

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, AM

आयकर अपील सं./ITA Nos. 499 & 500/JPR/2024

Suraj Charitable Trust 211, 2 nd Floor, Kailash Tower, Durgapura, Jaipur.	बनाम Vs.	The CIT-Exemption, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:ABATS 8885 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Dinesh Kumar (Adv.)
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 25/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 19/07/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are two appeals filed by the assessee against two different orders of the Learned Commissioner of Income Tax (Exemption), Jaipur [herein after referred to as "Ld.CIT(E)] both dated 16.02.2024 passed under section 12AB and 80G of the Income Tax Act, 1961 respectively.

2.1 In ITA No. 499/JPR/2024 the assessee has raised following grounds: -

"1. That on the facts and circumstances of the case, the Learned CIT (Exemption) Jaipur grossly erred in passing the ex-parte order rejecting the application filed in Form 10AB for seeking registration under Section 12AB of

the Act without providing sufficient opportunity of being heard and thus order is bad in law and illegal.

2. That on the facts and circumstances of the case, the Learned CIT Exemption Jaipur grossly erred in rejecting application seeking registration under Section 12AB of the Act as such rejection of the same is bad in law and illegal.

3. That on the facts and circumstances of the case, the Learned CIT (Exemption) Jaipur grossly erred in not considering the documents submitted along with application of provisional registration filed in Form No 10A, on the basis of which the authority could have verified the genuineness of the activities carried out by the trust.

4. That on the facts and circumstances of the case, the Learned CIT (Exemption) Jaipur grossly erred in rejecting provisional registration without issuing any show case notice and thus order is bad in law and illegal.

5. That the appellant craves leave to add, amend or alter all or any of grounds of appeal and relief claimed before or at the time of hearing.

2.2 In ITA No. 500/JPR/2024 the assessee has raised following grounds: -

“1. That on the facts and circumstances of the case, the Learned CIT (Exemption) Jaipur grossly erred in passing the ex-parte order rejecting the application filed in Form 10AB for seeking approval under Section 80G(5) (iii) of the Act without providing sufficient opportunity of being heard and thus order is bad in law and illegal.

2. That on the facts and circumstances of the case, the Learned CIT (Exemption) Jaipur grossly erred in rejecting application under Section 80G(5)(iii) of the Act as such rejection of the same is bad in law and illegal.

2.1 That on the facts and circumstances of the case, the Learned CIT (Exemption) grossly erred in rejecting application under Section 80G(5)(iii) of the Act as non-maintainable and as such rejection of the same is bad in law and illegal.

3. That the appellant craves leave to add, amend or alter all or any of grounds of appeal and relief claimed before or at the time of hearing.”

3. The applicant filed online application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 on 30.09.2023. A letter/notice No. ITBA/EXM/F/EXM43/2023-24/1058878497(1) dated 19.12.2023 was issued at the e-mail/address provided in the application requiring the assessee to submit certain documents/explanations by 29.12.2023, but no compliance has been made by the assessee. Thereafter, a reminder letter was issued vide letter DIN & Notice No. ITBA/EXM/F/EXM43/2023-24/1059689554(1) dated 13.01.2023 wherein date of hearing was fixed as 22.01.2024, but again no compliance has been made the assessee. Further, again one more opportunity was also provided to the assessee vide letter DIN & Notice No. ITBA/EXM/F/EXM43/2023-24/1059688299(1) dated 13.01.2024 to submit complete details/information by 22.01.2024. This time also on given date, the assessee had not produced any details/documents. Since it was a limitation matter, therefore, the case was decided on the basis of material filed by the assessee along with its application in Form no. 10AB by the ld. CIT(E).

4. Apropos to the grounds so raised by the assessee in ITA No. 499/JPR/2024, the ld. CIT(E) rejected the assessee's claim of registration 12AB of the Act by observing as under:-

“However, the applicant has failed to comply with the letters, despite being given three opportunities details of which given in para-1. All the above details were sought in order to determine the actual working of the institution. The applicant didn't furnish the sought details. The applicant has not furnished the details along with bill/ vouchers of expenses debited in income and expenditure account for the last three financial years. Further, the assessee was also not submitting the details of bank account for the F.Y. 2021-22 & 2022-23 to till date. The above details were sought from the applicant to determine the actual purpose/nature of expenditures made and to determine whether the impugned charitable activity had actually been done by the trust or not. Such type of verification is necessary to keep a check and balance on the actual working of the trust. Since, the applicant didn't furnish sought details, in the absence of such documents/details, the justification of impugned activity could not be derived and it is not known whether the applicant is genuinely carrying out charitable activity as per its objects. Hence, the applicant has failed to justify the genuineness of activities and thus falls out of the scope of registration u/s 12AB of the Act.

05. In view of above discussion assessee's claim of registration section 12AB is liable to be rejected and thus being rejected on following grounds: -

- Incomplete Form 10AB.

- Rajasthan Public Trust Act, 1959.
- Genuineness of Activities.

06. Further 12AB (1)(b)(ii) (B) of the Income Tax Act, 1961 also state that if CIT is not satisfied has to pass order rejecting such application and also cancelling its earlier registration. Thus, it is clarified that applicant's provisional registration under clause (vi) of clause (ac) of sub-section (1) of section 12A of the Income Tax Act, 1961 dated 10.03.2022 is also being cancelled. Further assessee has failed to give proper justification for regularisation of provisional registration, thus with this order provisional registration is also lapsed and cancelled.”

5. Apropos to the ground so raised by the assessee in ITA No. 500/JPR/2024, the Id. CIT(E) rejected the assessee's claim of exemption u/s 80G of the Act by observing as under:-

“3.6. In view of the above, the present application filed in Form No. 10AB under clause (iii) of first proviso to sub-section (5) of sec. 80G of the Act is liable to be rejected as non-maintainable.

04. In view of above discussion assessee's claim of approval u/s 80G is liable to be rejected and thus being rejected on following grounds: -

- Approval u/s 80G cannot be granted without registration u/s 12AB.
- Commencement of activities.

05. Further 2nd proviso to 80G(5) also state that if CIT is not satisfied has to pass order rejecting such application and also cancelling its earlier approval. Thus, it is clarified that applicant provisional approval under clause (iv) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 dated 12.03.2022 is also being cancelled. Further assessee has failed to give proper justification for regularisation of provisional approval, thus with this order provisional approval is also lapsed and cancelled.”

6. During the course of hearing, the Id. AR of the assessee in both the appeals mainly submitted that the assessee if given an opportunity will be able to clarify the queries/ issues raised / details to be submitted and thus in both the case the Id. AR of the assessee prayed that one more chance of presenting the case of the assessee be given.

7. In this appeal the Id. AR of the assessee submitted a detailed affidavit and the same is extracted here in below:

AFFIDAVIT

I, Latika Sajnani D/O Vijay Kumar Sajnani aged about 38 Years, Resident of C5D/113A, Janakpuri, Delhi – 110058, solemnly affirm and declare on oath as under:

1. That I am Managing Trustee of Suraj Charitable Trust bearing PAN No ABATS8885N.
2. That we have filed an application in Form 10A seeking Provisional Registration under Section 12A(1)(ac)(vi) of the Act and order for provisional Registration was granted on 10.3.2022 vide Unique Registration No ABATS8885NE20212. At the time of filing application for Registration, e-mail id of our Chartered Accountants "GNK & Co" bearing gnklalsot25@gmail.com was mentioned in the application form.
3. That subsequently we had filed online application in form 10AB seeking permanent registration u/s 12AB of the Act on 30.9.2023. This

of Section 80G of the Act on 30.9.2023. This application was filed by our New Chartered Accountants Himanshu Jain & Co but inadvertently the previously reported e-mail id "gnklaisot25@gmail.com" was captured in the Application form instead of active e-mail id "surajtrustjaipur@gmail.com".

4. That in the income tax portal also, e-mail id surajtrustjaipur@gmail.com is showing as an active and primary e-mail id.
5. That due to the above mistake, all the communications pertaining to our Application for permanent registration u/s 12AB of the Act were sent on wrong e-mail id gnklaisot25@gmail.com (e-mail id of previous Chartered Accountants) and in absence of communication of notices, we could not submit the required information to CIT (Exemptions) and our application was dismissed for non-compliance of the notices.
6. That regarding the registration under Rajasthan Public Trust Act, 1959, I submit that our Trust is already possessing registration No 78 dated 25.11.2021 from Devasthan Vibhag. Copy of Registration is enclosed herewith.

ATTESTED

For Suraj Charitable Trust

[Signature]
NOTARY
JAIPUR (RAJ) INDIA
Verification

Latika
Authorized Signatory

Deponent

I, Latika Sajnani, the Managing Trustee of the Trust do hereby declare on oath that what is stated above is true to the best of my information and belief.

ATTESTED

For Suraj Charitable Trust

[Signature]

Latika
Authorized Signatory

Deponent

8. Per contra, the Id. DR relied on the orders of the Id. CIT(E) and objected to the prayer of the Id. AR of the assessee.

9. We have heard the rival contentions and perused material available on record. We note that the Id. CIT(E) has rejected the application for permanent registration u/s 12AB of the Act on 16.02.2024. The Id. CIT(E) has issued three notices on 19.12.2023, 13.01.2024 and 22.01.2024 wherein the Id. CIT(E) has served notices in a short span and without giving sufficient opportunities to the assessee. The Id. CIT(E) rejected the application on the grounds that incomplete Form 10AB, Rajasthan Public Trust Act, 1959, Registration not furnished and genuineness of the activities not established. On perusing the record we observe that the appellant has filed an application in Form 10A seeking provisional registration u/s 12A(1)(ac)(vi) of the Act and provisional registration was granted on 10.03.2022. Subsequently, the assessee had filed online application in Form 10AB seeking permanent registration u/s 12AB of the Act on 30.09.2023 before Id. CIT(E), whereas the Id. CIT(E) has not passed order on merits of the case where the impugned order passed by Id. CIT(E) has stated that notices on different dates were issued to the assessee to submit certain documents and explanations where the assessee

has failed to comply with notices and did not produce any documents to decide the matter of the application made for registration. Before us, the Id. AR for the assessee has submitted an affidavit in support of his arguments that the reason for not appearing before the Id. CIT(E) is that at the time of filing registration in Form 10AB seeking provisional registration u/s 12A(1)(ac)(vi) of the Act where the e-mail id of Chartered Accountant “GNK & Co.” bearing gnklalsot25@gmail.com was mentioned in the application form.

9.1 Subsequently, the assessee has filed online application for 10AB registration u/s 12AB of the Act on 19.09.2023 and 80G on 13.09.2023, where the application was filed by assessee’s under Chartered Accountant Himanshu Jain & Co but inadvertently the previously reported e-mail id gnkalsot25@gmail.com” was captured in the application form instead of active e-mail id “surajtrustjaipur@gmail.com.

9.2 Further, the Id. AR for the assessee submitted the registration certificate under Rajasthan Public Trust Act, 1959 dated 25.11.2021 from Devsthan Vibhag.

9.3 Taking into consideration, the above facts and circumstances of the case, we note that the above mistake committed by the assessee old Chartered Accountant and new Chartered Accountant and all communications pertaining to the applications of permanent registration u/s 12AB of the Act were sent on wrong e-mail id gnklalsot25@gmail.com (e-mail id of previous Chartered Accountants) and in absence of communication of notices that remained non complied.

9.4 Further 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. From the order we have persuaded that the details required or incomplete were note on the activity of the trust was not submitted and as regards the registration of 80G the same was rejected as the assessee was not granted the registration u/s. 12AB. Thus, ongoing through afore said query we are of the considered view that the same are curable in nature and if the assessee be given a chance can submit the details and 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.

10. 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, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 19/07/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 19/07/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Suraj Charitable Trust, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT- Exemption ,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. 499 & 500/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar