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ITA NO. 561/JP/2024  
UTKARSH SANSTHA VS CIT (E), JAIPUR

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. 561 & 574/JP/2024  
Assessment Year: -

Utkarash Sanastha 22, Pushpanjali colony, Mahesh Nagar, Jaipur.	बनाम Vs.	The CIT, Exemption Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABAU6386K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Miss Priya Choudhary-Proxy  
राजस्व की ओरसे / Revenue by: Shri Anil Dhaka, CIT-DR

सुनवाई की तारीख / Date of Hearing: 01/07/2024  
उदघोषणा की तारीख / Date of Pronouncement: 29 /07/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, JM

These are two appeals filed by the assessee against two different orders of the Learned Commissioner of Income Tax (Exemption), Jaipur [hereinafter referred to as "CIT(E)"] both dated 29.03.2024 passed in the matter of section 12AB and 80G of the Income Tax Act, 1961 respectively. The Grounds of appeal raised by the assessee in respective appeals are as under:-

“1. Under the facts and circumstances, order passed by Ld. CIT, Exemption under section 12AB of the I.T. Act bad in law being non speaking, ignoring without considering the submission and against the principle of natural justice. The assessee submitted a reply, including the agreement or sanction letter regarding the receipt of CSR fund on March 28, 2024, through the e-filing portal of Income Tax with Ack No. 158024491280324. The allocation of funds from corporate social responsibility (CSR) initiatives to support charitable under the project Early Childhood Education Program for Children with Disabilities (Divyang), which is supported by Aavas Financers Ltd amounting to Rs. 4.00 Lac and a VAN sanctioned by the Raj COMP info Service Ltd for conveyance facility for divyang children. However, the Ld. CIT. (E), ignored the reply and without considering the submission and against the principle of natural justice.

2. The assessee submitted a reply, including the agreement or sanction letter regarding the receipt of CSR fund, along with Form No. 26AS regarding TDS, on March 28, 2024, through e-filing portal of Income Tax with Acknowledgement Number: 158024491280324. The allocation of funds from corporate social responsibility (CSR) initiatives to support charitable under the project Early Childhood Education Program for Children with Disabilities (Divyang), which is supported by Aavas Financers Ltd amounting to Rs. 4.00 Lac. The Aavas Financers Ltd deducted tax at Source (**TDS**) **on the Corporate Social Responsibility (CSR) funds. However, the Learned Commissioner of Income Tax (CIT), Exemptions, Jaipur, ignored the reply and without considering the submission and against the principle of natural justice.**

3. The assessee submitted a reply, including the agreement or sanction letter regarding the receipt of CSR fund, along with Form No. 26AS regarding TDS, on March 28, 2024, through the e-filing portal of Income Tax with Acknowledgement Number: 158024491280324. The allocation of funds from corporate social responsibility (CSR) initiatives to support charitable nature. However, the Learned Commissioner of Income Tax (CIT), Exemptions, Jaipur, was ignore the reply and without considering the submission and against the principle of natural justice. The agreement or sanction letter regarding the receipts of CSR Fund are activity as per object of the society. When Ld. CIT ignore the agreement or sanction letter regarding the receipts of CSR Fund how it is possible to say activity as per object or not.

4. The assessee submitted a reply, with details of payment made to Uganta and Krishan Pal amounts were paid to trustees, who are covered u/s 13(3) of the IT Act, on 17/01/24 & 12/03/24 through the e- filing portal of IT with Ack. No.904359241170124 and

140616921120324 spectively. (a) Uganta, holding a qualification in B.Ed. provides her services as a special educator for disabled children. During the FY 2022-23, Uganta withdraw a salary and allowance Exp. Rs. 120,000, Additionally, she serves as the Project Coordinator in the Early Childhood Education Program for Children with Disabilities (Divyang), which is supported by Aavas Financers Ltd. as part of their CSR Fund. (b)The society has not made any payments to Krishan Pal for the reimbursement of expenses in the previous three years. Krishan Pal provides services as a caretaker in the project Early Childhood Education Program for Children with Disabilities (Divyang), which is supported by Aavas Financers Ltd. as part of their CSR Fund.

5. (c)Mrs. Uganta and Mr. Krishan Pal Choudhary render services to the society as outlined in the above mentioned paragraphs a) and b). Payments to both individuals are not considered as siphoning off funds from the institution to persons referred to under section 13(3). Additionally, such payments do not constitute a violation of section 13(1)(c) or a specified violation under clause (a) of the Explanation below section 12AB(4) of the Income Tax Act, 1961. It is emphasized that the payments made to Mrs. Uganta and Mr. Krishan Pal Choudhary are genuine, verifiable and in accordance with the services provided to the society. However, the Learned Commissioner of Income Tax (CIT), Exemptions, Jaipur, ignored the reply and without considering the submission and against the principle of natural justice.

6. The Ld. CIT (E) did not issue any notice through the e-filing portal of IT for the verification of these Books of Accounts. Despite this, the assessee uploaded some ledger accounts along with their response for verification. The Books of Accounts were made readily available for verification. Due to technical constraints, such as the inability to upload the Cash Book, Ledger, bills, vouchers, etc., onto the e-filing portal of IT, the assessee faced challenges. The Ld. CIT (E) scheduled a physical hearing for the dated 27/03/24, requesting specific information and books of accounts to be presented on 28/03/24. The Ld. CIT (E) was preoccupied with other tasks on 28/03/24. Consequently, the assessee submitted their response on the e-filing portal of IT in the evening. The failure of the CIT (E) to provide without considering the facts and without providing adequate opportunity of being heard to the assessee and disregard for the principles of natural justice is evident in this situation.

7. The assessee, registered under the Rajasthan Society Registration Act, 1958, was also duly registered under the Rajasthan Public Trust Act, 1959. Primarily focused on operating a special school for Divyang Children, the society extended its activities to provide support for Divyang children unable to attend school and to educate families on understanding the behaviour of Divyang individuals. Recognized as a charitable entity under section 2(15) of the Income Tax Act. 1961, the society meticulously maintained proper books of accounts and records. Furthermore, the society promptly responded to notices issued by the Ld. CIT,

Exemption. However, it is apparent in this instance that the Ld. CTT Exemption's failure to overlook, consider without due diligence, and provide adequate opportunity for the assessee to be heard, demonstrates a disregard for the principles of natural justice.

8 The Ld. CIT (E) communicated with the assessee and fixed a hearing on the 27/03/24. The assessee and their AR were present during the hearing. where they noted down queries raised and assessee submitted their reply on the 28/03/24. It's worth noting that the above-mentioned notice was issued without compliance with CBDT Circular No. 19/2019 dated 14th August, 2019, which pertains to the issuance of DIN. In the Matter of M/s VSK Infra projects v. DCIT 374 ITR 18 (Del) dated 28.01.2022 the Court held that the absence of a DIN in an income tax notice means that the notice cannot be tracked and that there is no way to ensure that it is authenticity. The order passed by Ld. CIT (E) regarding the genuineness of activities is solely based on the hearing held on the 27/03/24. It is important to note that the notice issued did not contain a DIN issued by Ld. CIT (E) rendering the notice is invalid. Therefore, the grounds for rejection mentioned in the order u/s 12AB of the IT Act, are not valid

9. The assessee submitted a reply, with provisional Income & Expenditure Account for the period 01/04/2023 to 31/12/2023 on March 28, 2024, through the e-filing portal of Income Tax with Acknowledgement Number: 158024491280324. As per the Income & Expenditure Account activity is fully charitable and verifiable. The submission was intended to provide a comprehensive overview of the charitable activities However, the Ld. CIT. (E), was ignore the reply and without considering the submission and against the principle of natural justice. When Ld. CTT ignore the provisional Income & Expenditure Account for the period 01/04/2023 to 31/12/2023, how it is possible to say activity as per genuineness or not. It undermines the opportunity to assess the genuineness of the activity.

10. That the appellant craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing. The Paper Book will be filed at the tune of the hearing.”

#### ITA No. 574/JP/2024

“1. Under the facts and circumstances, order passed by Ld. CIT, Exemption, Jaipur under section 80G of the Income-tax Act bad in law being non speaking, without considering the submission and against the principle of natural justice.

2. The Honorable Supreme Court of India was decided in the matter of M/S New Noble Educational Society Versus The Chief Commissioner Of Income Tax 1 And Anr. On dated 19, October, 2022 as" It is held that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc." In

the Compliance of the above mentioned order the Society was applied for registration as "Trust" under the RPT Act, 1959 on dated 19/01/23. Thereafter society was filed application for withdraw form No. 10AB due to society does not have registration certificate as "Trust" to the CIT (E) on dated 02/03/23. The society was done all compliance regarding trust registration with AC (Pratham) Devsthan Vibhag Jaipur. The society was received registration as "Trust" on dated 27/09/23 in compliance of guidelines issued by the SCI. The society was re-apply for permanent registration under section 80G(5)(iii) of the IT Act, 1961 on dated 30/09/23.

3. The Society submitted its application for renewal before the expiration of the provisional registration certificate issued u/s 80G(5)(iii), six months prior to its expiry. The society filed Form 10AB after a delay from the commencement of activities. The Ld. CIT(E) granted permission despite the withdrawal application by the assessee as "In the light of the above facts and applicant's request to withdraw the aforementioned application for approval under clause (iii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961, the applicant's application for approval under clause (iii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 is rejected as 'in limine'. However, the approval granted to the institution, if any, in Form No. 10AC will continue to exist till the expiry of the time period mentioned thereon unless cancelled separately as per law. Hence, the application of the applicant trust/institution is rejected as withdrawn."

4. Go Gram Eco Foundation V/s Commissioner of Income-tax (Exemption), Jaipur ITA. No. 504/JP/2023 on dated 28/11/2023 was decided as "----The assessee has all the reasons for recognition. under section 80G of the Act at least from the date the assessee filed an application and therefore, in the light of this facts and circumstances of the case we direct the Id. CIT(A) to decide the issue of registration under section 80G of the Act, 1961 in accordance with law from the date on which the assessee made an application for permanent registration." According to Circular No. 7/2024 issued by the CBDT, dated 25/04/2024, in the case of an application under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, till 30.06.2024 in Form No. 10A and 10AB. Based on the aforementioned circular, the commencement of activities and the delay in filing the application in Form 10AB earlier are to be taken into consideration.

5. Commencement of activities and delay filing of Form 10AB under section 80G(5)(iii) decided by The honorable High Court Of Judicature At Madras in the matter of Sri Nrisimha Priya Charitable Trust vs Central Board of Direct Taxes Prayer in W.P.No.27030 of 2023 Dated: 02.04.2024 decided as" 6.6. In the instant case, the differential treatment is not based on any substantial distinction that is real and pertinent to the object of the circular. The discrimination is artificial. The respondents are evasive and could not provide any rationale for such a classification. Accordingly, we hold that

the impugned clause (ii) of the Circular, dated 24.05.2023 is arbitrary and violative of Article 14 of the Constitution of India and accordingly, would be ultra vires the constitution .

6. Because we find that clause (ii) of the impugned circular is unconstitutional, we direct the first respondent to consider the applications of the petitioners as to the recognition/approval in respect of clause (i) of the first proviso to sub-section (5) of section 80G of the Act as within time and consider the same and pass orders thereon on merits as per law, 7. In the result, these Writ Petitions are allowed on the following terms:- (i) The clause 5(u) of Circular No.6 of 2023 bearing F.No.370133/06/2023-TPL, dated 24.05.2023 of the first respondent is declared as illegitimate, arbitrary, and ultra vires the Constitution of India, (ii) The respondents are directed to consider the applications submitted by the petitioners as to the recognition/approval in respect of clause (1) of the first proviso to sub-section (5) of section 80G of the Act as within time and consider the same and pass orders thereon on merits."

7. Therefore, owing to extenuating circumstances beyond our control, such as the registration of the Trust under the Rajasthan Public Trust Act, 1959, as mandated by the honorable Supreme Court of India in the case of New Noble Educational Society Versus The Chief Commissioner Of Income Tax-1 And Anr, dated October 19, 2022. Hon'ble Supreme Court of India in case of S. Nagaraj & Others Vs. State Of Karnataka & Another 4 SCC 595 was decided as "Procedural provision should be so construed as to sub serve the course of justice and not to hinder it. It is a settled proposition of law that technicalities should not come in way in imparting the substantial justice." Vivekananda Resham Khadi Gramodyog Sangha [2023] 155 taxmann.com 538 (Kolkata-Trib) decided as Certificate's duration is beyond assessee's control; Sec. 10(238) relief can't be denied due to technical violation.

8. The assessee has filed an appeal against the order passed by the Ld. Commissioner of Income Tax, Exemptions, Jaipur under section 12AH of the Income Tax Act, 1961 to the Honorable Income Tax Appellate Tribunal (ITAT), Jaipur. The appeal is presently pending before the Honorable Income Tax Appellate Tribunal (ITAT), Jaipur.

9. That the appellant craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing. The Paper Book will be filed at the time of the hearing."

2.1 As regards the appeal of the assessee relating to Section 12AB (ITA No.561/JP/2024), it is noted that Id.CIT(E) has rejected the application for

registration u/s 12AB of the Act on the ground of "Genuineness of Activities" with following narration.

"2.3. In response, the applicant attended and furnished reply on 12.03.2024 and which is considered but not found tenable. Vide note sheet dated 27.03.2024, the applicant was asked to furnish the following details:-

1. Details of exp. of Rs.5.6 lakh shown in F.Y. 2022-23.
2. IVE account, Balance Sheet for F.Y. 2023-24.
3. Produce all books of account, bank a/c, bank book, bills/ vouchers etc. for F.Y. 2022-23 & 2023-24.
4. All Donation list, CSR fund details, copy of MOU.
5. Details of all amount on which TDS is deduced, copy of MOU to prove that the same do not fall in business.

In response to the above, no further submission furnished by the applicant. Hence, it is clear that the activities of the applicant trust are not genuine and conclusion drawn from above is under-

- Assessee not submitted any details of receipts in form of CSR funds etc., in absence of those details as asked, whatever they are business receipts or charitable donation/grants could not be ascertained.
- Details of TDS not submitted, which also not make clear that these CSR receipts are business or otherwise.
- Further in absence of MOU for CSR receipts, it is also not clear that whether assessee has right to such receipts as per its deed or not. Thus, activity as per object are as per objects could not be ascertained.
- Huge salary shown as paid to Uganta & Krishan Pal Choudhary [persons covered u/s 13(3)] but not furnished details for which purpose, work done by

these persons etc. In absence of the same, such salary payments are treated as siphoning of money of the trust to the persons u/s 13(3) in grab of salary.

- The applicant has claimed that it has running school for differently abled children as but not furnished details of expenses like ledger a/c, bill vouchers, payment details of expenses. Thus, genuineness of such expenses & books of account remains unverifiable.
- Not furnish Income and expenditure account for the F.Y. 2023-24. Thus, genuineness of activities the trust not proved.

The assessee has already been provided multiple opportunities, but assessee failed to justify above issues. In view of above discussion, it could not be determined whether the applicant is genuinely carrying out charitable activity as per its objects. Therefore, the applicant's claim of registration u/s 12A of the Act is also liable to be rejected on ground of not proving its genuineness of activity. From the above discussion it is held that applicant's activities are non-genuine thus application for registration is liable to be rejected.

03. In view of above discussion applicant's application for registration u/s 12AB is liable to be rejected and thus being rejected on following-grounds:-

Genuineness of Activities.”

2.2 As regards the appeal of the assessee relating to Section 80G (ITA No.574/JP/2024), it is noted that Id.CIT(E) has rejected the application for exemption u/s 80G of the Act with following narration.

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

04. In view of above discussion, applicant's application for 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.’’

2.3 During the course of hearing, the ld AR of the assessee prayed that Utkarsh Sanstha is properly and genuinely doing charitable activities for Divyang children of the society. He submitted that the earlier ld. AR of the assessee submitted the reply before the ld. CIT(E) but the ld.CIT(E) noted in his order that the assessee did not submit all details that have been called for. The ld. AR of the assessee stated that all the observations noted are of the issue related to the accounts maintained by the assessee. As regards the payments made, trustee is covered u/s 13(3) of the Act which cannot be made basis to reject the registration of the Trust. However, at last the ld. AR of the assessee prayed that one more chance may be given to the assessee to resubmit the documents before the ld. CIT(E) and to dispel the doubts raised in his orders, if any, with a view to providing natural justice to the assessee otherwise all efforts made by the Sanstha's will jeopardize.

2.4 On the other hand, the ld.DR strongly supported the orders of the ld.CIT(E) and refuted the submissions advanced by the ld.AR while arguing the case before the Bench.

2.6 We have heard the rival contentions and perused material available on record. The Bench noted that ld. CIT(E) has rejected the applications of the assessee u/s 12AB and u/s 80G of the Act as narrated above in the respective orders. The Bench in view of prayer made by the ld. AR of the assessee hold the view that the issue raised as reasons to reject the registration are based on the accounts maintained by the assessee. Even the payment made to trustee covered u/s 13(3) of the Act cannot be reason to reject the registration of the assessee but all these issues be decided based on merits so that nobody's rights could be scuttled down without providing sufficient opportunity of being heard to the assessee. Hence, the matter is restored to the file of the ld. CIT(E) to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. The ld. AR of the assessee is directed to produce all the relevant papers concerning both the applications so filed before the ld. CIT(E) to settle the dispute raised hereinabove. Thus the appeals of the assessee are allowed for statistical purposes.

2.6 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 Id. CIT(E) independently in accordance with law.

3.0 In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 29/07/2024.

Sd/-

(राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 29/07/2024

\* Mishra

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

1. The Appellant- Utkarash Sanastha, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT-Exemption, Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 561& 574/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar