered Accountants are explaining why the relevant columns in Form 10B Annexure -II(2) are left "NIL",*

(h) *The Trustees have not proved if any other educational foundation / Trust enjoying Public Charitable Trust status in Nashik would allow its land for setting up of RMC plant by M/s. ABL under similar terms,*

(i) *The sequence of events prove that the Trustees have allowed their company M/s. ABL to use Trust property for its benefit. It is interesting to note that M/s. ABL has been permitted to sell Ready-Mix-Concrete to outside parties also besides supplying to road construction and purportedly to school building construction.*

9. The assessee is in appeal against the said denial of exemption under section 80G(5) of the Act.

10. The learned Authorized Representative for the assessee pointed out that the assessee was part of M/s. Ashoka Buildcon Ltd., which in turn

was engaged in construction business. M/s. ABL approached the assessee for using part of its land for the RMC Plant and as per the agreement, it was agreed that the Ready Mix Concrete would be given to the assessee @ Rs.550/- per cubic meter for the purpose of constructing the school building. Our attention was drawn to the copy of agreement placed at page 95 of the Paper Book under which, it was agreed that the Ready Mix Concrete would be supplied to the assessee at concessional rates. The learned Authorized Representative for the assessee pointed out that the trust had passed a Resolution in this regard and copy of which in English translation is placed at page 100 of the Paper Book.

11. The learned Authorized Representative for the assessee further pointed out that the assessee had received quotation for the conversion charges for RMC manufacturing from one Shree Construction Company which in turn, said that the conversion rate per cubic meter would be Rs.750/-. He drew our attention to the copies of the bills placed at pages 131 to 133 of the Paper Book in which, M/s. ABL had sold the RMC at a price varying between Rs.2842.44 per cu mtr. to Rs.3,111.11 per cu mtr. The case of the assessee before us was that by giving part of its land to M/s. ABL for establishing RMC Plant, it was receiving the Ready Mix Concrete at a lower rate and the notional working of the savings made on conversion and transportation cost of Ready Mix Concrete was Rs.40,35,826/-, as per the details filed at page 115 of the Paper Book. In case the said land had been rented out, then at best, the assessee was entitled to rental of Rs.4,62,000/- for a period of five years and for a period of two years worked out to Rs.1,84,800/-. On the other hand, the compensation of concession received by the assessee was more than Rs.40,00,000/-. The learned Authorized Representative for the assessee

referred to the order of CIT and stated that the renewal of exemption under section 80G(5) of the Act was not allowed to the assessee since the permission of the charity commissioner was not taken. It was pointed out by him that the understanding between the assessee and M/s. ABL was only a lease, for which no permission was required to be taken. Even otherwise, no approval from the charity commissioner does not violate the provisions of section 80G(5) of the Act. Further, the plea of the assessee was that the said piece of land was given to sister concern, who was to vacate the premises in 2-3 years. In any case, there was no violation of the provisions of section 13 of the Act. The learned Authorized Representative for the assessee placed reliance on following decisions for the proposition that even if there was violation of section 13 of the Act, there was no reason to reject the grant of exemption to the assessee:-

- i) *Orpat Charitable Trust Vs. CIT (2002) 256 ITR 690 (Guj)*
- ii) *George Educational, Medical & Charitable Society Vs. Asst. Director of Income Tax (2002) 80 ITD 619 (Cochin)*
- iii) *Director of Income-tax (Exemption) v. Pariwar Sewa Sansthan (2002) 254 ITR 268 (Delhi)*

12. The learned Authorized Representative for the assessee further stated that since the assessee was running school, it was carrying on charitable activities and had not violated the provisions of section 13 of the Act. In any case, the violation of provisions of section 13 of the Act is not to be seen for grant of registration as held in *Aggarwal Mitra Mandal Trust Vs. DIT (Exemption) (2007) 293 ITR (AT) 259 (Delhi)*.

13. In respect of the additional ground of appeal, the learned Authorized Representative for the assessee pointed out that the CIT is to dispose of the application under section 80G of the Act within a period of

six months as stipulated under Rule 11AA(vi) of the IT Rules, 1962. The application for grant of exemption was filed on 31.03.2008 and the first notice was issued on 19.06.2008 and the order was passed on 15.04.2009. The learned Authorized Representative for the assessee stressed that even if the time taken by the assessee is excluded, then also it was beyond the period of six months. Reliance in this case was placed in *Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust Vs. CIT (2008) 111 ITD 175 (Delhi) (SB)*. Further, the plea of the assessee was that similar reasoning would apply in respect of grant of registration under section 12AA of the Act.

14. The learned Departmental Representative for the Revenue pointed out that section 12A of the Act was a statutory provision and the rules governing section 80G(5) of the Act were subordinate legislation. The learned Departmental Representative for the Revenue further pointed out that the decision in *Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust Vs. CIT (supra)* has been reversed by the Hon'ble Allahabad High Court and the matter has been referred to larger Bench, which also approved that the non-grant of registration within period of six months would not result in any deemed grant of registration. Reliance was placed upon the decision in *CIT Vs. Muzafar Nagar Development Authority (2013) 38 taxmann.com 21 (Allahabad)*. The learned Departmental Representative for the Revenue pointed out that in case of registration under section 12A of the Act, the period of 12 months was directory and not mandatory. Further with regard to the grant of exemption under section 80G(5) of the Act, the learned Departmental Representative for the Revenue pointed out that investigation was conducted in the case of assessee and there were many

hearings, in which the assessee had sought adjournments and eventually, an order was passed on 15.04.2009. With regard to the merits of the case, the learned Departmental Representative for the Revenue pointed out that when there was material change in the objects of the society and where the CIT becomes aware of it, then the renewal of exemption under section 80G(5) of the Act could be denied. Reliance was placed on the ratio laid down in CIT Vs. O.P. Jindal 290 taxmann.com 70 (P&H) that the objects of the trust are required to be gone through at the time of grant of exemption under section 80G(5) of the Act.

15. The learned Authorized Representative for the assessee in rejoinder pointed out that the assessee was enjoying the benefit of exemption under section 80G(5) of the Act w.e.f. 01.04.2005 and also of registration under section 12A of the Act and only for a period of two years, the exemption under section 80G of the Act was withdrawn. Further, the plea of the assessee before us was that the trust was running college in Nashik and there was no merit in the application of the provisions of section 13(1)(b) of the Act as the assessee has not paid anything extra. Further, plea was that the provisions of section 13 of the Act would be violated if benefit was passed at the cost of the assessee. In view there being no change in the activities being carried on by the trust, the learned Authorized Representative for the assessee stressed that both the renewal of registration under section 12AA of the Act and exemption under section 80G(5) of the Act, merits to be allowed to the assessee.

16. We have heard the rival contentions and perused the record. The assessee had sought extension of exemption under section 80G(5) of the Act. In this regard, the assessee furnished the Form No.10G on 31.03.2008. The assessee trust was registered under section 12AA of the

Act w.e.f. 14.07.2005. While granting the said exemption under section 80G(5) of the Act, the conditions / requirements for the said approval are enshrined in Rule 11AA of the Rules. The said Rule provides that the application has to be made in Form No.10G and is to be accompanied by the following documents:-

- i) Copy of Registration granted u/s.12A or copy of notification issued under section 10(23) and 10(23C);*
- ii) Notes on activities of institution or funds 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.*

17. The CIT under sub-rule 3 to Rule 11AA of the Rules, is empowered to call for such further documents or information from the institution or make such enquiries as he may deem necessary in order to satisfy himself about the genuineness of the activities of the trust of the institution or the fund. Where the commissioner is satisfied that all the conditions laid down in clauses (i) to (vi) of section 80G(5) are fulfilled by the institution or the fund, he shall record the satisfaction and grant approval to the institution or fund, satisfying the assessment year(s), for which the approval is valid, as per Rule 11AA(4) of the Rules. In any case, where the commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (vi) to section 80G(5) are not fulfilled, then he shall reject the application for approval after recording reasons for such rejection in writing. The said power is enshrined in CIT vide Rule 11AA(5) of the Rules. Further, it is provided that no order of rejection of the application shall be passed without giving reasonable opportunity of hearing to the institution or the fund. Under sub-rule (6) to Rule 11AA of the Rules, the time limit within which the commissioner has to pass an order of either granting the registration or rejecting the

application shall not exceed six months from the date on which the application was made. Further, it is provided that in computing the period of six months, any time taken by the applicant in not complying with the directions of Commissioner under sub-rule (3), shall be excluded. The CIT is to look into the activities of the institution for the past three years and also to see that all the conditions laid down in clauses (i) to (vi) to section 80G(5) of the Act are fulfilled by the institution or the fund. The conditions laid down in clauses (i) to (vi) to section 80G(5) of the Act read 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 (271(1)(c) of the Act), 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 section 11 and 12*

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 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 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;*
- (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.*

18. In the facts of the present case before us, the assessee was running schools, vocational courses, colleges, etc. and as per the list annexed at page 3 of the Paper Book, which read as under:-

Name	Activity
Ashoka Universal School	Pre-primary, Primary & Secondary Schools (ICSE & Govt of Maharashtra recognized)
Ashoka International Centre for Educational Studies & Research	B. Ed College (SNDT, NCTE & Govt. of Maharashtra recognised)
Ashoka Institute of Management & Technology	Master of Computer Mgmt & PG Diploma in Computer Mgmt (Pune University & Govt. of Maharashtra re cognized)
Ashoka Institute of Management Research & Technology	MBA (Pune University, Govt. of Mah & AICTE recognized)
Ashoka Centre for Business & Computer Studies	BBA, BCA & MCA (Pune University & Govt of Mah)
Ashoka Training Institute	Vocational Courses
Centre for Excellency in Science & Mathematics	Guidance for Competitive Examination Studies.

19. The assessee came into existence in the year 2005 and was enjoying the exemption under section 80G(5) of the Act from inception. The assessee trust was also registered under section 12A of the Act and

the copy of registration certificate dated 14.07.2005 granted under section 12A of the Act is placed at page 25 of the Paper Book. The copy of exemption certificate under section 80G(5) of the Act granted for the period 01.04.2005 to 31.03.2008 vide order dated 14.07.2005 is placed at page 26 of the Paper Book. The assessee was getting its accounts audited as per the requirements of the Act and the copy of the balance sheets for the years ending 31.03.2007 and 31.03.2008 along with audit report are placed at pages 27 to 94 of the Paper Book.

20. The assessee on 03.02.2007 entered into an agreement with M/s. Ashoka Buildcon Ltd. which was a sister concern of the assessee, in which it was agreed upon that part of the land owned by the assessee would be handed over to M/s. ABL for putting up a plant for manufacture of Ready Mix Concrete. In turn M/s. ABL would supply RMC required by the assessee for the construction of its school building on priority and at concessional rates to the assessee. M/s. ABL had been issued a Tender by Nashik Municipal Corporation for the construction of a road by use of Ready Mix Concrete only and at the relevant time, there was no Ready Mix Concrete manufacturing plant in and around Nashik. The assessee handed over an area of 6000 sq. mtrs. to M/s. ABL to put up a RMC plant and it was agreed upon between the parties that the material i.e. RMC would be supplied at concessional rate of Rs.550/- per cu mtr. to the assessee. The agreement was executed for a period of two years. The said understanding between the parties was approved by the meeting of the trust held on 02.02.2007 and the copy of English translation of Resolution No.4 of the said meeting of trust is placed at pages 100 and 101 of the Paper Book. The assessee thereafter, had applied for renewal of exemption under section 80G(5) of the Act.

However, the same was denied by the CIT on the premise that the assessee had handed over portion of its land to M/s. ABL without taking any permission from the charity commissioner and / or in allowing M/s. ABL to set up plant in its land i.e. the trust property was used for the benefit of M/s. ABL, who were selling the RMC not only to the assessee but to outside parties also. The CIT was of the view that such arrangements were hit by the provisions of section 13(1)(c) of the Act and consequently, the conditions prescribed under section 80G(5) of the Act were not satisfied. In view thereof, the renewal of registration under section 80G(5) of the Act was denied to the assessee trust.

21. While granting the exemption or renewal of exemption under section 80G(5) of the Act, the role of CIT is limited to look into the nature of activities being carried on by the institution or fund and the violation if any, of the provisions of section 13 of the Act and its various sub-sections are to be looked into by the Assessing Officer while deciding the issue of grant of deduction under sections 11 and 12 of the Act. The CIT while issuing the extension of exemption under section 80G(5) of the Act has a limited role to play i.e. to see whether the activities of the assessee trust were charitable in nature. As pointed out in the paras hereinabove, the assessee was engaged in promoting educational activities by way of running schools, colleges, etc. The activities carried on by the assessee were purely charitable in nature which entitled it to claim the exemption under section 80G(5) of the Act. Merely because, the assessee had entered into an agreement for leasing out the part of its land to its sister concern M/s. ABL for establishing RMC Plant with the understanding that the RMC would be supplied to it at concessional rates and on priority basis, does not establish the case of the CIT that the assessee

had allowed M/s. ABL to use its property for its benefit. On the other hand, the assessee had benefited by way of receipt of the Ready Mix Concrete for the construction of its school building at concessional rates. The assessee has tabulated such benefit over the period of the agreement at Rs.40,35,856/-. On the other hand, if the portion of land made available to M/s. ABL was rented out, then the same would have fetched very low rentals. In other words, by way of this arrangement, the assessee has benefited in getting the RMC at concessional rates and such understanding between the assessee and M/s. ABL is not in violation of the provisions of section 13 of the Act.

22. Even otherwise, while granting the exemption under section 80G(5) of the Act, the Hon'ble Gujarat High Court in Orpat Charitable Trust Vs. CIT (supra) while deciding the issue of renewal of certificate under section 80G(5) of the Act, held that even if the ground about contravention of section 11(5) of the Act was validly taken by the CIT, that would have bearing only at the point of the assessment and would not be a material consideration in so far as the granting approval under section 80G(5) of the Act was concerned.

23. Further, the Cochin Bench of the Tribunal in George Educational, Medical & Charitable Society Vs. Asst. Director of Income Tax (supra) had held that while granting registration under section 12A of the Act where the objects of the assessee society were genuine, merely because it had incurred certain expenditure, which fell within the category of benefit to a person under section 13(3) of the Act and hence, the assessee society was held to be hit by the provisions of section 13(1)(c) of the Act, does not entitle the CIT to deny the exemption of income claimed under section 11 of the Act.

24. The Delhi Bench of the Tribunal in *Aggarwal Mitra Mandal Trust Vs. DIT (Exemption)* (supra) held that while granting registration under section 12A of the Act, the CIT is to satisfy himself about the genuineness of activities and objects of the trust and as such, the scope of his powers was limited in this regard to make such enquiries as he deemed to, in respect of these two aspects. It was further held that if the Commissioner had not doubted the genuineness of the activities of the trust, he could not refuse the grant of registration under section 12A of the Act. The provisions of section 13(1) of the Act would be applied or invoked only at the time of computation of total income of the previous year of the person who was claiming deduction under section 11 or 12 of the Act, by the Assessing Officer and not by the CIT, while considering the application for registration under section 12A of the Act.

25. Following the above parity of reasoning in the facts of the present case, where the assessee was engaged in promotion of educational activities, which with within the domain of being charitable, the CIT at the time of grant of extension of exemption under section 80G(5) of the Act was not empowered to deny the said exemption to the assessee on the ground that it had violated the provisions of section 13(1) of the Act. In any case, the arrangement entered into by the assessee with M/s. ABL was a beneficial arrangement and was for the purpose of carrying on the activities of the trust by way of construction of the buildings of the educational institutes to be run by the assessee, and where there was benefit to the assessee by way of such arrangement, the same does not establishes that the assessee was not engaged in providing charitable activities i.e. education. In view thereof, we find no merit in the order of

Commissioner. Accordingly, we direct the Commissioner to grant renewal of exemption under section 80G(5) of the Act to the assessee.

26. Another aspect that the said renewal of extension of exemption under section 80G had been denied to the assessee only for an intervening period of two years. Prior to this period and thereafter, the assessee was enjoying the exemption under section 80G(5) of the Act. Only for the intervening period of two years when the assessee had entered into an agreement with M/s. ABL, the extension of exemption under section 80G(5) of the Act was denied to the assessee.

27. In view of our granting the exemption under section 80G(5) of the Act to the assessee, we are not adjudicating the additional ground of appeal raised by the assessee that the order passed by the CIT was beyond the period of six months as prescribed under Rule 11AA(6) of the Rules.

28. The denial of registration under section 12A of the Act by way of order passed under section 12AA(3) of the Act was on similar grounds as in the case of exemption denied under section 80G(5) of the Act. In view of our finding in the paras hereinabove, we direct the CIT to grant registration under section 12AA of the Act, as at the time of grant of registration, the CIT was only empowered to look into the nature of activities carried on by the assessee and whether the same were charitable in nature and not to look into the applicability of the provisions of section 13(1) of the Act. The Assessing Officer while granting the deduction under section 11 and 12 of the Act is to look into the violation of the provisions of section 13(1) of the Act, if any. The Commissioner at the time of grant of registration under section 12A of

the Act was not empowered in considering the violation, if any, under section 13(1) of the Act. Further, in the paras hereinabove, we have already given a finding that the agreement entered into by the assessee with M/s. ABL was for the benefit of the society and the same cannot be the ground for denial of registration to the assessee trust under section 12A of the Act. The CIT is thus, directed to allow the registration under section 12AA of the Act. The grounds of appeal raised by the assessee in both the appeals are allowed.

29. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on this 31st day of December, 2014.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
JUDICIAL MEMBER

Pune, Dated: 31st December, 2014.

GCVSR

Copy of the order is forwarded to: -

- 1) The Assessee;
- 2) The Department;
- 3) The CIT-I, Nashik;
- 4) The DR "A" Bench, I.T.A.T., Pune;
- 5) Guard File.

By Order

//True Copy//

Assistant Registrar
I.T.A.T., Pune