

No denial of sec. 80G approval once sec. 12AA registration granted to assessee: ITAT

Summary – The Jaipur ITAT in a recent case of Anand Incubation Centre., (the Assessee) held that No denial of sec. 80G approval once sec. 12AA registration granted to assessee

Facts

- The assessee filed an application before the Commissioner (Exemption) seeking approval under section 80G(5)(vi).
- The Commissioner (Exemption) found that no significant charitable activity had been started by the assessee-trust as per its objects. Accordingly, the application filed by the assessee was rejected.
- On appeal:

Held

- The limited objection raised by the Commissioner (Exemption) is that the assessee has not started significant activity and accordingly, the application is not fit for grant of approval under section 80G. In other words, the Commissioner (Exemption) has accepted the fact that the assessee has started certain activities as per its objects. The objects have been duly verified and approved as charitable objectives while granting approval under section 12AA. Even during the course of hearing, the assessee submitted that certain scholarship amount has been disbursed during the year as per its objects and the said fact is on record before the Commissioner (Exemption) which he has failed to consider.
- What is a significant activity is a very subjective term and cannot be a sole basis for rejection of application. Where the assessee has various objectives, it is not necessary that the activities in furtherance of each of the objectives should be started simultaneously and at the same pace and level. It is up to the assessee to determine which activities can be started initially and how the same can be expanded subsequently.
- What is of relevance for the purposes of grant of approval under section 80G is whether the objectives are charitable or not and the activities, so started, howsoever insignificant it may be, are genuine activities or not and whether the same are in consonance with and in furtherance of objectives of the assessee society.
- Further, on perusal of section 80G(5) as well as rule 11AA, of Income-tax Rules, 1962, what is required to be seen is whether the institution/fund has been established in India for a charitable purpose or not. Secondly, it lays down certain additional conditions under clause (i) to clause (v) which are required to be fulfilled. Rule 11AA provides that where the Commissioner is satisfied that the conditions laid down in clauses (i) to (v) of sub-section (5) are fulfilled, the Commissioner is

required to record his satisfaction before grant of approval under section 80G(vi). Where however, the Commissioner is satisfied that one or more of the conditions are not fulfilled, he is empowered to reject the application for approval after recording the reasons for such rejection.

- In the instant case, the assessee has been duly registered under section 12AA which showed that the Commissioner has already verified its objectives and its establishment for charitable purposes. Regarding fulfilment of additional conditions specified in clause (i) to clause (v) of section 80G(5), there is no recording of satisfaction regarding non-fulfilment of any of the conditions so specified and the Commissioner (Exemption) has summarily rejected the assessee's application.
- Accordingly the matter is set aside to the file of the Commissioner (Exemption) to examine the matter afresh in light of above directions.
- In the result, the appeal of the assessee is allowed for statistical purposes.