

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

आयकरअपील सं./ITA No. 611/JPR/2023

Raksha 69 Green Nagar Durgapura, Tonk Road, Near Dalda Factory, Jaipur.	बनाम Vs.	The CIT (Exemption) Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AABTR 5444 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby :Shri Preerna Sharma (C.A.)
राजस्व की ओरसे / Revenue by: Shri Ajay Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 07/11/2023
उदघोषणा की तारीख / Date of Pronouncement: 01/01/2024

आदेश / ORDER

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

This is an appeal filed by the assessee against orders of the Learned Commissioner of Income Tax (Exemption), Jaipur [herein after referred to as "Ld.CIT(E)] dated 20.10.2022 passed under section 80G of the Income Tax Act, 1961.

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

"1On the fact and in the circumstances of the matter Ld. CIT(E) has grossly erred in rejecting the application made u/s 80G(5)(ii) of the Act vide Form 10AB. Ld. CIT(E) has erred in rejecting the application merely on the ground that not lees issued could not be complied by the appellant. Appellant prays

rejecting the application grossly without considering or rebutting the documents and material filed along with the application, being bad in law and in violation to the principles of natural justice deserves to be rolled back.

2. That Ld. CIT(E) has further erred in rejecting the application by alleging that the appellant did not submit the trust deed and account of past 3 years. Appellant prays that the same were duly filed along with Form 10AB and thus rejecting the application on this ground being grossly unwarranted and unjustified, the rejection deserves to be rolled back.

3. That Ld. CIT(E) has further erred in rejecting the application without considering the fact that the appellant trust has been duly registered u/s 80G(5)(ii) of the Act since its inception in 2009. Appellant prays that rejecting the registration on technical grounds without considering the past history being absolutely unjustified the rejection deserves to be rolled back.

4. That the appellant reserves the right to add/alter/amend/delete all or any of the ground at any time before or during the appeal.”

3.1 At the outset of hearing, the Bench observed that there is delay of 288 days in filing of the appeal by the assessee for which the ld. AR of the assessee filed an affidavit for condonation of delay with following prayers:-

“ Rohit Gangwal, S/o Dhan Kumar Gangwal, aged 42 years presently residing at 70 Green Nagar, Durgapura, Tonk Road, Jaipur 302018, do hereby solemnly affirm on oath as under:-

1. That I am the Principal Officer of assessee M/s Raksha.
2. That the assessee trust had submitted a Form 10AB on 13.06.2022 before the Ld. CIT(Exemption) Officer. But inadvertently assessee was not able to make the compliance of the hearing notices which led to the rejection of Form 10AB on 22.12.2022.
3. That such order passed by Ld. CIT was served on the assessee on 22.12.2022, thus the appeal against the said order was supposed to have been filed by the assessee by 20.02.2023.
4. That the assessee could not make an appeal within the prescribed time limit as the said memorandum of appeal in the physical mode was sent to me for signature and

- had to be forwarded to the counsel for further action, and inadvertently I could not send back the same on time, as the same got dumped under other paper on my desk.
5. That, on being reminded by the counsel, it was realized that appeal papers were omitted to be signed and dispatched, however by then due date of filing appeal had expired.
 6. That the delay in filing the appeal physically is solely attributable to inadvertent mistake on my part and is absolutely un-intentional and has occurred due to circumstances beyond my control.
 7. The affidavit is being submitted in confirmation of the application seeking condonation of delay.
 8. In the circumstances of the matter it is humbly prayed to the Hon'ble Bench to please condone the delay which is merely of days and to be kind enough to direct the listing of the appeal for disposal on the merits. Your kindness would go a long way to depart effective justice to the ignorant litigants."

3.2 The Id. AR of the assessee appearing in this appeal submitted that the assessee is serious on the duties and the delay of 288 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 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.

3.4 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 filling the appeal by the assessee.

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

"The applicant filed application on 21.04.2022 in Form No. 10AB seeking registration under clause (ii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961. As per provisions of clause (ii) of first proviso to sub-section (5) of section 80G of the Act the application under section is to be filed in cases-

"(ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period."

From the plain reading of clause (ii) of first proviso to sub-section (5) of section 80G of the I.T. Act, 1961, it is evident that the application under this

section is to be filed by the trust or institution which is already approved u/s 80G(5). As per the provisions of section 80G(5) of the Act, the applicant is not eligible for approval under clause (ii) of first proviso to sub-section (5) of section 80G of the I.T. Act, 1961 of the Act as it is not already approved under clause (iii) of first proviso to sub-section (5) of section 80G of the I.T. Act, 1961.

02. On perusal of the application filed by the applicant, it was noticed that the applicant is not eligible for approval of exemption under clause (ii) of first proviso to sub-section (5) of section 80G of the I.T. Act, 1961 since it was not already approved under clause (iii) of first proviso to sub-section (5) of section 80G of the Act. To clarify the same, the applicant was issued a letter/notice No. ITBA/EXM/F/EXM43/2022- 23/1046170101(1) dated 04.10.2022 to furnish Form 10AC (existing order of registration u/s 12A) by 07.10.2022. However, on the given date, neither anyone attended in person nor any written reply was submitted.

03. Thereafter, in view of principle of natural justice and change of incumbent, another opportunity was given to the applicant as final opportunity vide this office letter no. ITBA/EXM/F/EXM43/2022-23/1046314836(1) dated 14.10.2022 to withdraw its application in Form 10AB or to justify its claim for registration under clause (ii) of first proviso to sub-section (5) of section 80G of the Act on or before 19.10.2022. However, on this date also, the applicant did not file any reply.

04. As the assessee has failed to file details/information required by the notices referred above and even otherwise as discussed, the applicant is not eligible for approval of exemption under clause (ii) of first proviso to sub-section (5) of section 80G of the Act, the application filed on 21.04.2022 in Form 10AB for grant of approval of exemption under clause (ii) of first proviso to sub-section (5) of section 80G of the Act is hereby rejected being in fructuous. However, the approval granted to the institution, if any, in Form No. 10AC will continue to exist till the expiry of the time period mentioned thereon unless cancelled separately as per law.”

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 rectification:-

“With respect to the Form 36 filed in above case bearing acknowledgement no. 1695735085 dated 03.10.2023, we wish to state that inadvertently while filing the form 36 online, the order appealed against was stated with DIN as ITBA/EXM/F/EXM45/2022-23/1046422912(1) dated 20.10.2022 instead of the relevant order with DIN ITBA/EXM/F/EXM45/2022-23/1048161970(1) dated 22.12.2022 and consequently the copy of order uploaded online as well as enclosed with the hard copy of Form 36 was incorrectly attached.

It is therefore humbly requested to allow us to alter the column nos. 3(b) and 3(c) under the title "Appeal Details" in Form 36, wherein the dates may be read as 22.12.2022 in both columns. We are also enclosing herewith copy of order dated 22.12.2022 (4 copies) which may please be accepted and considered as "order appealed against" in the memorandum of appeal already filed (both online and offline).

We truly regret the inconvenience caused and humbly request co-operation for the above 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. The Bench noted that Id. CIT(E) has rejected the applications of the assessee u/s 80G(5) of the Act as narrated above in the respective orders that the applicant failed to submit the details called for. Further, it is also noted that Id. CIT(E) in the appeal of the assessee pertaining to granting approval u/s 80G of the Act has been rejected with following observation.

02. On perusal of the application filed by the applicant, it was noticed that the applicant is not eligible for approval of exemption under clause (ii) of first proviso to sub-section (5) of section 80G of the I.T. Act, 1961 since it was not already approved under clause (iii) of first proviso to sub-section (5) of section 80G of the Act. To clarify the same, the applicant was issued a letter/notice No. ITBA/EXM/F/EXM43/2022- 23/1046170101(1) dated 04.10.2022 to furnish Form 10AC (existing order of registration u/s 12A) by 07.10.2022. However, on the given date, neither anyone attended in person nor any written reply was submitted.

03. Thereafter, in view of principle of natural justice and change of incumbent, another opportunity was given to the applicant as final opportunity vide this office letter no. ITBA/EXM/F/EXM43/2022-23/1046314836(1) dated 14.10.2022 to withdraw its application in Form 10AB or to justify its claim for registration under clause (ii) of first proviso to sub-section (5) of section 80G of the Act on or before 19.10.2022. However, on this date also, the applicant did not file any reply.

It is also pertinent to mention that during the course of hearing in the appeal, the Id. AR of the assessee prayed that he was deprived off availing adequate opportunity of being heard by the Id. 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 is allowed for statistical purposes

Order pronounced in the open court on 01/01/2024.

Sd/-

(राठौड़. कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/01/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Raksha, Jaipur.

Sd/-

(डॉ.एस.सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिकसदस्य / Judicial Member

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. 611/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar