

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 229/JPR/2024

Shital Goushala Samiti Mandrella, Jhunjhunu, Jhunjhunu.	बनाम Vs.	The ITO, Ward-1, Jhunjhunu.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAKTS4784P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Rajat Choudhary, Proxy for AR.
राजस्व की ओरसे / Revenue by: Shri Ajey Malik, (CIT)

सुनवाई की तारीख / Date of Hearing : 10/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 15/07/2024

आदेश / ORDER

PER: NARINDER KUMAR, Judicial Member

By way present appeal, assessee has challenged order dated 16.02.2023 passed by Learned CIT(E), Jaipur.

Vide impugned order, Learned CIT(E) has rejected the application filed by the appellant-Samiti u/s 12AB of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on the following three grounds:-

- Incomplete from 10AB.
- Non registration with RPT Act, 1959.

- Genuineness of Activities.

2. Impugned order is dated 16.2.2023. Appeal came to be presented on 29.02.2024 i.e. after 318 days, of the prescribed period for filing of the appeal.

Record reveals that despite deficiency note by the Registry that the appeal was barred by limitation, no application seeking condonation of delay was filed.

Only on 09.07.2024, an application seeking condonation of delay in filing the appeal came to be presented. It is accompanied by affidavit of Mahesh Kumar, President of the appellant-applicant Samiti.

3. In the application, it has been alleged that new provisions of law having come into force with effect from 01.04.2021, there was a doubt as to whether the applicant Samiti should file fresh application u/s 12A of the Act, before Learned CIT(E) or should file an appeal before this Appellate Tribunal; that it was only after the appellant had consultations and the advice given for filing of appeal instead of filing fresh application, that present appeal came to be presented.

4. On behalf of the applicant, reference has been made to supporting affidavit of the President of the Samiti to urge that delay in filing of the appeal may be condoned.

5. Learned DR for the department has submitted that there being delay of 318 days, appellant-applicant must be burdened with costs, for the delay on its part in not filing the appeal within the prescribed period of limitation.

6. As noticed above, in the application seeking condonation of delay, it has been alleged that after rejection of the application u/s 12A of the Act, it was not clear as to whether the applicant should prefer an appeal against the impugned order or file fresh application 12A of the Act, and that it was only after the new consultant of the society advised for filing of appeal, that the same was prepared and filed appeal.

7. The impugned order was passed on 16.02.2023. As the record reveals, Shri R.S. Poonia, CA was given Power Attorney on 28.02.2024 for the purpose of filing of this appeal.

Nowhere in the application or in the affidavit of the President of the applicant Samiti, it has been alleged/testified as to on which the date, its previous consultant was contacted and he advised to await instructions in connection with fresh application U/s 12A of the Act.

No affidavit of the previous consultant has been filed to support the aforesaid averment.

Even if the previous consultant had so advised, the competent authority of the Samiti should have been diligent in contacting him to resort

to appropriate remedy after rejection of the application u/s 12A of the Act..

But, it appears that this is a case where person responsible for taking further steps on behalf of the Samiti, after passing of the impugned order, was not diligent enough. It was only on 28.02.2024 that Shri R.S. Poonia, C.A. was given Power of Attorney.

8. In the given facts and circumstances and in view of the above discussion, and that the applicant is a trust seeking registration as required by the law, we deem it a fit case to allow the application seeking condonation of delay. We allow the prayer seeking condonation of delay, with costs of Rs. 1000/-. Costs to be deposited in "Prime Minister Relief Fund".

9. When heard on merits today itself, as required, as per impugned order, Learned CIT(E) found that the application in Form 10AB was incomplete as three documents mentioned in the impugned order, were not furnished by the applicant Samiti.

The impugned order reveals that notice dated 29.12.2022 was issued to the applicant calling upon to furnish documents by 13.01.2023. But, no compliance with the said notice was made by the applicant. Thereupon, a notice dated 19.01.2023 was issued, but, again the applicant did not comply with the same.

Ultimately, another notice, by way of final opportunity, was issued calling upon the applicant Samiti to furnish requisite documents by 09.02.2023, but, there was no compliance by the applicant samiti.

As is available from the impugned order vide notice dated 29.12.2022, documents were requisitioned to be submitted by 13.01.2023. Vide notice dated 19.01.2023, documents were required to be submitted on the same date.

By way of last notice dated 02.02.2023, the documents were required to be submitted by 09.02.2023. This goes to show that reasonable time was not provided to the applicant Samiti to submit requisite documents/response.

10. As regards second ground for rejection of the application that the applicant Samiti was not registered under Rajasthan Public Trust Act, 1959, Ld. AR for the appellant submits that proper application seeking registration of the applicant Samiti under RPT Act is pending consideration of the competent authority and that the applicant shall submit the requisite certificate of registration before Learned CIT(E), but, he further prays that the matter be remanded to Learned CIT(E) for decision on the application afresh.

11. For the very reasons recorded, while dealing with the first ground of rejection of the application u/s 12AB of the Act, even as regards second ground reasonable opportunity of being heard also deserves to be granted to the applicant Samiti.

12. Third ground for rejection of the application u/s 12AB of the Act was that the applicant failed to furnish requisite documents despite 3 opportunities, and as such, it could not be determined as to whether the appellant was genuinely carrying out any charitable activity, as per its objects.

13. As discussed above, reasonable opportunity of being heard was not provided to the applicant Samiti before rejecting the application u/s 12AB of the Act. Therefore, applicant Samiti deserves reasonable opportunity to produce the requisite documents before Learned CIT(E).

Result

14. For the foregoing discussion and the findings recorded above, this appeal is disposed off, and while setting aside the impugned order, the matter is hereby remanded to Learned CIT(E) with the direction to dispose of the application u/s 12AB of the Act, in accordance with law, after providing reasonable opportunity to the appellant-applicant, of being heard.

Applicant-appellant to produce before Learned CIT(E), receipt in proof of deposit of costs of Rs.1,000/-. On production of said receipt, Learned CIT(E) to commence proceedings.

Order pronounced in the open court on 15/07/2024.

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

Sd/-
(नरेन्द्रकुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/07/2024

*Santosh

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

1. The Appellant- Shital Goushala Samiti, Jhunjhunu..
2. प्रत्यर्थी / The Respondent- ITO, Ward-1 Jhunjhunu.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 229/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar