

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.186/Jodh/2023  
Assessment Year: N/A**

Dharohar Charitable Foundation E-Class Pratap Nagar, Industrial Area Udaipur, Rajasthan. [PAN: AAICD5411D] <b>(Appellant)</b>	<b>Vs.</b>	Commissioner of Income Tax, (Exemption), Jaipur.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Amit Kothari, CA.</b>
<b>Respondent by</b>	<b>Sh. Shailendra Sharma, CIT. DR</b>

<b>Date of Hearing</b>	<b>21.11.2023</b>
<b>Date of Pronouncement</b>	<b>06.12.2023</b>

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the Commissioner of Income Tax (Exemptions), Jaipur, [(in brevity the CIT(E)] order passed u/s 12A of the Income Tax Act 1961, [in brevity the Act].

The assessee has taken the following ground:

*“1. Under the facts and circumstances of the case and in law the Ld Commissioner of Income Tax (Exemption) wrongly concluded that the section 8 company is undertaking business*

*activities based on the agreements submitted during proceedings u/s 12A(1)(ac)(iii) of the IT act 1961. All these agreements are for the activities, which is enlisted in the Object clause of the company and are being undertaken on no profit no loss i.e. there is no element of profit therein and therefore the observations of the Ld CIT(Exemption) is on wrong premises and bad in law.*

*2. Under the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Exemption) Jaipur has erred in cancel the application for registration U/s 12AB of the Income Tax Act, 1961, whereas the assessee was under the honest belief that the objection raised by the Ld CIT that registration is required under the Rajasthan Public Trust act 1959 is valid and therefore withdrew the application, where as no registration was required as per various notification and therefore the order of the Ld. CIT(Exemption) is bad in law & illegal and proceedings U/s 12A deserves to be restore.*

*3. The appellant prays for Justice and the appeal deser; 's to be allowed.*

*4. The appellant craves leave to add, alter, amend and modify any grounds of appeal on or before the date of hearing.”*

2. The brief fact of the case is that the assessee is registered under section 8 of the Company Act, 2013. The assessee filed an application for registration u/s 12A(1)(ac)(iii) of the Act before the ld. CIT(E). During pursuing of registration before the Rajasthan Public Trust Act, 1959, the assessee by wrong advised had

withdrawn the application filed before the Id. CIT(E). But later on, the registration under Rajasthan Public Trust was not required as the assessee is already registered under Companies Act, 1956. But the status of application of registration under the Act is withdrawn. But the registration under the Act is required to restore for the assessee for future activities. Hence, the assessee filed an appeal before us for restored the application of registration under the Act before the Id. CIT(E).

3. The Id. AR vehemently argued and submitted the written submissions which are kept in the record. The Id. AR invited our attention in relevant paragraph of the submission which are reproduced as below:

*“1.2 During the course of the proceedings before the Id. CIT (Exemption) an objection was raised that the registration of even the Companies registered under the Companies Act, 2013, will be required to be registered under the Rajasthan Public Trust Act, 1959.*

*1.3. However, the Devasthan Department Regional Office had in application filed had stated that the institutions registered under the Companies Act, are not registered under the Rajasthan Public Trust Act.*

*1.4. The appellant was under the mistaken belief that since the objection was raised by the Id. CIT (Exemption) and the registration under the Rajasthan Public Trust was not made, it was submitted that the appellant would reapply for registration after seeking necessary registration under the Public Trust Act. The copy of such*

*1.5. However since the said registration is not required, the appellant pray that the order of Id. CIT Exemption on the basis of withdrawal application under the misconception of law deserves to be set aside and the application filed by the appellant deserves to be decided on merits of the case.*

*1.6. The appellant also places reliance on the Circular No. 14(XL-35) OF 1955 dated 11th April, 1955 which inter-alia contains the following instructions :*

*"3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department "*

*1.7. The appellant therefore pray that the order of the Id. CIT Exemption may be set aside to be decided afresh in accordance with the provisions of law."*

4. The Id. DR vehemently argued and fully relied on the order of the revenue authorities. The relevant paragraph of the order of Id. CIT(E) is reproduced as below:

*“02. In response to the above, the applicant submitted its reply for withdrawing the application for registration u/s 12AB and has stated as under:-*

*“We hereby withdraw our application for registration u/s 12A(1)(ac)(iii) of the IT Act in Form 10AB dated 29.09.2022 right now and will apply after getting registered under Rajasthan Public Trust Act, 1959. Under the above facts and circumstances you are requested to consider our above request of withdrawal of application for Registration u/s 12A(1)(ac)(iii) of the IT Act in Form 10AB vide acknowledgement no. 567774300290922 dated 29.09.2022 and drop the above proceedings.”*

*03. In the light of the above facts and applicant’s request to withdraw the aforementioned application for registration u/s 12AB, the applicant’s application for registration u/s 12AB applied under section 12A(1)(ac)(iii) is rejected.”*

5. We heard the rival submission and considered the documents available in the record. The assessee is registered under the Companies Act 2013. By wrong advice the assessee had withdrawn the application of registration u/s 12AB of the Act, for pursuing registration under Rajasthan Public Trust. Finally, the assessee came to know that the state registration is not required if the trust registered under the Companies act. The assessee requests to restore the application of registration u/s 12AB of the Act. The ld. AR fully relied on the Circular No. 14(XL-35) of 1955

dated 11/04/1955 that the department cannot take the advantage of ignorance of an assessee. Here, the revenue has not taken any advantage of the ignorance of the assessee. The assessee by wrong advised or under different impression had withdrawn the application for registration filed before the ld. CIT(E) u/s 12A of the Act. Further, we find that the order of the ld. CIT(E) is well accepted and need not be intervened by us. Accordingly, the appeal filed by the assessee is duly dismissed.

6. In the result, the appeal of the assessee bearing **ITA No. 186/Jodh/2023** is dismissed.

**Order pronounced on 06.12.2023 at Amritsar, Punjab in accordance with  
Rule 34(4) of the Income tax (Appellate Tribunal) Rules, 1963.**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order