

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

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

आयकर अपील सं./ITA No. 552 & 553/JPR/2023

Vivan Seva Sansthan-Ek Kadam Manavta Ki Aur Akshat Retreat, Room No. 405, Opposite to Gate No. 1 of SMS Hospital, Jaipur.	बनाम Vs.	The CIT (Exemption) Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AADTV 6960 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Vishal Gupta (C.A.)
राजस्व की ओरसे / Revenue by: Shri Anil Kumar Bhardwaj (CIT)

सुनवाई की तारीख / Date of Hearing : 10/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 18/12/2023

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 "Ld.CIT(E)] both dated 27.06.2023 passed under section 12AB and 80G of the Income Tax Act, 1961 respectively.

2.1 In ITA No. 552/JPR/2023 the assessee has raised following grounds: -

“1. On the facts and circumstances of the case, the Ld. CIT (Exemption) grossly erred in law and facts by rejecting the application of assessee for registration under Section 12AB on the ground of mere non registration of trust under Rajasthan Public Trust act without making any observation on materiality of such non compliance on achievement of the objects of the trust. Further, such rejection was made on the basis of erroneous interpretation of Honorable Supreme Court Judgement in the case of New Noble Education Society. Also, the fact that the application has already been made by the assessee for registration under the said act was completely ignored. It is thus hereby prayed for quashing the rejection order so passed and order for grant of registration.

2. On the facts and circumstances of the case, the Ld. CIT (Exemption) grossly erred in law and facts by rejecting the application of assessee for registration under Section 12AB without affording it a reasonable opportunity of being heard. Thus, the order so passed is against the principles of natural justice and thus hereby prayed for being quashed.

3. On the fact and circumstances of the case. the Ld. CIT (Exemption) grossly erred in law and facts by rejecting the application of assessee for registration under Section 12AB on the ground of it being engaged in business objects which is an allegation completely based on erroneous interpretation of object clause of the trust. It is hereby thus prayed for quashing the order so made.

4. On the facts and circumstances of the case, the Ld. CIT(Exemption) grossly erred in law and facts by rejecting application under Section 12AB on the ground of non satisfaction about the genuineness of activities of the trust by ignoring the submissions made by the assessee and on the basis of reasons that are not connected with genuineness of activities of trust. Further, no proper opportunity of being heard was provided to assessee for submitting additional documents and ignoring the fact that the almost all the documents so asked for were already submitted by the assessee at the time of provisional registration. It is thus hereby prayed for quashing the rejection order so passed and order for grant of registration.

5. The assessee hereby craves the leave to add, delete, amend or abandon any grounds of this appeal at the time of or before the hearing of the case.”

2.2 In ITA No. 553/JPR/2023 the assessee has raised following grounds: -

“1. On the facts and circumstances of the case the Ld. CIT(Exemption) has grossly erred in law and facts by rejecting the application of assessee seeking exemption under Section 80G on the ground of rejection of assessee's application for registration under Section 12AB when such rejection was itself not as per provisions of law. It is hereby thus prayed for quashing the said rejection order and direct for accepting the application so made by the assessee.

2. On the facts and circumstances of the case, The Ld. CIT(Exemption) grossly erred in rejecting the application made by the assessee for seeking exemption under Section 80G without affording reasonable opportunity of being heard to the assessee. It is thus hereby prayed for quashing the said rejection order so made as it was against the principles of natural justice.

3. On the facts and circumstances of the case, the application of assessee has been rejected on account of delay in filing the application which have been already condoned by the board. It is thus hereby prayed that the rejection is unwarranted owing to same. The assessee hereby thus prays for consequential relief.

4. The assessee hereby craves the leave to add, delete, amend or abandon any grounds of this appeal at the time of or before the hearing of the case.”

3. Brief facts of this case is that the assessee is registered charitable trust carrying on various charitable activities like hosting of camps and treatment of patients free of cost. Besides this, the assessee has taken two rented premises and running them as shelter home for the patients who come from outside Jaipur for medical treatment. Free stay, food and medical facilities are provided in these shelter homes. The assessee filed an application in Form No. 10AB on 13.12.2022 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 27.06.2023 alleging that the assessee has only given part reply. 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 observing as under:-

- Approval u/s 80G cannot be granted without registration u/s 12AB.
- Non registration with RPT Act, 1959.
- Commencement of activities.
- Business objects.
- Genuineness of activities & non-compliance.

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 ld. AR of the assessee submitted that the reasons advanced for rejection are curable and the assessee could not apply and seek registration. The ld. AR appearing on behalf of the assessee has placed their written submission on record and the same is extracted here in below:-

“We have submitted a paper book separately. The paper book so submitted is prayed for being considered as part of this submission. With this prayer, we start our reply which is as under:

Brief Facts of the case are as under:

The assessee is registered charitable trust carrying on various charitable activities like hosting of camps and treatment of patients free of cost. Besides this, the assessee has taken two rented premises and running them as shelter home for the patients who come from outside Jaipur for medical treatment. Free stay, food and medical facilities are provided in these shelter homes. The copy of trust deed of the assessee is enclosed vide Page No. 1-24 of paper book submitted by the assessee. The assessee filed an application in Form No. 10AB on 13.12.2022 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. The reply dated 26.05.2023 of the assessee is enclosed as a part of paper book vide page No. 25-55. However, being not satisfied with the replies of assessee, the Ld. CIT exemption rejected the application of the assessee vide order dated 27.06.2023 alleging that the assessee has only given part reply. Aggrieved by the said order, the assessee is in appeal before the H'ble ITAT, Jaipur bench.

Now we hereby submit ground wise reply as under:

Ground No. 1

On the facts and circumstances of the case, the Ld. CIT (Exemption) grossly erred in law and facts by rejecting the application of assessee for registration under Section 12AB on the ground of mere non registration of trust under Rajasthan Public Trust act, 1959 without making any observation on materiality of such non compliance on achievement of the objects of the trust. Further, such rejection was made on the basis of erroneous interpretation of Honorable Supreme Court Judgement in the case of New Noble Education Society. Also, the fact that the provisions of law. It is hereby thus prayed for quashing the said rejection order and direct for accepting the application so made by the assessee.

Same is covered in our submissions to Appeal No. ITA 552/JPR/2023 which is also heard alongwith the appeal under question. Hence, we pray the H'ble bench to decide this ground accordingly.

Ground No. 2

On the facts and circumstances of the case, The Ld. CIT(Exemption) grossly erred in rejecting the application made by the assessee for seeking exemption under Section 80G without affording reasonable opportunity of being heard to the assessee. It is thus hereby prayed for quashing the said rejection order so made as it was against the principles of natural justice.

It is hereby prayed before the H'ble bench that the assessee was not provided sufficient time to reply on the voluminous queries raised by the Ld. Commissioner (Exemptions). This was a gross violation of principles of natural justice. It is however pertinent to note that the assessee duly replied to almost all queries raised inspite of such deficiency of time (Kindly refer to our submissions to Ground No. 7). Thus, without prejudice to other submissions made herein, the assessee hereby pray that if the H'ble bench deems fit, the matter may be set aside to Ld. CIT Exemption, Jaipur for submission of any other documents/information in the matter of assessee.

Ground No. 3

On the facts and circumstances of the case, the application of assessee has been rejected on account of delay in filing the application which have been already condoned by the board. It is thus hereby prayed that the rejection is unwarranted owing to same. The assessee hereby thus prays for consequential relief.

This ground off appeal is not pressed by the appellant and we hereby pray that if the H'ble bench decided to set aside the case to Ld. CIT Exemption, this issue may also be transferred there only.

Ground No. 4

The assessee hereby craves the leave to add, delete, amend or abandon any or all grounds of appeals at the time of or before the hearing of the case.

This ground of appeal does not require any submission.

Ground No. 5

On the facts and circumstances of the case, the Ld. CIT (Exemption) grossly erred in law and facts by rejecting the application of assessee seeking approval under proviso to Section 80G(5) on the ground of non registration of trust under Rajasthan Public Trust act, 1959 which is also not requirement of law so far as this Section 80G(5) is concerned. It is thus hereby prayed for quashing the rejection order so passed and order for grant of registration.

We draw attention of the H'ble members towards relevant portion (highlighted bold) of Section 80G(5) where it has been mentioned as under:

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso shall-

(1) where the application is made under clause (1) of the said proviso, pass an order in writing granting it approval for a period of five years:

(ii) where the application is made under clause (j) or clause (iii) of the said proviso-

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about-

(A) the genuineness of activities of such institution or fund; and

(B) the fulfilment of all the conditions laid down in clauses (1) to (v);

(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a)-

(A) pass an order in writing granting it approval for a period of five years, or

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard:

(ii) where the application is made under clause (iv) of the said proviso, pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the institution or fund:

Thus, it can be clearly seen that there is no as such requirement of compliance with other laws in Section 80G(5) as was there in Section 12AB. Hence, it is hereby prayed to quash the rejection order so passed.

Ground No. 6

On the facts and circumstances of the case, the Ld. CIT (Exemption) grossly erred in law and facts by rejecting the application of assessee seeking approval under Section 80G(5) on the ground of it being engaged in business objects which is an allegation completely based on erroneous interpretation of object clause of the trust. It is hereby thus prayed for quashing the order so made.

In support of this ground, we hereby reproduce the relevant object as under:

Object No. e-"To construct and running of schools, college, education institution, free dispensaries, centers for poor feeding and homes for the benefit of public".

We have enclosed as a part of paper book a copy of trust deed vide Page No 1-24 in which it can clearly be seen that the sole purpose of trust is charitable in nature. Also, the object mentioned above itself suggests of it being charitable in nature. It is hereby respectfully also submitted that the appellant fail to understand that how presence of a mere clause in trust deed can lead the Ld. Commissioner (Exemption) to conclude that activities are being done commercially (para 5.1 of order). The rejection of assessee's application is possible on ground of question upon genuineness of activities of trust but not on presence of any clause in trust deed (even if interpretation of said clause of department is treated correct). It is thus hereby prayed that the rejection of application

of assessee on this ground is beyond the scope of act and hence the cancellation order may kindly be quashed.

Ground No. 7

On the facts and circumstances of the case, the Ld. CIT (Exemption) grossly erred in law and facts by rejecting application of assessee seeking approval under Section 80G(5) on the ground of non satisfaction about the genuineness of activities of the trust by ignoring the submissions made by the assessee and on the basis of reasons that are not connected with genuineness of activities of trust. Further, no proper opportunity of being heard was provided to assessee for submitting additional documents and ignoring the fact that the almost all the documents so asked for were already submitted by the assessee at the time of provisional registration. It is thus hereby prayed for quashing the rejection order so passed and order for grant of registration.

We hereby bring to the notice of the H'ble bench few facts:

a. The assessee has submitted a reply dated 26.05.2023 in which almost all the queries raised by the Ld. CIT Exemption, Jaipur were duly addressed. However, ignoring same, the rejection order was passed on the same grounds like non giving of complete donation list, detail of rented properties etc. We hereby draw attention of the H'ble members to Page No. 25-86 of paper book submitted by us wherein Annexure 11 (Page no. 83-86) of the said reply contains details of donations received by the assessee trust. Similarly, details of charitable activities undertaken have been elaborated in reply to Point 14 (Page 33-61 of paper book). As regards details of rented properties is concerned, reply to Point 14, 18 to 20 clearly addresses same (Page 62-82. Hence, it can be clearly concluded that the rejection order was passed in a haste and without considering the reply filed by the assessee. It is hereby mentioned that only relevant annexures have been enclosed by assessee in Paper Book.

b. We hereby also draw the attention of the H'ble members to the fact that some grounds which have been taken by Ld. CIT Exemption, Jaipur for rejecting application are not at all related to evaluation of genuineness of activities of trust such as General Expense, Printing & Stationery etc. hence, the rejection have been made on grounds which were outside the purview of powers laid down by law and hence rejection order is liable for being quashed.

It is hereby prayed for allowing this ground of appeal by the assessee.

With the above submissions, we hereby pray the Ld. Bench to allow the appeal of the assessee.”

5. Per contra, the ld. DR relied on the orders of the ld. 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 ld. CIT(E) has rejected the applications of the assessee u/s 12AB and u/s 80G(5) of the Act as narrated above in the respective orders that the applicant failed to submit the details called for. From the order we have persuaded that the details required are note on the activity and the source of property for 12AB and as regards the registration of 80G the same was rejected as the assessee was not granted the registration u/s. 12AB. Thus, ongoing through afore said query we are of the considered view that if the assessee be given a chance can submit the details and therefore, considering the request of the ld.AR of the assessee we are restoring the matter to the file of the CIT(E) with direction to grant opportunity of being heard in respect of both the applications of the assessee. 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 ld. 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 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.

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. 552/JPR/2023 and ITA No. 553/JPR/2023 are allowed for statistical purposes.

Order pronounced in the open court on 18/12/2023.

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 18/12/2023

*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Vivan Seva Sansthan-Ek Kadam Manavta Ki Aur, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT, Exemption, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 552 & 553/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar