

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

डा० एस. सीतालक्ष्मी, 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. 352 & 351/JPR/2023

Mother Teresa Parmarth Shikshan Sansthan Naiyon Ka Mohalla, Ward No. 10, VPO Danta Teh Dantaragarg , Sikar.	बनाम Vs.	CIT(E), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AACAM 7918 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Shrawan Gupta (Adv.)
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 02/08/2023
उदघोषणा की तारीख / Date of Pronouncement: 03/08/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are two appeals filed by the assessee against two different orders of the Learned Commissioner of Income (Exemption), Jaipur [herein after referred to as "ld.CIT(E)"] passed under section 12AB and 80G(5) of the Income Tax Act dated 25.01.2023 respectively.

2.1 At the outset of hearing, the Bench observed that there is delay of 61 days in filing both the appeals by the assessee for which the Id. AR of the assessee filed applications for condonation of delay with following prayers:-

“1. In this connection it is submitted that the applicant is Trust/Society. The assessee has filed application before CIT(Exemption), Jaipur for registration u/ 12AB and 80G(5). The Id. CIT(E) rejected the application of the assessee on dt. 25.01.2023 on the reason assessee not registered under the RPT Act 1959. The order was received on portal on dt. 25.01.2023, which was not served upon the assessee physically. However as per date of order the appeal was to be filed on or before 26.03.2023 but the same is being filed on by 23.05.2023 i.e by delay of about 2 month. Although actually there is no delay if following facts are being considered.

2. The reason of late filing was that the assessee is situated in Sikar District, after receiving the order the assessee contacted to some local counsel at Sikar at the end of Feb. 2023, who advised to file again fresh application for registration. On his advice they keep mum. After that the committee has decided to take advice from other counsel at Jaipur to file fresh application in May Second Week. After searching some advocates at Jaipur and show him this rejection order. Then the advocates advised to file the appeal against the rejection order in place of fresh application being the strong case in favour and there is merit in the case.

3. That thereafter our counsel has started to prepare the appeal and the appeal has been prepared on 23.05.2023 and sent to us for signature.

4. Thus there was no negligence's of neither the assessee nor the counsels. Thus due to improper advice of other counsel the appeal could not be filed within time. In support of these contentions an affidavit of the trustee is enclosed.

5. It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Kotiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:

"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression sufficient cause employed by the

legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."

The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.

6. The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N. Balakrishnan v. M. Krishna Murthy(1998) 7 SCC 123 published in 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Another 118 ITR 507.

That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(All), N. Balakrishnan v/s M. Krishanmurthy 7 SSC123.

7. The Hon'ble Jaipur Bench of ITAT has also condoned the delay in the case of Ganesh Himalaya Pvt.Ltd. v. ACIT 22 Tax World 415 (Jp) the filing was delayed because the son of the Managing Director had become victim of some misdeeds committed by the Hologans, particularly when on the similar points in the earlier four years, the appeals were filed in time.

In the instant case also, the appeal could not be filed in time because of the above time taking a various process which were bonafide and was a sufficient cause and there was no melafide intention.

8. Recent Decision of Apex Court: In a recent decision, the apex court has again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'ble court has also held that advancing of substantial justice should be of prime importance. Kindly refer Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC).

Prayer: In view of above facts and circumstance and with the sympathy and settled legal position, the delay so caused may kindly be condoned."

2.2. During the course of hearing, the ld. DR objected to assessee's applications for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

2.3 We have heard the contention of both the parties and perused the materials available on record. The prayer as mentioned above by the assessee for condonation of delay of 61 days in both the appeals has merit for the reason that there was complete lockdown in Jaipur on account of COVIND-19 and all the offices including the office of assessee's consultant were closed and we concur with the submissions of the assessee. Thus the delay occurred of 61 days in filing both the appeals by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3. Apropose to the grounds so raised by the assessee the relevant findings of the ld. CIT(E) is reproduced here in below:-

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"2.4 Assessee vide letter dated 14.11.2022 and note sheet entry dated 17.11.2022 and 05.12.2022 was given show causes to submit documents/explanation, the relevant portion of which is reproduced as under:-

"10. If the trust is not registered under Rajasthan Public Trust Act, 1959, please give explanation that why same should not be considered violation of law and accordingly why your application should not be rejected."

".....Society is not registered under Rajasthan Public Trust Act, 1959, thus why should not be considered as violation of other Acts as mentioned under 12AB(1)(ac)(i) and

application should be rejected, specifically in view of recent Supreme Court Judgement in the case of New Noble Education Society."

However, assessee has failed to prove that assessee is registered under RPT Act, 1959 as discussed above. In light of above discussion and in the absence of registration under Rajasthan Public Trust Act, 1959 assessee is not eligible for registration u/s 12AB.

03. Genuineness of Activities & non-compliance

3.1. While examining Income and Expenditure account for the FY 2021-22 furnished by the applicant, it is seen that out of total expenditure amounting to Rs. 74,26,344/-, huge expenditures have been claimed for the running and maintenance of buses. Considering the location of the applicant which is a small place, number of buses run by the applicant and current scenario, such expenditures seem dubious. Same scenario is also visible in other years as well.

To clarify the same, the applicant was asked to file details vide note sheet entry dated 17.11.2022, the relevant portion of which is reproduced as under:-

"Details of bus running expenses for last three years with bill, vouchers etc."

However, the applicant has failed to submit the sought details. In the absence of such documents, it could not be determined whether the applicant is genuinely carrying out charitable activity as per its objects.

Therefore, applicant's claim of registration u/s 12AB is also liable to be rejected on ground of not proving its genuineness of activity.

04. In view of above discussion assessee's claim of registration section 12AB is liable to be rejected and thus being rejected on following grounds:-

- Non-registration with RPT Act, 1959.
- Genuineness of Activities and Non-compliance.”

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“1. The applicant filed online application on 16.08.2022 in Form No. 10AB for seeking exemption u/s 80G of the Income Tax Act, 1961.

2. As per rule 11AA of the Income Tax Rule, 1962, the registration u/s 12A/12AA or notification u/s 10(23C) is a precondition for granting approval u/s 80G of the I.T. Act, 1961. Vide this officer order No. ITBA/EXM/F/EXM45/2022-23/1049087090(1) dated 25.01.2023 the applicant Society/trust/samiti has been denied registration u/s 12AB. Therefore, it is not eligible for exemption u/s 80G of the I.T. Act, 1961.

3. In view of above discussion, the application in form No. 10AB seeking exemption u/s 80G is rejected. The applicant is, however, at liberty to apply afresh after completing the requisite details.”

4. Per contra, the ld. DR relied on the orders of the ld. CIT(E).

5. We have heard the rival contentions and perused material available on record. The Bench noted that the ld. CIT(E) in the application of the assessee pertaining to registration of the appeal u/s 12AB of the Act has been rejected on the ground of Non-registration with RPT Act, 1959 and absence of proof for genuineness of activities and non-compliance. Further, it is also noted that ld. CIT(E) in the appeal of the assessee pertaining to granting approval u/s 80G of the Act has been rejected with following observation.

“2. As per rule 11AA of the Income Tax Rule, 1962, the registration u/s 12A/12AA or notification u/s 10(23C) is a precondition for granting approval u/s 80G of the I.T. Act, 1961. Vide this officer order No. ITBA/EXM/F/EXM45/2022-23/1049087090(1) dated 25.01.2023 the applicant Society/trust/samiti has been denied registration u/s 12AB. Therefore, it is not eligible for exemption u/s 80G of the I.T. Act, 1961.

It is also pertinent to mention that during the course of hearing in both the appeals the ld. AR of the assessee prayed that he was deprived off availing adequate opportunity of being heard by the ld. CIT(E) in both the application for registration/recognition. The Bench does not want to go into merit of the case but it is imperative that the assessee must be provided adequate opportunity of being heard by the ld. CIT(E). In this

view of the matter, the Bench feels that the assessee should be given one more chance to contest the case before the ld. CIT(E) and the ld. AR of the assessee is directed to produce all the relevant papers concerning both the application so filed before the ld. CIT(E) to settle the dispute raised hereinabove.

6. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. CIT(E) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. CIT(E) independently in accordance with law.

In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 03/08/2023.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 03/08/2023

*Santosh

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

1. The Appellant- Mother Teresa Parmarth Shikshan Sansthan, Sikar.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 352 & 351/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar