

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" 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. 594/JPR/2023

Amritam Prasadam Foundation 9, Ganesh Colony, Brahampuri Road, Jaipur-302002.	बनाम Vs.	The CIT (Exemption) Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AAKAA3386 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal (C.A.)  
राजस्व की ओर से / Revenue by : Shri Ajey Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 07/11/2023  
उदघोषणा की तारीख / Date of Pronouncement: 20/12/2023

आदेश / ORDER

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

This appeal 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 20.09.2022 passed under section 80G of the Income Tax Act, 1961.

2.1 The assessee has raised the following grounds of appeal:-

*"1. That the ld. CIT(Exemption), Jaipur has erred seriously on facts and in law to reject the application of the assessee for approval u/s 80G(5) of the Income Tax Act, 1961 without allowing opportunity to the appellant.*

*2. That the appellant craves leave to add, amend, alter, withdraw any of the grounds of appeal before hearing.”*

3.1 At the outset of hearing, the Bench observed that there is delay of 306 days in filing of the appeal by the assessee for which the Id. AR of the assessee filed an application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

“In the above case the order under challenge was passed by the Id. CIT (Exemption), Jaipur vide his order dated 20.09.2022 which was uploaded in the online account of the appellant The office bearers of the assessee institution could not come to know about passing of such order since none of them is expert in e mails, computer net working etc. (Details about the office bearers are enclosed in support of the same) and none of them accessed the online account for last so many months. This order could come to their notice very recently when for filing the ITR their online account was accessed and hence the instant appeal could be filed on 22.09.2023 with a delay of 307 days (as the appeal was to be filed on or before 19.11.2022. whereas could be filed on 22.09.2023). The delay so occurred is requested to be condoned on account of following reasons:-

1. There was no malafide intention on the part of office bearers in filing appeal with delay of 307 days. There were genuine reasons for the delay as mentioned hereinabove duly supported with an affidavit of the president of the institution.
2. The appellant is a charitable institution and due to non condonation of delay. charitable activities of the institution will suffer adversely.

The appellant commits that all precautions would be taken by the institution in future, to avoid any such delay in any proceeding required under any law of the country.

Your honours are sincerely requested to condone the delay in filing appeal and hear the appeal on merits and oblige.”

To this effect, the assessee has filed an affidavit as to the condonation of delay in filing the appeal.

3.2 The ld. AR of the assessee appearing in this appeal submitted that the assessee is serious on the duties and the delay of 306 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.

3.3 On the other hand ld. 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.

3.4 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. Apropos to the ground so raised by the assessee the ld. CIT(E) rejected the assessee's claim of exemption u/s 80G of the Act by observing as under:-

- “1. The applicant filed online application online on 19.03.2022 in Form No. 10AB for seeking exemption u/s 80G of the Income Tax, 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/EXM45/2022-23/1045689607(1) dated 20.03.2023 the applicant society/trust/samiti has been denied registration u/s 12AB. Therefore, it is not eligible for exemption u/s 80G of the IT 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. Feeling dissatisfied from the order of the ld. CIT(E) the assessee has preferred this appeal on the ground as reiterated here in above. A propos to the ground so raised the ld. AR of the assessee submitted the following written submissions:-

“The appellant is a charitable institution engaged into social service of establishing shelter homes for helpless children and women, helping poor students in getting education, providing food for poor and needy persons etc. since 26.02.2020. It was granted provisional registration u/s 12A and 80G on 29.05.2021. As it had started working it had filed application for permanent registration on 19.03.2022 under both the said sections.

For permanent registration u/s 12A the Id. CIT (E) issued notices to the appellant for producing various information and documents through online mode which could not be noticed by the office bearers of the institution as none of them is computer savvy and no reply could be submitted and hence its application u/s 12A was rejected vide order dated 20.09.2022. Based on the rejection of registration u/s 12A its application for registration u/s 80G was also rejected on the very same day. It is the rejection u/s 80G the appellant has filed this instant appeal with a request to kindly allow one opportunity to the assessee for complying with the directions of the Id. CIT (E) and hence the application for permanent registration u/s 80G may kindly be restored back to the file of the Id CIT (E) and oblige.

So far as its permanent registration u/s 12A is concerned the applicant has filed a fresh application on 22.09.2023 which is pending for action before the Id. CIT (E).

Kindly restore the application for permanent approval u/s 80G to the Id. CIT (E), Jaipur and oblige.

6. During the course of hearing, the ld. AR of the assessee in the appeal mainly submitted that the assessee if given an opportunity will be able to satisfied the queries/ issues raised / details to be submitted and thus in the case the ld. AR of the assessee prayed that one more chance of presenting the case of the assessee be given.

7. Per contra, the ld. DR relied on the orders of the ld. CIT(E) and objected to the prayer of the ld. AR of the assessee.

8 We have heard the rival contentions and perused material available on record. We observed that so far as its permanent registration u/s 12A is concerned the assessee has filed a fresh application on 22.09.2023

which is pending for action before the ld. CIT(E) and also the Bench noted that ld. CIT(E) has rejected the applications of the assessee u/s 80G(5) of the Act as narrated above in the respective order that the applicant failed to submit the details called for. Further, it is also noted that ld. CIT(E) in the appeal of the assessee pertaining to granting approval u/s 80G of the Act has been rejected with following observation.

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/EXM45/2022-23/1045689607(1) dated 20.03.2023 the applicant society/trust/samiti has been denied registration u/s 12AB. Therefore, it is not eligible for exemption u/s 80G of the IT Act, 1961.

It is also pertinent to mention that during the course of hearing in the appeal, the ld. AR of the assessee prayed that he was deprived off availing adequate opportunity of being heard by the ld. CIT(E) in the application for registration/recognition. 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 ld. CIT(E) and the ld. AR of the assessee is directed to produce all the relevant papers concerning the

application so filed before the ld. CIT(E) to settle the dispute raised hereinabove.

9. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. 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 ld. CIT(E) independently in accordance with law.

In the result, the appeal of the assessee are allowed for statistical purposes

Order pronounced in the open court on 20/12/2023.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 20/12/2023

\*Santosh

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

1. The Appellant- Amritam Prasadam Foundation, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT, Exemption, Jaipur.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त (अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File ITA No. 594/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar