

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" 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 Nos. 334 to 337/JP/2024
निर्धारण वर्ष/Assessment Years : 2007-08, 2008-09, 2014-15 & 2015-16

Digamber Jain Mandir Shrineminath Ji Sanwalaji Amer, Nasia Bhattarak Ji, Sawai Ram Singh Road, Narain Singh Circle, Rajasthan	बनाम Vs.	ITO, (Exemption), Ward-1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATD 3672 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Sanjeev Kumar Mathur, CA
राजस्व की ओर से / Revenue by : Sh. Rajesh Kumar Meena, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 26/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 28/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These four appeals filed by assessee are arising out of the order of the National Faceless Appeal Centre, Delhi dated 16/11/2021, 29/04/2022 & 21/04/2022 [here in after 'NFAC'] for assessment years 2007-08, 2008-09, 2014-15 & 2015-16 which in turn arise from the order dated 20.03.2015, 26.12.2016, 16.03.2016 & 12.12.2017 passed under section

147 r.w.s. 144 (3) & 143(3) of the Income Tax Act [here in after as Act] ,
by ITO (Exemption), Ward -1, Jaipur.

2. Since the issues involved in these appeals are almost identical on facts and are almost common, except the difference in figure disputed / added in each year. Therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter in ITA No. 334/JPR/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount in disputed. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 334/JP/2024 is taken as a lead case.

4. At the outset of the hearing Bench observed that there is delay of 796 days in bringing the present appeal. The Id. AR of the assessee relied on the application filed for this delay and prayed for condonation of delay, the content of the application reads as under :-

“Subject: Request for Condonation in delay in filing appeal before the Hon'ble Bench for AY 2007-08

It may please your honor,

We are filing an appeal consequent to an order passed by Ld. CIT(Appeals) dated 16/11/2021 before the Hon'ble bench. There is delay in filing the appeal for 794 days. The reason for delay in filing an appeal before the Hon'ble bench is due to the fact that order of the Ld. CIT (Appeals) was not in the knowledge of office bearers of the trust, as the secretary of the trust Mr. Mahendra Kumar Patni who was looking after the income tax matters was not well at the time of passing the order by CIT (A) and later on passed away after long illness on 07/08/2023.

As there was no malafide intention and delay is because of the reason that the order of CIT(A) was not in knowledge of the office bearers of the trust. Due to such reason the appellant was prevented to file the appeal in time.

In view of the submissions, it is earnestly requested with humbleness that the delay occurred in filing of appeal is unintentional and therefore, we request the Hon'ble bench to kindly condone the delay in filing the appeal before the Hon'ble bench.”

To support the contention raised in the application the Id. AR of the assessee filed the death certificate of the trustee.

5. On this issue during hearing, the Id. DR objected to assessee's application for condonation of delay. Serving of the notice at the

email is sufficient but at same time prayed that Court may decide the issue as deem fit in the interest of justice.

6. We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 796 days has merit. The assessee trust managing trustee was aged and was not well in covid period. He being the responsible for managing all these issue of the assessee trust we concur with the submission of the assessee, that they have valid reason for filling the present appeal off late. Thus, the delay of 796 days in filing the appeal by the assessee 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.

7. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 334/JP/2024 on the following grounds;

“1. The Id. CIT(Appeals) has erred in dismissing the appeal without giving the proper opportunity as most of the notices were issued during the Covid period. The action of the Id. CIT(A) is against the principle of natural justice.

2. The Id. CIT(Appeals) has erred in upholding the fact that trust is not registered u/s 12A of the Act, without considering the fact the trust had applied for registration long back and further on fresh application filed on 20.08.2015 granted registration u/s 12A of the act w.e.f. 01.04.2015 and there is no change in the object of the trust since its inception.

3. The petitioner craves the right to add, alter or in any way amend the grounds of appeal.”

8. Succinctly, the fact as culled out from the records is that the revenue has the information that the assessee trust deposited cash in saving bank account amounting to Rs. 14,29,922/-. As the said transaction was found not verifiable, proceeding u/s. 147 of the Act, by issuance of notice u/s. 148 of the Act dated 21.03.2014. In response to the notice the assessee requested to consider the return filed on 26.03.2008 as return in response to notice u/s. 148 of the Act. The assessee provided the details / information and books of account were also produced.

9. The Id. AO noted that the assessee is registered under Rajasthan Public Trust Act, 1959. Further the Id. AR of the assessee submitted that the assessee is also registered u/s. 12A of the Act and the activities of the

trust is covered as general public utility. Accordingly, the assessee claimed the benefit of exemption u/s. 11(1)(a) of the Act. During the pendency of the proceeding the assessee was required to file a copy of registration u/s. 12A of the Act. The assessee failed to furnish the registration certificate and also did not submit any evidence in this regard. In that situation the Id. AO understood that the assessee is not registered u/s. 12A of the Act. Thus, Id. AO considering the provision of section 11 & 12 of the Act to claim the benefit of those section registration u/s. 12A was condition precedent. Therefore, the assessee denied the benefit of exemption and the income was computed at Rs. 21,44,470/- as against the returned income of Rs. 1,70,142/-.

10. Aggrieved from the order of Assessing Officer, the assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“4. Against the order of the AO u/s 147 r.w.s 143(3) of the Act, the appellant filed an appeal. Notices of hearings were sent on ITBA portal given by the appellant in form No. 35 and also the available on record. I have considered the impugned order. It has been noted from the appeal record that the appellant was given opportunity to present its appeal by way of submissions of details, documents, evidences and arguments as follow”

Sl. No.	Notice No.	Date of issue of notice/Date of speed post	Date fixed for hearing
1.	By DIN:- ITBA/NFAC/F/APL_1/2020-21/1029178739 (1)	23.12.2020	31.12.2020
		--	On given date neither any compliance received nor any adjournment letter was filed.
		--	On 23.01.2021 adjournment letter was filed and requested for adjournment for one month.
2.	By DIN:- ITBA/NFAC/F/APL_1/2021-22/1034763878 (1)	10.08.2021	17.08.2021
		17.08.2021	On given date again neither any

			compliance received nor any adjournment letter was filed.
3.	By DIN:- ITBA/NFAC/F/APL_1/2021-22/1036306765(1)	11.10.2021	25.10.2021
		25.10.2021	On given date again neither any compliance received nor any adjournment letter was filed.
4	By DIN:- ITBA/NFAC/F/APL_1/2021-22/1036690205(1)	01.11.2021	09.11.2021 (Final Opportunity)
		09.11.2021	On given date again neither any reply received nor any adjournment letter was filed.

4.1 As has been brought out above, it is evident that the appellant is not interested in filing any details during the appellate proceedings and to avail the opportunity under the principle of natural justice. As many as four (04) notices were issued through ITBA portal as noted above. However, it is a matter of record that any kind of documents or details were not submitted by the Authorized Representative of the appellant.

4.2 It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and another (118 ITR 461) (at pages 477 & 478) that appeal does not mean filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol Vs. Union of India in Excise Appeal No. 62 of 2009.

4.3 This appeal has been filed by the appellant claiming that the action of the Assessing Officer is not supported by facts and laws and that is unjust. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed as income, the initial onus is on the Assessing Officer to prove that it is taxable. Where, however, the assessee claims exemption, the burden is on the assessee to prove it to be exempt. Same is the position in cases of all allowance,

deductions, claims or loss, etc. since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

4.4 Since, the Appellant has not presented any argument and submission or any paper filed in support of its claim, the appeal is decided judiciously based on materials available on record.

4.5 Going to the merits of the case, it is seen that the assessing officer had withdrawn benefit of Section 11(1)(a) since the assessee had not submitted a copy of registration u/s 12 A of the I.T. Act 1961. During appellate proceedings also, no evidence or registration copy has been submitted. Therefore, the order of the A.O. is upheld. In the result, the appeal is Dismissed.

11. Feeling dissatisfied with the order of the Id. CIT(A)/NFAC, the assessee has preferred the present appeal on the grounds as raised by the assessee as reiterated here in above. To support the various grounds so raised by the assessee, the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is reiterated here in below;

“Submission in the matter of Appeal No. ITA 334/JPR/2024 filed by Digamber Jain Mandir Shri Neminath Ji Sanwalaji Amer for A.Y. 2007-08, in the matter of Digamber Jain Mandir Shri Neminath Ji Sanwalaji Amer Vs. ITO (EXEMPTION) WARD-1, JAIPUR. Appeal Fixed on 24.06.2024

BRIEF FACTS OF THE CASE

The Assessee is a Trust established before the commencement of Income tax act, 1961. The Trust is registered with Devasthan Department Rajasthan. An application in Form 10A for registration U/s 12A of the Income tax act, 1961 was also filed on 1.04.1973. As the registration Number was not available, therefore the assessee filed a fresh application in form 10A on 20.08.2015. The Ld CIT(E) rejected the application of the assessee filed on 20.08.2015 vide its order dated 17.02.2016. The assessee preferred an appeal before the Honble ITAT Jaipur bench against the order of LdCIT(E). The Hon'ble bench of ITAT Jaipur bench vide its order dated 11.08.2017 restored the matter back to the CIT(Exemption). The Ld CIT (E) vide its order u/s 12AA(1)(b) r.w.s 254 of the Income tax act, 1961 dated 19.07.2018 granted registration u/s 12AA as Religious trust w.e.f. 1.04.2015. (Copy of order is enclosed)

The Assessment u/s 143(3) was completed by the Ld. A.O. for the A.Y. 2007-08 on 20/03/2015 and that time the application for grant of registration was rejected by LdCIT(E) but appeal against such order was pending before Hon'ble ITAT Jaipur bench, The Hon'ble ITAT Jaipur bench vide its order dated 11.08.2017 restored the matter back to CIT (E) with direction, thereafter the Ld CIT(Exemption) on the basis of original application granted registration U/s 12A of the act.

In the assessment order the Ld. A.O. disallowed expenditure of capital nature amounting to Rs. 18,94,269/- on the ground that the assessee trust is not registered u/s 12 A of the Income Tax Act, 1961 therefore can not avail the benefit u/s 11 and 12 of the Income Tax Act.

GROUND OF APPEALS

GROUND NO.1

1.The Ld CIT(Appeals) has erred in dismissing the appeal without giving the proper opportunity as most of the notices were issued during the Covid period. The action of the Ld CIT(A) is against the principle of natural justice

Our Submission

We submit that Ld CIT(A) issued most of the notices during Covid period as evident from the para 4 of the CIT(A) order dated 16.11.2021 which is against the principle of natural justice as during Covid period the offices was not working properly and the situation is known to everyone."

Ground No 2

The Ld. CIT(Appeals) has erred in upholding the fact that trust is not registered u/s 12A of the Act, without considering the fact the trust had applied for registration long back and further on fresh application filed on 20.08.2015 granted registration u/s 12A of the act w.e.f. 01.4.2015 and there is no change in the object of the trust since its inception.

Our Submission

We submit that the assessee is a Religious Trust registered under "Devasthan Department" Rajasthan. The trust works mainly in Jaipur area and it carries on Religious and Charitable activities in this area.

The Trust had filed Form No. 10 A for registration of charitable or religious trust or institution under section 12 AA of the Income Tax Act, 1961 on 01/04/1973, and since then the assessee has been filing its return.

The assessee had filed a fresh application in Form 10A on 20.08.2015 for registration u/s 12A of the Income Tax Act, 1961. The said application was rejected by the Ld. CIT(E) vide its order dated 17.02.2016. Against such order, the assessee preferred an appeal before the Income Tax Appellate Tribunal. The Hon'ble Jaipur bench of ITAT vide its order dated 11.08.2017 restored the matter to the file of Ld. CIT(E) for deciding the application afresh. (Copy of the order of Hon'ble ITAT is enclosed as annexure B) On the basis of the order of Hon'ble ITAT the Ld. CIT (E) passed the order dated 19.07.2018 whereby the assessee was granted registration as Religious Trust u/s 12A of the Income Tax Act, 1961 with effect from 1.04.2015.

We submit that for AY 2007-08, the assessment was completed by AO u/s 143(3) of the Income Tax Act, 1961, and an order dated 20/03/2015 was passed by him making an addition of Rs. 18,94,269/- by stating that in the absence of the registration u/s 12A, the trust is not eligible for claiming exemption of income under the provisions of section 11 of the Income-tax Act 1961

We submit that Trust is eligible for the benefit available u/s 11 and 12 of the Income tax act, 1961 as on fresh application dated 20.08.2015 registration was granted to the trust on 19-07-2018 w.e.f. 01-04-2015 and the object and activities of the trust remains the same for AY 2007-08

We also refer to the case of TILLA BABA FARID RELIGIOUS & CHARITABLE SOCIETY vs. INCOME TAX OFFICER whereby Hon'ble Amritsar Tribunal held that;

With regard to the legal issue, we, again, find the assessee's claim acceptable. No doubt registration is a condition precedent for sections 11 and 12 to apply (refer section 12A(1); UP Forest Corporation & Ors. v. CIT [2008] 297 ITR 1 (SC)). However, even where granted subsequent to the assessment, as in the present case, an assessee cannot, given the scheme of the Act, be denied the benefit of sections 11 and 12.

In view of the above submission, we request you set aside the order of AO."

12. The Id. AR of the assessee also submitted that since the assessee had applied u/s. 12AA of the act on 01/04/1973 and since then the assessee is regularly filling the ITR. The assessee trust has filed the fresh application on 20.08.2015 for registration u/s. 12A of the Act. The said

application based on the direction of the ITAT was ultimately granted to the assessee w.e.f. 01.04.2015. The assessment of 2007-08 was completed on 20.03.2015 stating that the assessee does not have any 12A registration. The object of the trust has not been changed and there is no such observation in the year under consideration. Since, the assessee is registered u/s. 12A the benefit should be given for the past year also. In support of this contention the Id. AR of the assessee relied upon explanatory notes to the provisions of section 12AA introduced by the Finance Act,(No.2) Act, 2014 where in the intention of the subsequent registration was given benefit to the assessee.

13. Per contra, the Id. DR representing the revenue categorically submitted that the assessee was given sufficient time to submit the registration details as claimed but the assessee miserably failed to support the requirement of registration before the Id. AO and the Id. CIT(A) and therefore, Id. CIT(A) has rightly rejected the claim of the assessee and thus, the assessee do not deserve any relief.

14. We have heard the rival contentions and perused the material placed on record. The bench noted that in case of the assessee revenue was

having the information that the assessee trust deposited cash in saving bank account amounting to Rs. 14,29,922/-. To verify these transactions proceeding u/s. 147 of the Act was initiated by issuance of notice u/s. 148 of the Act dated 21.03.2014. The assessee participated in the proceeding and filed the required details, except the registration of the trust u/s. 12A of the Act. The assessee has claimed the benefit of exemption u/s. 11(1)(a) of the Act but in the absence of the registration u/s. 12A of the Act the exemption claimed was denied to the assessee contending that to claim the provision of section 11 & 12 of the Act registration u/s. 12A was condition precedent. Therefore, the assessee denied the benefit of exemption and the income was computed at Rs. 21,44,470/- as against the returned income of Rs. 1,70,142/-. Aggrieved by that order of the assessment the assessee filed an appeal before the Id. CIT(A) who also noted that since the assessee had not submitted a copy of registration u/s 12 A of the I.T. Act 1961 even at the hearing of the appeal. He confirmed the finding of the Id. A.O. As the assessee was denied the benefit merely on that ground the present appeal is filed. The bench noted that during the hearing of the appeal the Id. AR of the assessee submitted the assessee had applied u/s. 12AA of the act on 01/04/1973 but they could not trace that registration certificate being old. Since then the assessee regularly filling

the return and claiming the benefit. The assessee filed a fresh application on 20.08.2015 for registration u/s. 12A of the Act. The said application first was rejected but in an appeal before the ITAT direction was given and ultimately the assessee hold registration w.e.f. 01.04.2015.

15. On being asked the applicability of that registration certificate in an assessment completed on 20.03.2015. The Id. AR of the assessee submitted that there is no change in the object of the trust and as such there is no such observation in the year under consideration i.e. A. Y. 2007-08. The benefit of the registration should be given for the past year also. To drive home to the contention the Id. AR of the assessee relied upon explanatory notes to the provisions of section 12AA introduced by the Finance Act,(No.2) Act, 2014 contained in the circular of CBDT no. 01/2015 and the extract of that explanatory note is reproduce here in below:

“8. Applicability of the registration granted to a trust or institution to earlier years

8.1 The provisions of section 12A of the Income-tax Act, before amendment by the Act, provided that a trust or an institution can claim exemption under sections 11 and 12 only after registration under section 12AA of the said Act has been granted. In case of trusts or institutions which apply for registration after 1st June, 2007, the registration shall be effective only prospectively.

8.2 Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organisations. Due to absence of registration, tax liability is fastened even though they may otherwise be eligible for

exemption and fulfil other substantive conditions. However, the power of condonation of delay in seeking registration was not available.

8.3 In order to provide relief to such trusts and remove hardship in genuine cases, section 12A of the Income-tax Act has been amended to provide that in a case where a trust or institution has been granted registration under section 12AA of the Income-tax Act, the benefit of sections 11 and 12 of the said Act shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

8.4 Further, it has been provided that no action for reopening of an assessment under section 147 of the Income-tax Act shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under section 12AA for the said assessment year.

8.5 However, the above benefits would not be available in the case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA of the Income-tax Act or a registration once granted was cancelled.”

As it is evident that considering the hardship in genuine cases the benefit has been granted by amending the law. The board also went into the observation that no action for re-opening of an assessment u/s. 147 of the Act be taken up because such trust or institution has not obtained the registration earlier. We also get strength to our view from the decision of the co-ordinate bench in the case of Ramkrishan Samity Vs. DCIT in ITA no. 1680 to 1685/Kolkata/2012 and ITA no. 358/Chny/2018. Based on these

observations the Id. AO is directed to treat this assessee trust as having registered even for the year under consideration and the consequential benefit be thus given.

In terms of these observations, the appeal of the assessee in ITA no. 334/JP/2024 is allowed.

16. The facts of the case in ITA Nos. 335 to 337-JP-2024 are similar to the case in ITA No. 334-JP-2024 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 334/JP/2024 are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 334/JP/2024 for the Assessment Year 2007-08 shall apply mutatis mutandis in the case of Digamber Jain Mandir Shri Neminath Ji Sanwalaji in ITA No. 335 to 337/JP/2024 for the Assessment Years 2008-09, 2014-15 & 2015-16.

In the result, all appeals of the assessee are allowed.

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

Sd/-

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

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Digamber Jain Mandir Shri Neminath Ji Sanwalaji, Amer
2. प्रत्यर्थी / The Respondent- Income Tax Officer (Exemption), Ward-01, 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 Nos. 334 to 337/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar