

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. 467 & 468/JPR/2023

Shri Gopal Goshala Seva Sansthan Bhawanimandi Jhalawar-326502.	बनाम Vs.	CIT(E), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPAS 5798 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Sh. Shrawan Kumar Gupta (Adv.)
राजस्व की ओरसे / Revenue by : Sh. Ajay Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 26/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 02/11/2023

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 07.06.2023 [here in after "CIT(E)"] respectively.

2.1 In ITA No. 468/JPR/2023 the assessee has raised following grounds: -

"1. The Impugned order u/s 12AB of the Act dated 07.06.2023 is bad in law and on facts, without providing adequate & 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 Id. CIT(E) be directed to grant Registration/approval from the dated of application.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

2.2 In ITA No. 467/JPR/2023 the assessee has raised following grounds: -

“1. The Impugned order u/s 80G(5) of the Act dated 07.06.2023 is bad in law and on facts, without providing adequate & 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 dated of application.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

3. Brief facts of this case are that the assessee made an application in Form no. 10AB seeking registration u/s.12AB on 09.12.2022. Thereafter, a letter/ notice No. ITBA/EXM/F/EXM43/2022-23/1051755751(1) dated 31.03.2023 was issued at the e-mail/address provided in the application requiring the assessee to submit certain documents/explanations by 17.04.2023. In response to the above, the assessee furnished certain documents/details, which is placed on record. Since it is a limitation matter, therefore, the case is decided on the basis of material placed on record, information gathered by this office and application of the assessee in Form 10AB for registration u/s 12A is liable to be rejected. As the assessee has failed to prove that the assessee is registered under RPT Act, 1959, assessee is not eligible for registration u/s 12AB of the Act.

3.1 Whereas in the application for registration u/s. 80G of the Act the Id. CIT(E) noted that 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

4. 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 was not given sufficient opportunity of being heard before the Id. CIT(E). The Id. AR also submitted that the trust has already applied for registration under the Rajasthan Public Trust Act also.

5. 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.

6. 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 and also upon one notice the assessee partly complied the notice and balance details to be submitted by the assessee but before that the application for registration was rejected. Thus, the bench noted that the reasons advanced by the Id. CIT(E) while rejecting the application of the

assessee are curable in nature and considering the peculiar facts of the case that the assessee already applied for Registration as per Rajasthan Public Trust Act and thus, 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.

7. 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.467/JPR/2023 and ITA No. 468/JPR/2023 are allowed for statistical purposes.

Order pronounced in the open court on 02/11/2023.

Sd/-

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

Sd/-

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/11/2023

*Santosh

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

1. The Appellant- Shri Gopal Goshala Seva Sansthan, Jhalawar.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
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. 467 &468/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar