

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

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

आयकर अपील सं./ITA No.669/JPR/2023

Desire Foundation 15, Sukh Vihar, Gurjar Ki Thadi, Mansarover, Jaipur.	बनाम Vs.	ITO Exemption, Ward-1, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAETD1460F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia(CA)  
राजस्व की ओर से / Revenue by : Shri Ajey Malik(CIT)( V.H.)

सुनवाई की तारीख / Date of Hearing : 27/02/2024  
उदघोषणा की तारीख / Date of Pronouncement: 29/02/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee, which is arising out of the order of the learned Commissioner of Income Tax (Exemptions), Jaipur dated 21.02.2023 [here in after referred as "CIT(E)"].

2.1 At the outset of hearing, the Bench observed that there is delay of 199 days in filing of the appeal by the assessee for which the Id. AR of the

assessee filed an affidavit for condonation explaining the reasons thereof and the contention of the same is reproduced here in below :-

“ with reference to above subject we request you that:-

1. This present appeal is filed on 07.11.2023 against the ex-parte order passed by CIT(Exemption), Jaipur on rejection of approval u/s 80g of the I.T. Act, 1961 order dated 21.02.2023.
2. That this present appeal filed before Hon'ble ITAT, Jaipur Bench with a delay of 199 days.
3. Further, it is submitted that the reasonable cause of delay in filing the present appeal was due to time taken in process of legal advice whether the remedy is re- apply or filing of appeal, which is possible remedy action.
4. That while reapplying for the registration u/s. 80G of the I.T. Act, 1961 in Form No. 10AB there were some technical glitch on the Income Tax Portal and due to technical glitch time was taken in process of reapplying of Form No. 10AB.
5. That we were in constant touch with the office of CIT (Exemption). They assured us that the CBDT is likely to allow re-apply on portal for the application of registration u/s. 12A and approval u/s. 80G of the Act. But, the CBDT only allow to re-apply the application for registration u/s. 12A of the Act.
6. That the order passed by CIT (Exemption), Jaipur was ex-parte and the non compliance was due to mistake of earlier counsel. As assessee-trust was not aware about these non compliances of notices before CIT (Exemption), Jaipur

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, that proper inquiry can be conducted and substantial justice may be delivered to the appellant.”

2.2 The Id. AR of the assessee appearing on behalf of the assessee submitted that the assessee is serious on the duties and the delay of 199

days is on account of the technical glitches and the reasons are beyond his control and therefore, it has attributable to the delay. Considering the various judicial precedent where in the courts has considered ignored technicality of the reasons and has considered the delay. Even the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji& Others 167 ITR 471(SC) directed the other courts to consider the liber 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.

2.3. During the course of hearing, the Id. DR objected to assessee's application for condonation of delay and prayed that the bench may decide the issue as deem fit and proper in the interest of justice.

2.4 We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee in support of the delay filed an affidavit praying for condonation of delay of 199 days and has also explained that the reasons were beyond his control and has resulted the delay. Considering the overall aspect of the matter we consider the reasons of delay of 199 days in filing the appeal by the assessee and same is condoned in view of the decision of Hon'ble Supreme Court in the case of

Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3. In this appeal, the assessee has raised following grounds: -

*“1. That the order passed by Id. 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 appellant.*

*2. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of the them.”*

4. The Id. AR of the assessee in support of the ground submitted that the application for recognition u/s 80G of the Act has been rejected by the Id. CIT(E) by observing as under:-

*“1. The applicant filed online application online on 22.09.2022 in Form No. 10AB for seeking exemption u/s 80G of the Income Tax Act, 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- 23/1049956769(1) dated 21/02/2023 the applicant Society/trust/samiti has been denied registration u/s 12AB. Therefore, it is not eligible for exemption u/s 80G of the I.T. 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. Assessee aggrieved from the rejection of approval / recognition, preferred the present appeal on the grounds as raised here in above. The

Id. AR of the assessee thus submitted that the application for registration u/s. 80G of the Act has solely been rejected on the ground that the registration of the trust u/s. 12AA has been denied and therefore, registration for 80G was also denied. The assessee has re-applied for registration u/s. 12AA as permitted by a board and therefore, he submitted that the assessee may be permitted to represent this fact before the Id. CIT(E) and therefore, prayed to set aside the order of the Id. CIT(E) with a direction to decide the issue along with fresh application for registration of the trust.

6. Per contra, the Id. DR did not raise any specific objection to the prayer of the assessee but at the same time he has relied upon the findings of the Id. CIT(E).

7. 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 by observing as under :

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- 23/1049956769(1) dated 21/02/2023 the

applicant Society/trust/samiti has been denied registration u/s 12AB. Therefore, it is not eligible for exemption u/s 80G of the I.T. 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.”

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 as the application for 12AA has been given permission to re-apply on 29.09.2023 but the same is not for the 80G of the Act. Thus, we are of the considered view that the assessee permitted to re-apply for 12AA of the Act then in that case why not for 80G of the Act. Thus, the Bench does not want to go into merit of the case but it is imperative that the assessee must be provided adequate opportunity based on these facts. In view of the matter, the Bench feels that the assessee should be given one more chance to contest the case for recognition u/s. 80G before the Id. CIT(E) and the Id. AR of the assessee is directed to produce all the relevant papers concerning 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 appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29/02/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/02/2024

\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Desire Foundation, Jaipur
2. प्रत्यर्थी / The Respondent- ITO(E), Ward-1, Jaipur.
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. गार्ड फाईल / Guard File (ITA No. 669/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar