

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

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

आयकर अपील सं./ITA No.548 & 554/JPR/2023

Qasim Ul Ulloom Trust, Mohalla RajbanTonk, Tonk	बनाम Vs.	ITO Ward, Tonk
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAATQ 0541 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. R.S. Poonia (C.A.) &
Sh. Rajat Choudhary (Adv.)
राजस्व की ओर से / Revenue by: Sh. Ajay Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 19/10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals are filed by assessee and are arising out of the order of the Learned Commissioner of Income Tax (Exemption), Jaipur both dated 16.03.2023 [here in after "CIT(E)"] respectively.

2.1 In ITA No. 548/JPR/2023 the assessee has raised following grounds: -

"1. That the order passed by Ld. Commissioner of Income Tax, Exemption, Jaipur by rejecting application u/s 12AB (1)(b) of the IT. 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.”

2.2 In ITA No. 554/JPR/2023 the assessee has raised following grounds: -

“1. That the order passed by Ld. 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.”

3. At the outset of the hearing of the appeal it is noted the appeal in ITA No. 548/JPR/2023 filed is delayed by 100 days. The Id. AR of the assessee relied upon the petition for condonation of delay as reproduced here in below:

DELAY CONDONE APPLICATION

To,
The Hon'ble Members,
Income Tax Appellate Tribunal, Jaipur.

Sub: Regarding acceptance of application for condonation of delay in case of M/s. Qasim UI Uloom Trust having appeal No. ITA 548/JPR/2023 (PAN:AAATQ0541L).

Respected Members,

With reference to above subject we request you that:-

1. This Present appeal is filed on 23.08.2023 against the order passed by CIT(Exemption), Jaipur order dated 16.03.2023.

2. That this present appeal filed before Hon'ble ITAT, Jaipur Bench with delay of 100 days.

3. Further, it is submitted that the reasonable cause of delay in filing the present appeal was due to the time taken in the process of reapplying for registration u/s. 12A of the I.T. Act, 1961 in Form No. 10AB due to technical glitch on the Income Tax portal.

4. Moreover, it is submitted that the order passed by CIT (Exemption) Jaipur was non compliance due to mistake of earlier counsel of assessee-society.

In view of abovesubmission you are requested that kindly consider this as reasonable cause to condone the delay and kindly remand back the case to CIT(Exemption), Jaipur. So, that proper inquiry can be conducted and substantial justice may be delivered to the appellant.

The assessee prays accordingly.”

3.1 At the outset of the hearing of the appeal it is noted the appeal in ITA No. 554/JPR/2023 filed is delayed by 102 days. The Id. AR of the assessee relied upon the petition for condonation of delay as reproduced here in below:

DELAY CONDONE APPLICATION

To,
The Hon'ble Members,
Income Tax Appellate Tribunal, Jaipur.

Sub: Regarding acceptance of application for condonation of delay in case of M/s. Qasim UI Uloom Trust having appeal No. ITA 554/JPR/2023 (PAN:AAATQ0541L).

Respected Members,

With reference to above subject we request you that:-

1. This Present appeal is filed on 25.08.2023 against the ex0parte order passed by CIT(Exemption), Jaipur order dated 16.03.2023.
2. That this present appeal filed before Hon'ble ITAT, Jaipur Bench with delay of 102 days.
3. Further, it is submitted that the reasonable cause of delay in filing the present appeal was due to the time taken in the process of reapplying for registration u/s. 80G of the I.T. Act, 1961 in Form No. 10AB due to technical glitch on the Income Tax portal.
4. Moreover, it is submitted that the order passed by CIT (Exemption) Jaipur was non compliance due to mistake of earlier counsel of assessee-society.

In view of abovesubmission you are requested that kindly consider this as reasonable cause to condone the delay and kindly remand back the case to CIT(Exemption), Jaipur. So, that proper inquiry can be conducted and substantial justice may be delivered to the appellant.

The assessee prays accordingly.”

Based on the above contention the Id. AR of the assessee prayed to take a lenient view of the matter.

3.1 The Id. AR of the assessee appearing in this appeals submitted that the assessee is serious on the duties and the delay of 100 days & 102 delay is on account of the technical glitches resulted delay with a hope that the assessee will be permitted to reply online. Considering the various judicial precedent where in the courts has considered ignored technicality of the reasons and has considered the delay. Even the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liberal approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

3.2 On the other hand Id. DR representing the revenue submitted that the assessee has engaged the counsel and the reasons applicable was denied on account of non co-operation from the side of the assessee and the reasons are not sufficient to condone the delay and therefore, objected to the petition for condonation of delay.

3.3 Respectfully following the finding of the apex court and settled principles as laid down that in the interest of the justice a liberal approach is to be taken and considering the non disputed fact that there were technical

glitches on the portal we find merits in the reasons advanced. Therefore, in the facts and circumstances of the case, we condone the delay in filing the appeals by the assessee.

4. Brief facts of this case is that the assessee made an application in Form no. 10AB seeking registration u/s.12AB on 30.09.2022. The Id. CIT(E) noted that even after giving the sufficient opportunities, the assessee failed to submit the details of salary paid to employees, copy of final accounts for financial year 2019-20 & 2020-21, comparison chart depicting fees taken by similar institutions in the area, Evidences to corroborate the expenses claimed by the assessee, bank account statement for the last three year / since inception, Donation list / ledger for three year / since inception. The Id. CIT(E) noted that in the absence of this information the genuineness of the activity carried out was not verifiable. The Id. CIT(E) also noted that there is no dissolution or irrevocability clause in the memorandum of the assessee. The assessee is also not registered under the Rajasthan Public Trust Act. Since the registration of 12AB was rejected even the application for registration u/s. 80G of the act was also rejected observing as under:

“1. The applicant filed online application online on 06.10.2022 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/EXM45/2022-23/1050835048(1) dated 16.03.2023 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.”
5. Assessee aggrieved from the rejection of approval / recognition has preferred the present appeal on the grounds as raised here in above. Apropos to the ground so raised the Id. AR of the assessee submitted that the reasons advanced for rejection are curable and the assessee could not apply and seek reregistration because of the technical glitches on the portal. The Id. AR also relied upon the board circular no 6 dated 24.05.2023 giving Clarification regarding provisions relating to charitable and religious trusts. The trust has already applied for registration under the Rajasthan Public Trust Act.
6. Per contra, the Id. DR relied on the orders of the Id. CIT(E) and submitted that the assessee even though various opportunities were given

has not submitted required details and therefore, the plea of the assessee is not maintainable.

7. We have heard the rival contentions and perused material available on record. The Bench noted that the Id. CIT(E) in the application of the assessee pertaining to registration application u/s 12AB of the Act has been rejected on the ground of Non-registration with RPT Act, 1959, genuineness of activities & non-compliance and absence of dissolution clause. As argued by the Id. AR of the assessee that the ground for rejection are curable in nature and considering the circular no. 6 issued by the CBDT the liberal view of the matter is required to be taken in this case as the defect pointed out are not that much serious and if given a chance the assessee is in a position to clear the defects pointed out by the Id. CIT(E). Considering this aspect of the case 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 and be given a fair chance by the Id. CIT(E) to cure the defect / non submission of the certain information. In the light of this aspect of the case, the Bench feels that the assessee should be given one

more chance to contest the case before the Id. CIT(E) and the assessee is directed to produce all the relevant papers concerning both the application so filed before the Id. CIT(E) to settle the dispute raised hereinabove.

8. 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.

In the result, the appeals of the assessee in ITA No. 548/JPR/2023 and ITA No. 554/JPR/2023 are allowed for statistical purposes.

Order pronounced in the open court on 19/10/2023.

Sd/-

Sd/-

(संदीपगोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19 /10/2023

*Santosh

आदेश की प्रतिलि पिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Qasim UI Ulloom Trust, Tonk
2. प्रत्यर्थी / The Respondent- ITO, Ward, Tonk

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. 548& 554/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar