

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, AM

आयकर अपील सं./ITA No. 281 & 282/JPR/2024

Poswal Grandiose Foundation 13-A, Viman Vihar Goverdhan Nagar, Toll Tax Sanganer, Jaipur.	बनाम Vs.	CIT(E), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AALCP3259J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby :Shri P.C. Parwal (C.A.)  
राजस्व की ओरसे / Revenue by: Shri Ajey Malik (CIT) (V.C.)

सुनवाई की तारीख / Date of Hearing : 12/06/2024  
उदघोषणा की तारीख / Date of Pronouncement: 28/06/2024

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 "CIT(E)"] both dated 10.10.2023 passed under section 12AB and 80G of the Income Tax Act, 1961 respectively.

2.1 In ITA No. 282/JPR/2024 the assessee has raised following grounds: -

“1. The Ld. CIT(E) has erred on facts and in law in rejecting the application filed by the assessee u/s 12A(1)(ac)(iii) in Form No. 10AB seeking registration u/s 12AB of IT Act, 1961 on the ground that (i) there is discrepancies in Article of Association and (ii) assessee has not proved the genuineness of its activities.

2. The appellant craves to alter, amend and modify any ground of appeal.

3. Necessary cost be awarded to the assessee.”

2.2 In ITA No. 281/JPR/2024 the assessee has raised following grounds: -

“1. The Ld. CIT(A) has erred on facts and in law in rejecting the application filed by the assessee in Form 10AB seeking approval under clause (iii) of first proviso to section 80G(5) of IT Act, 1961 on the ground that approval u/s 80G cannot be granted without registration u/s 12AB.

2. The appellant craves to alter, amend and modify any ground of appeal.

3. Necessary cost be awarded to the assessee.”

3.1 At the outset of the hearing of the appeal it is noted the appeals in ITA No. 281 & 282/JPR/2024 filed are delayed by 89 days. The ld. AR of the assessee relied upon the petition for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

*“With reference to above it is to submit that the order of Ld. CIT(E) Act, 1961 rejecting the application for grant of registration u/s 12AB and approval u/s 80G was received by the assessee on 10.10.2023. The appeal was to be filed on or before 08.12.2023.*

*However, for the reasons mentioned in the affidavit, the appeal could not be filed in time and there is a delay of 89 days.*

*Since the above delay of 89 days is due to a reasonable cause, we request you to kindly condume the delay and admit the appeal for hearing.”*

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 appeals submitted that the assessee is serious on the duties and the delay of 89 days is on account of the fact that counsel of assessee Shri Pankaj Shukla was of the view that as the assessee is already registered provisionally, again the window for 12AB & 80G will open and that will be acted upon later on. Based on that misunderstanding and 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 opposed the submissions of the ld. AR of the assessee but submitted that the Court may decide this issue as deem fit and proper in the case.

3.4 We have heard the rival contentions and persuaded the petition advanced for condonation of delay. Since, the reasons advanced are the misunderstanding on the procedure of new registration process by counsel of the assessee. We condone the delay 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 we therefore, in the facts and circumstances of the case, we condone the delay in filling the appeals by the assessee.

4. Brief facts of this case is that the application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 was filed by the applicant online on 19.04.2023. A letter/notice No. ITBA/EXM/F/EXM43/2023-24/1055582471(1) dated 30-08-2023 was issued at the e-mail/address provided in the application requiring the applicant to submit certain documents/explanations by 14-09-2023. In response, no reply furnished by the applicant. Thereafter, a reminder was given to submit the requisite details vide letter dated 15.09.2023 fixing the case on 21.08.2023, again applicant failed to furnish any reply. In view of principle of natural justice, one more opportunity was provided to the applicant vide Letter No. ITBA/EXM/F/EXM43/2023-24/1056460527(1) dated 23-09-2023 as final opportunity through which date of submission was fixed as 03-10-2023. Again applicant non complied to the above letter. As applicant is not giving any

reply and the matter was of a limitation matter, therefore the case had to be decided on the basis of material available on record by the ld. CIT(E).

4.1 Whereas in the application for registration u/s. 80G of the Act the ld. CIT(E) noted that as the assessee is also not registered under the Rajasthan Public Trust Act and consequently the registration of 12AB was rejected and thereby the application for registration u/s. 80G of the Act was also rejected.

5. Assessee aggrieved from the rejection of approval / recognition, 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 was not given sufficient opportunity of being heard before the ld. CIT(E). The ld. AR also submitted that the trust has already applied for registration under the Rajasthan Public Trust Act also and if given an opportunity the observations made by the ld. CIT(E) being curable in nature the assessee have sufficient reason to get the registration / recognition.

6. 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 assessee has not submitted required details and therefore, the plea of the assessee is not maintainable.

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 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. But the reasons advanced for rejection was that discrepancies in articles of association and as it is evident from the discussion so recorded in that order that aspect of the matter was not confronted to the assessee and thereby application of 12AB was rejected. As regards the registration of 80G the same was rejected as the assessee was not granted the registration u/s. 12AB. Thus, ongoing through aforesaid aspect of the matter we are of the considered view that if the assessee be given a chance can submit the details and clarify the issue raised by Id. CIT(E). Therefore, considering the request of the Id.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 Id. 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.

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 appeals of the assessee in ITA No. 281 & 282/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open court on 28/06/2024.

Sd/-  
(राठोडकमलेशजयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2024

\*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Poswal Grandiose Foundation, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT(E), 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. 281 & 282/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar