

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीता लक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.11/JPR/2023  
निर्धारण वर्ष/Assessment Years :2021-22

Sophical Sikshan Sansthan 4, B.K. Kaul Nagar, Ajmer.	बनाम Vs.	CIT, Exemption, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAAJS1682A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Sh. Sunil Porwal (C.A.)  
राजस्व की ओरसे / Revenue by: Sh. Ajey Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 13/02/2023  
उदघोषणा की तारीख / Date of Pronouncement: 14/02/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income Tax (Exemption), Jaipur [ herein after referred as Id. "CIT(E)"] for the assessment year 2021-22 dated 04.03.2021 as per provision of under Section 12AA of the Income Tax Act [ here in after the Act].

2. The assessee marched this appeal on following grounds;

*“1. That order u/sec. 12AA(1)(b)(ii) of Income Tax Act, 1961 is bad in law and deserve to be quashed.*

*2. Any other matter with prior permission of the chair.”*

3. The facts as culled out from the records is that the assessee trust has made an application in Form no. 10A seeking registration u/s. 12AA of the Act. A letter / notice dated 23.10.2020 was issued at the email / address provided in the application requiring the applicant to furnish by Email Certain documents/ explanations by 04.11.2020 along with original / certified Trust deed / AOA for verification. However, one more opportunity was provided vide letter / notice dated 19.12.2020 as final opportunity. Since, it was limitation matter the application was disposed by Id. CIT(E) holding that since the applicant failed to submit the required details the application seeking registration u/s. 12AA was rejected and the application was treated as filed.

4. Aggrieved from the order of the Id. CIT(E) the assessee preferred an appeal before us taking the ground as raised in para 2 above.

5. To support the grounds taken by the assessee. The Id. AR of the assessee has submitted their written submission and the same is reiterated here in below:-

“Ground No. 1:- that order u/sec. 12AA(1)(b)(ii) of Income Tax Act, 1961 is bad in law and deserve to be quashed.

The brief of facts of case are as under-

(1) That assessee is an educational society registered under Societies Act, 1958 dated 14/12/2090. Copy of such certificate and society deed as enclosed. Regular income tax returns are being filed. Copy of affidavit of secretary to society is also enclosed stating facts.

(page No. 1 to 10 & 11 to 13 & A to B)]

(2) That the said society earlier had applied for registration u/sec. 12AA of Income Tax Act 1961 and granted registration on 09/08/2005 vide reg. no. CIT, Ajmer 2005-0617-59/127 dated 09/08/2002, copy as enclosed.

(Page no. 25)

Similarly, certificate u/sec. 80(G) dated 13/03/2013 w.e.f. 09/10/2012 was also granted, copy as enclosed both the certificate till date are in force and never cancelled/ withdrawn.

(Page no. 26)

(3) By Finance Act, 2020 w.e.f. 01/06/2020 section 12AB was inserted "PROCEDURE FOR FRESH REGISTRATION" where the assessee trust to file a fresh application u/sec. 12A(1) clause (ac)(i)-

"where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of April, 2021"

Both the clauses section 12AB and sub clause (ac)(i) to section 12A were later omitted by the taxation and other law (Relaxation and amendment of certain provision) Act, 2020 w.r.e.f. 01/06/2020 (TOLA).

(4) Under the said clause the trust / societies already registered u/sec. 12AA had to apply for "Fresh Registration in form 10A (Rule 17A)".

(5) Thus under this confusion the whether 10A is to be filed or not by existing trust/society who are already registered u/sec. 12AA. The assessee society on safer side e-filed form 10A on 13/07/2020.

Later due to TOLA (Taxation and other law) (Relaxation and Amendment of Certain Provision Act 2020) w.r.e.f. 01/06/2020, the applicability of such application to existing societies for fresh registration was extended and thus from 10A as filed under confusion was never pursued, nor proper details filed and in absence of same the order u/sec. 12AA(1)(b)(ii) dated 04/03/2021 and application seeking registration u/sec. 12AA was rejected and filed.

(6) Whereas the facts are that the existing registration u/sec. 12AA/ 80G were still in force and never withdrawn/ cancelled.

The provisions of section 12AB as inserted w.e.f. 01/06/2020 (Finance Act, 2020) was by TOLA extended to w.e. f. 01/04/2021.

Later the CIT(E), Jaipur has also granted "Order of Registration in form no. 10AC (see rule 17A/11AA/2C w.e.f. AY 2022-23 to AY 2026-27 registration dated 24/09/2021 copy as enclosed. Thus the assessee upto 31/03/2021 was registered u/sec. 12AA and later on granted registration u/sec. 12AB of Income Tax Act, 1961 and both are still in existence.

(Page no. 27 to 29)

Till these registration are not cancelled in terms of section 12AA(3)12AA(4), the registration are valid and are in force.

Provision empowering cancellation of registration of trust granted u/sec. 12A was brought in by sub section (3) of section 12AA by Finance Act, 2010 w.e.f. 01/06/2010. Further these powers of commission to cancel registration of charitable trust is not retrospectively.

ACIT vs Agra Development Authority (2018) 90 Taxman.com 282 (All)

Further when form 10A filed on 13/07/2020 (online) the CITE on merits u/sec. 12AA(2) of Income Tax Act, 1961 is suppose to grant or refuse registration within 6 months from end of the month in which application received.

CIT v/s Sahitya Sadawart Samiti (2017) 396 ITR 46 (Raj.)

CIT v/s Society of Promn. Of Education (2016) 238 Taxman 330 (SC) 67 Taxman.com 264

Under these circumstances it is requested to direct the CIT(E) to withdraw the order as passed u/sec. 12AA(1)(b)(ii) dated 04/03/2021 or to allow the continuity of old registration.

Pray justice!

(For Sophical Shikshan Sansthan)

Paper Book -

Encl: (1) Copy of society's registration dated 14/12/1990 under Society Act, 1958

(Page no. A to B)

(2) Copy of affidavit of secretary of society. (page No. C To D)

(3) Copy of society deed (page No. 1 to 10)

(4) Copy of ITR for AY 2021-22 & computation (Page no. 11 to 13)

(5) Copy of audited accounts and audit report for year ended 31/03/2021 (Page no. 14 to 21)

(6) Copy of CBSE Education Board affiliation (Page no. 22 to 24)

(7) Copy of certificate u/sec. 12AA of Income Tax Act, 1961 dated 09/08/2005 and 80G certificate dated 13/03/2013 (Page no. 25 to 26)

(8) Copy of form 10AC under Rule 17A dated 24/09/2021 u/sec. 12A(ac)(i) of Income Tax Act, 1961 from AY 2022-23 to AY 2026-27.

(Page no. 27 to 29)"

6. In addition to the above written submission the Id. AR of the assessee submitted that the period in which the notices were issued were in the Honorable apex court has extended all the limitation whether specifically extended or not. Thus, the assessee has reasonable cause for not responding to the notices. The Id. AR of the assessee further submitted that in past the trust is already registered u/s.12A of the act and subsequently for A. Y. 2022-23 to 2026-27 the Id. CIT(E) has already granted the registration(APB-27to29).

6.1 In furtherance to the submission, the Id. AR of the assessee relied upon a detailed affidavit duly signed by the secretary of the society. The contentions of the assessee as reflected in the affidavit is reiterated herein below :-

“ Sube Singh haudhary S/o Late Begraj Chodhri Secretary cum athorized person of Sophical Shikshan Sansthan, Ajmer do solemnly affirm as under-

1. That Sophical Shikshan Sansthan, Ajmer is an educational society meant for education and is presently running the schools named Queen Mary's Girls School at B.K. Kaul Nagar, & Queen Mary's School at Pushkar Road Ajmer.

2. That this society is already registered u/sec. 12AA of Income Tax Act, 1961 vide CIT, Ajmer Reg. No. 05-06/T-59/127 dated 14/02/1995.

3. Due to changes made by Finance Act, 2020, it was required by all such Income Tax Act, 1961, which was later extended / postponed on account of TOLA 2020.

4. Due to this confusion, we again filed form 10A on 13/07/2020 to CIT, Exemption, Jaipur for renewal / new section of registration u/sec. 12AA/12AB(1) of Income Tax Act, 1961 later on realizing the facts and cloud of confusion cleared. We have not persued the said application as filed in form 10A. Due to now compliance the CIT, Exemption, Jaipur without considering the facts or linking the application as filed (afresh) to existing registration u/sec. 12AA, still in force rejected/dismissed this application as filed in form 10A and order u/sec. 12AA(1)(b)(ii) of Income Tax Act, 1961 dated 04/03/2021 passed .

Whereas the old registration u/sec. 12AA dated 14/02/1995 was still in force and not canceled/withdrawn.”

6.2 The Id. AR of the assessee submitted the registration granted to the assessee in terms of TOLA was effective till 01.04.2021 and later on CIT(E) vide order dated 24.09.2021 granted registration. So, effectively the cancellation order in appeal in effect has in terms of the

above legal proposition not legal stands to stand to sustain. The Id. AR of the assessee thus, argued before us that the assessee trust is already having valid registration under the old provisions of Section 12A and 80G of the Act which was effective till 01.04.2021 and on account of change made in the Finance Act, 2020 the assessee has to apply afresh but on account of TOLA, the assessee was under the bona fide belief that on account of the extension the application need to be persuaded. The Id. AR of the assessee relied on the various extension granted by the apex court on account of Covid-19. In the meanwhile, on account of non-appearance of two notices promoted the Id. CIT(E) to reject the application of the registration in terms of the new provision of the Act, 12AB of the Act. The CIT(E) has without referring to TOLA and even though the registration was not expired on account of TOLA the application filed by the assessee was rejected without deciding the case on merit based on the information already available on record. The Id. AR of the assessee further drawn to our attention to the fact that the assessee upon subsequent application granted the registration under the amended provisions of Section 12AA of the Act. Therefore, the grievance of the assessee is for the intervening period for which without any adverse observation merely on account of non compliance of application of the notice issued in the

Covid 19 period the application was not considered for this intervening period. Thus, based on these facts, the Id. AR of the assessee has prayed before us that Tribunal may grant the restoration of the registration based on the ground that the registration should have been continued in the light of the facts stated here in above and in absence of any adverse observation even after the rejection order passed by the Id. CIT(E). The subsequent grant of registration itself proves that for intervening period also the relief is required to be granted. The Id. AR of the assessee has relied upon the decision of Hon'ble Jurisdictional High Court given in case of CIT vs. Sahitya Sadawart Samiti (2017) 396 ITR 46 (Raj) submitted that the cancellation invoked by the Id. CIT(E) is prejudicial and considering the subsequent registration granted the intervening period is also covered by the subsequent action of the Id. CIT(E).

7. Per contra, the Id. DR appearing on behalf of the Revenue objected to the prayer of the assessee and submitted that the action of non-appearance on the part of the assessee and non-submission of the details called for expelled for registration is on its merits and it is a fit case to remand back to the filed by the Id. CIT(E) to comply the

direction of the CIT(E) in support of application filed and requisite the detailed as called by the Id. CIT(E) be complied by the assessee.

8. In the rejoinder of arguments of Id. DR, the Id. AR of the assessee appearing on behalf of the assessee relying the TOLA submitted that it was under the bonafide belief that the application is required to be filed after registration expired and the limitation has already been extended by TOLA and even on the subsequent application the trust has been given the approval without observing any adverse remarked either on activity part or on the compliance of information filed by the assessee.

9. We have heard the rival contentions, perused the material on record. The Bench noted that it is not in dispute that the assessee is holding the valid registration and the approval under Section 12A and 12AA of the Act was in effect but it was only for the intervening period as the registration is already available to the assessee effective from A. Y. 2022-23. Considering the facts and rival contentions discussed here in above, the bench is of the considered view that in absence of any adverse remark on the activity of the trust merely on technical ground for this intervening period the registration cannot be canceled

for this period and a benefit of having registered trust cannot be denied to the assessee when there is specific time extension limit given by the Hon'ble Apex Court and TOLA for this period. The assessee is having sufficient cause for not replying to the notices issued by the Revenue. As regards the contention of the Id. DR we are not considering his prayer to restore to this issue to the file by the Id. CIT(E) as the subsequently the Id. CIT(E) has already granted the registration to the assessee trust and there is no adverse observation by the Id. CIT(E). In light of these facts and circumstances of the case, we see no reason to sustain the order under appeal and in the absence of any controverting finding on record we vacate the order passed by the Id. CIT(E) dated 04.03.2021.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 14/02/2023.

Sd/-

(डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14/02/2023

\*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

Sd/-

(राठोड कमलेश जयन्तभाई)  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

1. The Appellant- Sophical Sikshan Sansthan, Ajmer.
2. प्रत्यर्धी / The Respondent- CIT(E), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त (अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 11/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar