

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A-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. 780/JPR/2024

Parasmal Jain Bilaspuriya (Barjatya) Parmarthik Charitable Trust (Nyas) Ahiron Ka Mohalla Purani Tonk, Tonk.	बनाम Vs.	CIT(Exemption), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAETP5515B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Anoop Bhatia, C.A.
राजस्व की ओरसे / Revenue by : Shri Anil Kumar Bhardwaj-DR (V.C.)

सुनवाई की तारीख / Date of Hearing : 22/07/2024
उदघोषणा की तारीख / Date of Pronouncement : 22/07/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

Appellant trust applied to Learned CIT(E), Jaipur on 30.09.2023 by filing an application in Form No. 10AB, for approval u/s 80G of the Income Tax Act, 1961(hereinafter referred to as "the Act").

Vide impugned order dated 28.03.2024, Learned CIT(E) rejected said application on the following two grounds:-

- Commencement of activities.
- Religious trust are not eligible u/s 80G(5(iii)).

At the same time, it was clarified in the impugned order that the provisional approval dated 02.10.2021 under clause (iv) of first proviso to sub-section (5) of Section 80G of the Act was also being cancelled thereby.

2. That is why, the appellant is before this Appellate Tribunal, by way of this appeal.

3. Arguments heard. File perused.

4. As noticed above, the first ground for rejection of approval u/s 80G of the Act is that the applicant accepted to have been begun its activities from 05.11.2020, whereas the application in Form No. 10AB came to be filed beyond the prescribed period of six months, and as such, said application was not maintainable.

Therefore, the first ground for rejection of the application actually was that the same was filed beyond the prescribed period of limitation, and not the ground of non-commencement of activities by the trust-applicant.

5. In the course of arguments, on behalf of the appellant, it has not been disputed that the appellant trust began its activities from 05.11.2020 itself.

It is true that time limit has been prescribed under sub-section (5) of Section 80G of the Act for filing of such like application. Learned CIT(E) observed in the impugned order that CBDT never extended the time limit for filing of application under clause (iii) of first proviso to Section 80G of the Act.

6. At this stage, it is pertinent to mention that the time limit for filing of application under clause (iii) of first proviso to section 80G of the Act came to be extended upto 30.6.2024, vide circular No.7, dated 25.4.2024 issued by CBDT. It is true that the application rejected vide impugned order came to be rejected on 28.3.2024 i.e. before the issuance of abovesaid circular.

Learned AR for the applicant has submitted that already a fresh application under section 80G, in Form No.10AB has been presented before CIT(E).

As noticed above, vide impugned order the application was rejected on merits i.e. on the ground that religious trusts are not eligible under section 80G(5)(iii) of the Act. But, as we are going to discuss hereinafter, reasonable opportunity of being heard was not granted to the applicant before disposal of the application, and the matter needs to be remanded. Therefore, having regard to the extension of period by CBDT vide circular No.7 dated 25.4.2024, we deem it a fit case where the application rejected deserves to be restored to its original number for fresh decision by learned CIT(E), so far as the second ground is concerned.

7. The second ground for rejection of the application of the appellant trust, as per impugned order, is that religious trusts are not eligible u/s 80G(5)(iii) of the Act and the applicant being a religious trust does not fall

within scope of section 80G of the Act. In this regard, Learned CIT(E) has referred to the objects of the applicant trust as available in the original trust deed dated 05.11.2020 and the amendments dated 29.1.2024 made in the constitution of the Trust.

8. Ld. AR for the applicant has submitted that the applicant was not provided reasonable opportunity to explain its objects and that in case one more opportunity is provided to the applicant, the applicant would take steps to satisfy Learned CIT(E) that actually the applicant is not a religious trust. Therefore, he has urged that matter may be remanded to learned CIT(E) for decision afresh.

9. As per observations made in para 3.7 of the impugned order, show cause notice dated 11.03.2024 was issued to the applicant to furnish explanation, particularly, as regards the objects mentioned at Serial No. 1 and 2 of the amended *Vidhan* dated 29.01.2024, which revealed that the said objects were religious.

As further observed in the impugned order, the applicant did not respond to the show cause notice as regards the activities which appeared to be religious in nature. Accordingly, he concluded that the applicant is actually a religious trust falling beyond the scope of section 80G of the Act.

10. Impugned order is dated 28.03.2024. Show cause notice was issued to the applicant on 11.3.2024. Having regard to this short time between the date of issuance of the notice and the date of hearing, we find that had a reasonable opportunity been granted to the applicant of being heard, it might have been able to respond and explain its activities/objects particularly mentioned at Serial No. 1 and 2 of the amended *Vidhan* dated 29.01.2024.

Ld. AR for the appellant has submitted that applicant trust has already been registered under section 12AB of the Act; that in that application nature of the activities of the applicant trust was specifically mentioned as “charitable activity” and there was no objection from the department like the one raised while passing the impugned order, and as such, the impugned order rejecting approval under section 80G deserves to be set aside.

Learned AR has placed on record copy of application for registration submitted in Form No. 10AB i.e. under section 12 AB of the Act, where in column 3, nature of the activities have been described as “charitable”.

In the course of arguments, Ld. DR for the Department has not disputed the factum of registration of the applicant-trust u/s 12AB of the Act, but, added that essential ingredients for grant of registration u/s 12AB of the Act are different from the essentials for approval u/s 80G of the Act, and as

such, fact of registration u/s 12AB of the Act of the applicant does not come to the aid of the applicant while challenging the impugned order.

11. As per section 12AB of the Act, on an application under clause (ac) sub-section 12A of the Act, Principal of Commissioner or Commissioner is empowered to pass an order registering the trust or institution for a period of 5 years after specifying about genuineness of activities of the trust or institution.

Section 80G(5)(iii) of the Act provides that the institution or fund established in India, should be for a charitable purpose and the institution or fund is not expressed to be for the benefit of any particular religious community or caste.

It is true that as per Explanation 3 to section 80G, “charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.

To explain the objects of the trust or to explain that the same are charitable purposes and do not include any purpose the whole or substantially the whole of which is of a religious nature, the applicant trust deserved reasonable opportunity of being heard. But, as noticed above, reasonable opportunity cannot be said to have been granted to the applicant trust before the application came to be rejected by Learned CIT(E).

Conclusion

12. Since reasonable opportunity of being heard was not granted to the appellant-trust to respond to the show cause notice dated 11.03.2024, we find that this is a fit case for remand of the matter to Learned CIT(E) for decision afresh after providing reasonable opportunity of being heard to the applicant.

Result

13. For the abovesaid reasons and in view of the above discussion, this appeal is disposed off for statistical purposes, and the matter is remanded to Learned CIT(E) for decision of the application u/s 80G(5)(ii) of the Act afresh, in accordance with law, after affording reasonable opportunity of being heard to the applicant.

Order pronounced in the open court on 22/07/2024.

Sd/-

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/07/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Parasmal Jain Bilaspuriya (Barjatya) Parmarthik Charitable Trust (Nyas), Tonk.
2. प्रत्यर्था / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

(नरेन्द्र कुमार)

(NARINDER KUMAR)

न्यायिक सदस्य / Judicial Member

5. गार्ड फाईल / Guard File ITA No. 780/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar