

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 415 & 414/JP/2023
निर्धारण वर्ष/Assessment Year : 2022-23.

Shyam Mitra Mandal Jogbani Trust Khatushyam Ji, Jila Sikar, Sikar.	बनाम Vs.	Income Tax Officer, Ward-1, Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ABATS 2928 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajat Choudhary, Advocate.

राजस्व की ओर से / Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 21/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 27/09/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These are two appeals filed by the assessee against two different orders of the Ld.CIT (Exemption), Jaipur both dated 22.05.2023 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. 15/JP/2023 U/S 12AB of I.T. Act, 1961

1. That the order passed by Id. Commissioner of Income Tax, Exemption, Jaipur by rejecting application u/s 12AB(1)(b) of the I.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the assessee.
2. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.

ITA NO. 14/JP/2023 U/S 80G of I.T. Act, 1961

1. That the order passed by Id. Commissioner of Income Tax, Exemption, Jaipur by rejecting application u/s 80G(5)(iii) of the I.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the assessee.
2. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.

2. Apropos to the ground so raised by the assessee in ITA No. 415/JP/2023, the Id. CIT(E) rejected the assessee's claim of registration u/s 12AB of the Act by observing as under:-

"2.2 On verification of the application in Form 10AB filed by the applicant, it was found that the application was not complete, and the documents required to be accompanied with Form 10AB were not furnished such as –

- Note on activities of the applicant (Rule 17A(2)(k))

It is also important to mention here that above so-called details along with some other details were called from assessee vide various notices as mentioned above. However, assessee failed to submit the same. Thus, assessee's request for registration u/s 12AB is liable to be rejected on ground of incomplete form.

03. Genuineness of Activities

3.1 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 or institution as he thinks necessary in order to satisfy himself about the genuineness of the activities 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

- 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 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:-

- Incomplete Form 10AB
- Genuineness of Activities

2.1 Apropos to the ground so raised by the assessee in ITA No. 414/JP/2023, the Id. CIT(E) rejected the assessee's claim of exemption u/s 80G of the Act by observing as under:-

"1. The applicant filed online application online on 03.11.2022 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/EXM45/2023-24/1053049590(1) dated 22-05-2023, 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. During the course of hearing, the Id. AR of the assessee in both the appeals mainly submitted that the assessee was not provided adequate opportunity of being heard by the Id. CIT(E) and thus both the orders should be quashed being against the principles of natural justice.

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

5. We have heard the rival contentions and perused material available on record. The Bench noted that Id. CIT(E) has rejected the applications of the assessee u/s 12AB and u/s 80G of the Act as narrated above in the respective orders. It is also pertinent to mention that during the course of hearing the Id. AR of the assessee prayed that he was deprived off availing of adequate opportunity of being heard by the Id. 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 Id. 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 Id. CIT(E) and the Id. AR of the assessee is directed to produce all the relevant papers concerning both the applications so filed before the Id. 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 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.

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

Order pronounced in the open court on 27/09/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 27/09/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shyam Mitra Mandal Jogbani Trust, Khatushyam Ji, Jila Sikar, Sikar.
2. प्रत्यर्थी / The Respondent- The ITO Ward -1 Sikar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 414 & 415/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

ITA NOS. 414 & 415/JP/2023
Shyam Mitra Mandal Jogbani Trust
Khatushyam Ji Jila Sikar.