

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" 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. 377 & 376/JP/2023
निर्धारणवर्ष/Assessment Year :-

AR Rashid Education And Welfare Society Barli Manda Pokaran, Jaisalmer 345 021 (Raj)	बनाम Vs.	The CIT (Exemption) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAHAA 0849 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta, Advocate
राजस्व की ओर से / Revenue by: Shri Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 10/08/2023
उदघोषणा की तारीख / Date of Pronouncement: 29/08/2023

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 24-02-2023 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:-

“1. On the facts and circumstances of the case, the ld. CIT(E) grossly erred in law and facts by rejecting the application of assessee for registration u/s 12AB on the ground of mere non-registration of trust under Rajasthan Public Trust Act without making any observation on materiality of such non-compliance on achievement of the objects of the trust. Further, such rejection was made on the basis of erroneous interpretation of Hon’ble Supreme Court Judgement in the case of New Noble Education Society. Further the assessee has been registered under the said Act however after rejection. It is thus hereby prayed for quashing the rejection order so passed and order for grant of registration.

2. On the facts and circumstances of the case the ld. CIT(E) grossly erred in law and facts by rejecting the application of assessee for registration u/s 12AB without service of notice upon him and thus without affording him a reasonable opportunity of being heard. Thus the order so passed is against the principles of natural justice and thus hereby prayed for being quashed.

3. On the facts and circumstances of the case the ld. CIT(E) grossly erred in law and facts by rejecting the application of assessee for registration u/s 12AB on the ground of incomplete application whereas no such claim was made during the proceedings. It is hereby thus prayed for quashing the order so made.

ITA NO. 376/JP/2023 U/S 80G of I.T. Act, 1961

“1. On the facts and circumstances of the case the ld. CIT(E) grossly erred in law and facts by rejecting the application of assessee seeking exemption u/s 80G on the ground of rejecting application for registration u/s 12AB when such rejection was itself not as per provisions of law. It is hereby thus prayed for quashing the said rejection order and direct for accepting the application so made by the assessee.

2. On the facts and circumstances of the case the ld. CIT(E) grossly erred in rejecting the application made by the assessee for seeking exemption u/s 80G without affording reasonable opportunity of being heard to the assessee. It is thus hereby prayed for quashing the said rejection order so made as it was against the principles of natural justice.’’

2.1 At the outset of hearing, the Bench observed that there is delay of 43 days in filing both the appeals by the assessee for which the ld. AR of the assessee filed applications for condonation of delay with following prayers:-

‘‘It is hereby prayed that an order against assessee was passed rejecting application for approval u/s 12AB & 80G of the Act on 24-02-2023. However, owing to the fact that the legal consultant of assessee was not competent enough being a very small place, he did not intimate assessee of the order as well as the steps to be taken on rejection of said application. Further, the E Mail etc. were of staff of erstwhile legal consultant only and as such the trust or the person at helm of affairs of trust were not having knowledge of any notice or order being issued upon them. It came to knowledge of assessee trust only on 20-05-2023 when the newly appointed consultant checked the portal. In view of above, the assessee hereby prays for condonation of delay in filing of appeal owing to the above reasons.

To this effect, the ld. AR of the assessee filed an affidavit.

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 Jaisalmer and legal consultant of the assessee was not competent enough being a very small place. He did not intimate assessee of the order as well as the steps to be taken on rejections of the said applications and this fact came to the knowledge of the assessee trust on 20-05-2023 when the newly appointed checked the portal. 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 43 days in both the appeals has merit and we concur with the submissions of the assessee. Thus the delay occurred of 43 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 ground so raised by the assessee in ITA No. 277/JP/2023, the ld. CIT(E) rejected the assessee's claim of registration u/s 12AB of the Act by observing as under:-

“3.4 Assessee vide Notice dated 27.12.2022 was given a show causes to submit documents/explanation by 12-01-2023, which is reproduced as under:-

“ Whether the institution is registered under Rajasthan Public Trust Act, 1959. If not, please give explanation that why

same should not be considered violation of law and accordingly why your application should not be rejected."

Further, opportunities were also provided vide notice dated 12-01-2023 and 06-02-2023. 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.

04. Genuineness of Activities and non-compliance

4.1 It is important to mention here that while examining the claim of the assessee u/s 12AB of I.T. Act, the Commissioner of Income Tax has been empowered to call for such documents or information from the trust of institution as he thinks necessary in order to satisfy himself about the genuineness of the trust or institution and may also make such inquiries as he may deem necessary in this behalf. Under such powers vested in CIT(E), the applicant was asked to file details like:-

- List of donors
- Copies of annual documents of the applicant for last three years.
- Bills and vouchers of expenses.
- Photograph of activities.
- Details of social handle.
- Digital footprint.
- Details of Bank account details of last three years.

However, the applicant has failed to comply with the letters, despite being given three opportunities details of which given in para -1. 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, assessee claim of registration u/s 12AB is also liable to rejected on ground of not proving its genuineness of activity.

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

- Incomplete Form 10AB
- Non-registration with RPT Act, 1959.
- Genuineness of Activities

3.2 Apropos to the ground so raised by the assessee in ITA No. 276/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 30.09.2022 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 office order No. ITBA/EXM/F/EXM45/2022-23-/1050074994(1) (1) dated 24-02-2023, 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 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 orders. 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 orders (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 Id. 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 Id. 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 29 /08/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 29 /08/2023

Mishra

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

1. The Appellant- AR Rashid Education and Welfare Society, Jaisalmer.
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.377 & 376/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar