

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्री संदीपगोसाई, न्यायिकसदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA Nos. 354 & 353/JP/2023
निर्धारणवर्ष/AssessmentYear :2023-24

Shri Gusai Baba Gaushala Samiti Gothra Tagelan Sikar Samiti, Gothra Tagelan, Sikar 332 023	बनाम Vs.	The CIT (Exemption) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABAAS 0888A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sharvan Gupta, Advocate &
Shri Shyam Sunder Goyal, Advocate.
राजस्व की ओर से / Revenue by: Shri Ajay Malik, CIT-DR

सुनवाई की तारीख / Date of Hearing : 02/08/2023
उदघोषणा की तारीख / Date of Pronouncement: 10/08/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

These are two appeals filed by the assessee against two different orders of the Ld.CIT (Exemption), Jaipur both dated 17-01-2023 passed under section 12AB and 80G of the Income Tax Act, 1961 respectively. The grounds of appeal raised by the assessee in both the appeals are as under:-

ITA NO. 354/JP/2023 U/S 12AB of I.T. Act, 1961

“1. That impugned order u/s 12AB of the Act dated 17-01-2023 is bad in law and on facts, without providing adequate and reasonable opportunity of being heard, being without jurisdiction and for various other reasons and hence the same may kindly be quashed.

2. The ld. CIT(E) erred in law as well as on the facts of the case in rejecting the application for grant registration / approval u/s 12AB and in not granting registration/approval. The rejection so made and refusal to grant registration/approval u/s 12AB is contrary to the provisions of law and facts of the case. The same kindly be quashed.

3. That the impugned order so passed was in the contravention of the law prevalent at the relevant point of time and also on fact and hence may kindly be quashed. The ld. CIT(E) be directed to grant registration/ approval from the date of application.”

ITA NO. 353/JP/2023 U/S 80G of I.T. Act, 1961

“1. That impugned order u/s 80G(5) of the Act dated 17-01-2023 is bad in law and on facts, without providing adequate and reasonable opportunity of being heard, being without jurisdiction and for various other reasons and hence the same may kindly be quashed.

2. The ld. CIT(E) erred in law as well as on the facts of the case in rejecting the application for grant registration / approval u/s 80G(5) and in not granting registration/approval. The rejection so made and refusal to grant registration/approval u/s 80G(5) is contrary to the provisions of law and facts of the case. The same kindly be quashed.

3. That the impugned order so passed was in the contravention of the law prevalent at the relevant point of time

and also on fact and hence may kindly be quashed. The Id. CIT(E) be directed to grant registration/ approval from the date of application.’’

2.1 At the outset of hearing, the Bench observed that there is delay of 69 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. 17.01.2023 on the reason assessee not registered under the RPT Act 1959. The order was received on portal on dt. 17.01.2023, which was not served upon the assessee physically. However as per date of order the appeal was to be filed on or before 18.03.2023 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 either from the assessee or from 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 Holigans, 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 crux of delay in filing of the appeals by the assessee is that he hails from Sikar and he was in search of local advocate to file the appeals against the order of ld. CIT(E) and he could locate advocate whose advice was to file again fresh application for registration but the advice of local advocate did not appear to the committee of the trust justified for which they searched some other advocate at Jaipur and showed him the rejection orders of the ld. CIT(E) and based on the advice of the advocate at Jaipur the appeals are filed by the assessee trust and such delay took place in filing the appeals and it is not intentional delay. To this effect, the assessee trust member submitted an affidavit. The Bench noted that the prayer as mentioned above by the assessee for condonation of delay of 69 days in both the appeals has merit and we concur with the submissions of the assessee. Thus the delay occurred of 69 days in filing both the appeals by the assessee are 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.

3.1 Apropos to the grounds so raised by the assessee in ITA No. 354/JP/2023, the Id. CIT(E) rejected the assessee's claim of registration u/s 12AB of the Act by observing as under:-

“2.4 Assessee vide letter /Notice No. ITBA/EXM/FEXM43/2022-23/1047258035(1) dated 14.11.2022 and note sheet entry dated 05.12.2022 was given show causes to submit documents/explanation, which is reproduced as under:-

“ 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.”

However, the 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. 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.’’

3.2 Apropos to the grounds so raised by the assessee in ITA No. 353/JP/2023, the ld. CIT(E) rejected the assessee's claim of exemption u/s 80G(5) of the Act by observing as under:-

“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/EXM45/2022-23/1048868779(1) dated 17-01-2023, 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.”

3.3 During the course of hearing, the ld. AR of the assessee in both the appeals mainly submitted that in both the appeals, the assessee was not provided adequate opportunity of being heard by the ld. CIT(E) and thus both the appeals should be quashed.

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

3.5 We have heard the rival contentions and perused material available on record. The Bench noted that ld. CIT(E) has rejected the applications of the assessee u/s 12AB and u/s 80G(5) of the Act as narrated above in the respective appeals. It is also pertinent to mention that during the course of hearing 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 appeals (supra). 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 applications so filed before the ld. CIT(E) to settle the dispute raised hereinabove.

3.6 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.

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

Order pronounced in the open court on 10 /08/2023.

Sd/-

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

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /08/2023

Mishra

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

1. The Appellant- Shri Gusai Baba Gaushala Samiti, Sikar.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 354 & 353/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar