

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 555 & 556/JPR/2023

Divine Akshaya Shiksha Samiti Lalsot, Dausa.	बनाम Vs.	ITO, Ward-1, Bharatpur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AAAAD 6719 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri R.S. Poonia (C.A.)
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 05/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 28/11/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are two appeals filed by the assessee against orders of the Learned Commissioner of Income Tax (Exemption), Jaipur [herein after referred to as "CIT(E)"] both dated 24.03.2023 passed under section 12AB and 80G of the Income Tax Act, 1961 respectively.

2.1 In ITA No. 555/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 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.

2.2 In ITA No. 556/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.”

3.1 At the outset of the hearing of the appeal it is noted the appeal in ITA No. 555/JPR/2023 filed is delayed by 95 days. The ld. AR of the assessee relied upon the petition for condonation of delay as reproduced here in below:

“Sub: Regarding acceptance of application for condonation of delay in case of M/s Divine Akshaya Shikshan Samiti having appeal No. 555/JPR/2023 (PAN: AAAAD6791J).

Respected Members,

With reference to above subject we request you that:-

1. This present appeal is filed on 26.08.2023 against the ex-parte order passed by CIT(Exemption), Jaipur order dated 24.03.2023.
2. That this present appeal filed before Hon'ble ITAT, jaipur Bench with a delay of 95 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 10AB due to technical glitch on the Income Tax portal

4. Moreover, it is submitted that the order passed by CIT(Exemption), Jaipur was ex-parte and this non compliance was 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 because the order was ex-parte order. So, the proper inquiry can be conducted and substantial justice may be delivered to the appellant.”

3.2 At the outset of the hearing of the appeal it is noted the appeal in ITA No. 556/JPR/2023 filed is delayed by 95 days. The ld. AR of the assessee relied upon the petition for condonation of delay as reproduced here in below:

“Sub: Regarding acceptance of application for condonation of delay in case of M/s Divine Akshaya Shikshan Samiti having appeal No. 556/JPR/2023 (PAN: AAAAD6791J).

Respected Members,

With reference to above subject we request you that:-

1. This present appeal is filed on 26.08.2023 against the ex-parte order passed by CIT(Exemption), Jaipur order dated 24.03.2023.
2. That this present appeal filed before Hon'ble ITAT, jaipur Bench with a delay of 95 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 80F of the I.T. Act, 1961 in Form 10AB due to technical glitch on the Income Tax portal
4. Moreover, it is submitted that the order passed by CIT(Exemption), Jaipur was ex-parte and this non compliance was 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 because the order was ex-parte order. So, the proper inquiry can be conducted and substantial justice may be delivered to the appellant.”

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

3.3 The Id. AR of the assessee appearing in this appeals submitted that the assessee is serious on the duties and the delay of 95 days is on account of the technical glitches resulting delay with a hope that the assessee will be permitted to reply online and in that hope there happens delay. Considering the various judicial precedent where in the courts has considered and ignored technicality of the reasons and has considered the delay. Even the Hon'ble 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.

3.4 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.

3.5 We have heard the rival contentions and persuaded the petition advanced for condonation of delay. Since, the reasons advanced are sufficient to condone the delay and respectfully following the finding of the Hon'ble 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 is registered charitable trust carrying on various charitable activities like Aditya B.ed& BSTC college, Aditya Mahavidhyalay, Akshay Vidhya Niketan Sr. Sec. School, Veterinary College and any other collect/institution. The assessee filed an application in Form No. 10AB on 27.09.2022 seeking registration under Section 12AB of the Act. Certain documents/information were sought from the assessee various vide query letters which were duly replied with by the assessee. However, being not satisfied with the replies of assessee, the Ld. CIT(E) rejected the application of the assessee vide order dated 24.03.2023 alleging that the assessee has furnished its reply which was duly examined and few discrepancies were found. The ld. CIT(E) noted that in the absence of this information the genuineness of the activity carried out was not verifiable. The ld. 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.

4.1 Whereas in the application for registration u/s. 80G of the Act the Id. CIT(E) noted that as the assessee is also not registered under the Rajasthan Public Trust Act and consequently the registration of 12AB was rejected and thereby the application for registration u/s. 80G of the Act was also rejected.

5. Assessee aggrieved from the rejection of approval / recognition, 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 and if given an opportunity the observations made by the Id. CIT(E) being curable in nature the assessee have sufficient reason to get the registration / recognition.

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 assessee 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) rejected the registration u/s. 12AB of the Act only on the reason that the assessee is not registered with the authority prescribed under the Rajasthan Public Trust Act, 1959.

The Id. CIT(E) also noted that the assessee partly complied with the notice and balance details to be submitted by the assessee but by the time the assessee submits those details the application for registration was rejected on the ground that the assessee is not registered under the Rajasthan Public Trust Act. 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 has already applied for Registration as per Rajasthan Public Trust Act. Thus, considering that aspect of the matter 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 cure 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. 555/JPR/2023 and ITA No. 556/JPR/2023 are allowed for statistical purposes.

Order pronounced in the open court on 28/11/2023.

Sd/-
(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/11/2023

*Santosh

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

1. The Appellant- Divine Akshaya Shiksha Samiti, Dausa.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1, Bharatpur.
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. 555& 556/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar