

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM,

आयकर अपील सं./ITA No. 697 & 698/JPR/2024

|  |             |                           |
|--|-------------|---------------------------|
| Aacharya Shri Hira laxmi Guru<br>Jain Gaushala Sansthan<br>Devliya Kala Via Chapaneri,<br>Ajmer. | बनाम<br>Vs. | CIT Exemption,<br>Jaipur. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAEEA4208R  |             |                           |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent   |

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 06/08/2024  
उदघोषणा की तारीख / Date of Pronouncement: 14/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The two appeals were filed by the assessee on 16.05.2024, both appeals are filed against the order of the Id. Commissioner of Income Tax, Exemption, Jaipur [ for short "CIT(E) ] dated 22.03.2024 thereby rejecting the registration of the assessee trust u/s. 12AB of the Income Tax Act [ for short "Act" ] and recognition u/s 80G of the Act.

2. Vide this common judgment, both the above-mentioned appeals are being disposed off, as they have been argued together with the consent of the parties.

3.1 In ITA No.697JPR/2024 the assessee has raised following grounds: -

“ 1. The Ld. CIT(E) has erred on facts and in law in rejecting the application filed by the assessee u/s 12A(1)(ac)(iii) in Form No. 10AB seeking registration u/s 12AB of the IT Act, 1961 on the ground that (i) assessee is not registered under Rajasthan Public Trust Act, 1959 and (ii) assessee has not proved the genuineness of its activities.

2. The Ld. CIT(E) has further erred on facts and in law in cancelling the provisions registration granted by CITn u/s 12A(1)(ac)(vi) of IT Act, 1961.

3. The appellant crave to alter, amend and modify any ground of appeal.

4. Necessary cost be awarded to the assessee.”

3.2 In ITANo.698/JPR/2024 the assessee has raised following grounds: -

*“1. The Ld. CIT(E) has erred on facts and in law in rejecting the application filed by the assessee in Form No. 10AB seeking approval under clause (iii) of first proviso to Section 80G(5) of IT Act, 1961 on the ground that (i) approval u/s 80G cannot be granted without registration 12AB and (ii) application filed is not within the time limit.*

*2. The Ld. CIT(E) has further erred on facts and in law in canceling the provisional approval granted by CIT under clause (iv) of first proviso to section 80G(5) of IT Act, 1961.*

3. The appellant crave to alter, amend and modify any ground of appeal.

4. Necessary cost be awarded to the assessee.”

4. First, we take up the appeals of the assessee in ITA no. 697/JPR/2024. The brief fact of the case are that the assessee filed online

application on 30.09.2023 in Form No. 10AB seeking registration u/s 12AB of the Act. A letter/notice dated 14.12.2023 was issued at the e-mail/address to submit certain documents/explanations by 26.12.2023, but no compliance has been made by the assessee. Thereafter, a reminder letter was issued to the assessee vide notice dated 26.12.2023 to submit complete details/information by 10.01.2024. In response to the above notice, the assessee submitted its reply vide letter dated 10.01.2024 which was thoroughly examined and placed on record & few discrepancies were found and Id. CIT(E) did not find the explanation of the assessee and thereby the registration u/s. 12AB was rejected by observing as under:-

“1. On Perusal of I/E accounts furnished by the applicant it is seen that applicant trust is in receipt of donations and Govt. anudan very year but the applicant has not furnished Govt Grant received in form of:-

- Ledger account.
- Copy of agreement.
- Grant anudan receipts.
- Details of all fund utilisation and out.

Also, the applicant has not furnished any agreement on the basis of which it received Govt. Anudan and purpose of such Anudan. In absence of these details, it cannot be determined whether applicant is applying its income in accordance with same objects for which they get Aid and whether receipts are commercial or business as fall under grant. The receipts are as per object of trust also could not be produced.

2. As per reply as well as gift deed of land, the applicant has received land through gift deed, which was registered by the Sub registrar, Pisagan on 22.06.2010 and also the applicant has running goshala from such gifted premises. The applicant has duly shown such land in Balance sheet for F.Y. 2020-21 & 2021-22. However, the applicant has not shown this property in Balance sheet for F.Y. 2022-23 and onwards by stating that same is not transferred in the name of society. By this way, the applicant has misrepresented

the facts of land as well as building. Therefore, it is concluded that the applicant has furnished wrong statement/ data and thus falls out of the scope of registration u/s 12A.

3. Vide reply dated 11.03.2024, the applicant has admitted that it has applied for registration under Rajasthan Gopalan Act. 1960. Thus, as on date, the applicant is not registered under Rajasthan Gopalan Act, 1960

4. The applicant has furnished ledger a/c and self-made vouchers of chara expenses not bills.

Hence from the above it is clear that the activities are not verifiable and it could not be determined whether the applicant is genuinely carrying out charitable activity. Therefore, the applicant claim of registration u/s 12AB is also liable to be rejected on ground of not proving its genuineness of activity.

04. 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: -

- Registration under Rajasthan Public Trust Act, 1959.
- Genuineness of activities.

05. 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 22.03.2022 is also being cancelled. Further assessee has failed to give proper justification for regularization of provisional registration, thus with this order provisional registration is also lapsed and cancelled.”

5. So far as the appeal in ITA No. 698/JPR/2024 we note that the said appeal is against the rejection of recognition of section 80G of the Act and same was also rejected on the ground that the assessee is not registered under u/s. 12AB of the Act and therefore, the assessee was not considered as eligible for registration and provisional approval granted was also considered as cancelled.

6. The Id. AR of the assessee in support of the various grounds so raised in ITA no. 697/JP/2024 has relied upon the written submission so filed and the contention raised in the written submission reads as under: -

“Facts:-

1. The assessee gaushala is registered under Rajasthan Societies Registration Act, 1958 on 31.05.2005 with the main object of protection of cows (PB 1-14). It was granted provisional registration u/s 12A(1)(ac) (vi) of the Act on 22.03.2022 for AY 2022-23 to 2024-25 (PB 15- 17) and also provisional approval u/s 80G(5) on 22.03.2022 from 22.03.2022 to AY 2024- 25.

2. The assessee moved an application in Form No.10AB seeking permanent registration u/s 12AB of the Act and permanent approval u/s 80G of the Act on 30.09.2023. The Ld. CIT(E) held that assessee is not registered under Rajasthan Public Trust Act, 1959 & the genuineness of activities are not verifiable and therefore the application for registration was rejected and the provisional registration granted to the assessee was also cancelled. Further the application for permanent approval u/s 80G was also rejected for the reason that the same cannot be granted without registration u/s 12AB & the 'application filed on 30.09.2023 is not maintainable since it was not filed within 6 months of the commencement of activities or before 30.09.2022 and the provisional approval granted to the assessee was also cancelled.

Submission:-

1. At the outset it is submitted that as per section 12AB of the Act, the CIT on receipt of the application made by the assessee u/s 12A(1)(ac) of the Act shall call for such document or information or make such enquiries as he thinks necessary to satisfy about the genuineness of the activities and the compliance of such requirement of any other law for the time being in force as are material for the purpose of achieving its objects.

2. The Ld. CIT(E) has observed that assessee is not registered under Rajasthan Public Trust Act, 1959 ignoring the fact that the applicable law to the assessee is Rajasthan Gaushala Act, 1960. Thus when specific Act is applicable on assessee, it is not required to get itself registered under Rajasthan Public Trust Act, 1959. The assessee has been regularly receiving the grant from Joint Commissioner Animal Husbandry Department, Ajmer (PB 46, 20 & 23) which itself shows that it is recognized under Rajasthan Gaushala Act, 1960. Therefore registration under Rajasthan Public Trust Act, 1959 cannot be insisted upon and

for that reason the registration refused by L.d. CIT(E) is neither justified nor as per law.

3. So far as the genuineness of activities is concerned, the L.d. CIT(E) at Para 3.2, Pg 8-10 of its order observed that assessee has not furnished government grant received in form of ledger account, copy of agreement, grant anudan receipt and details of utilization of fund and therefore, it cannot be determined whether it is applying its income in accordance with same objects for which grant is received. Further the land received on 22.06.2010 through gift shown in the Balance Sheet for FY 2020-21 & 2021-22 is not shown in the Balance Sheet for FY 2022-23 and thus has furnished wrong statement and data. Only self made vouchers of chara expenses has been furnished.

4. It is submitted that all the above observations made by Ld. CIT(E) are incorrect. Assessee has filed the detailed submission with necessary documentary evidence in support of genuineness of its activities vide letter dt. 26.02.2024 (PB 28-31). From the Income & Expenditure A/c it can be noted that during FY 2022-23 assessee received government grant of Rs.17.88 lacs (PB 20 & 32) and received grant of Rs.11.34 lacs in FY 2021-22. All grants are received by cheque. The sanction for government grant by Joint Commissioner Animal Husbandry Department, Ajmer dt. 14.12.2023 sanctioning grant of Rs.10.03 lacs was furnished (PB 46). All the cows for which grant is provided is verified by the Tehsildar (PB 50-51) and the details of cows with tag, color, age, etc. was furnished (PB 52-56). The application of grant and other receipt is verifiable from the Income & Expenditure A/c from which it can be noted that the major expenses are on animal fodder and salary to employees. The complete details of chara expenses for FY 2022-23 along with bills & vouchers was furnished (PB 36-45). So far as the observation of L.d. CIT(A) that the land received in gift is not shown in the Balance Sheet for FY 2022-23 is concerned, it may be noted that all the asset which is shown in the Balance Sheet as on 31.03.2022 (PB 22) are also shown in the Balance Sheet as on 31.03.2023 (PB 21). Therefore, the observation made by Ld. CTT(E) that it could not be determined whether the assessee is genuinely carrying out the charitable activity is incorrect.

5. The Ld. CTT(E) has denied approval u/s 80G(5) of the Act for the reason that the application filed is beyond the time. It is submitted that sub-el. (iii) of the first proviso to sec. 80G(5) provides that assessee shall make an application for grant of approval where it has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier. In the present case the assessee has already commenced its activities since it was incorporated on 31.05.2005. Words "or within six months of commencement of its activities, whichever is earlier" occurring in said sub-cl. (iii) are applicable to newly formed

trust/institution. For the existing trust/institution, the time-limit for applying for regular registration is within six months of expiry of provisional registration. The assessee has filed the application on 30.09.2023 whereas the provision registration is in force till 31.03.2024. Thus the application filed is in time. For this purpose reliance is placed on the following cases:-

BhamashahSundarlal Daga Charitable Trust Vs. CIT(E) (2024) 233 DTR 161 (Jodhpur) (Trib.)

Words, "within six months of commencement of its activities" in sub-cl. (iii) of proviso to sec. 80G(5) apply to those trusts/institutions which have not started charitable activities at the time of obtaining provisional registration and not for those trust/institutions which have already started charitable activities before obtaining provisional registration. Since the assessee trust had received provisional approval u/s 80G(5) for the period from 16th Aug.. 2022 to AY 2025-26, the application in Form No. 10AB filed by the assessee on 11th Jan.. 2023 was within the time allowed under the Act and hence maintainable.

T.B. Lulla Charitable Foundation Vs. CIT(E) (2024) 236 DTR 61 (Pune) (Trib.) As per sub-cl. (iii) of the proviso to sec. 80G(5), the institution which is granted provisional registration has to apply for regular registration at least six months prior to expiry of the provisional registration or within six months of commencement of activities, whichever is earlier. Words "or within six months of commencement of its activities, whichever is earlier" occurring in said sub-cl. (iii) are applicable to newly formed trust/institution. For the existing trust/institution, the time-limit for applying for regular registration is within six months of expiry of provisional registration if they are applying under sub-cl. (iii). This will be the harmonious interpretation. In this case, assessee received provisional approval under s. 80G(5) vide orders dt. 9th July, 2021 for the period from AYs 2021-22 to 2023-24 and dt. 22nd Sept., 2022 for the period from AYs 2023-24 to 2025-26. Hence, the application in Form No.10AB filed by the assessee on 8th April, 2023 is within the time-limit allowed under cl. (iii) of first proviso to sec. 80G(5). Even otherwise, the provisional approval is effective upto AY 2025-26 and the CIT(Exemptions) has not mentioned about any violation by the assessee. Therefore, the rejection is not sustainable. CIT(Exemptions) is directed to treat the application as filed within statutory time and verify assessee's eligibility for approval as per the Act.

6. Otherwise also, CBDT vide Circular No.7/2024 dt. 25.04.2024 has extended the time for filing the application for permanent approval till 30.06.2024 whereas in earlier Circular No.6/2023 dt. 24.05.2023 the time for filing application for permanent approval u/s 80G was not extended till 30.09.2023. Therefore, on harmonidus interpretation of both the circular, the application filed by the assessee on 30.09.2023 be considered as filed in time. The Hon'ble Madras High

Court in case of Sri Nrisimha Priya Charitable Trust Vs. CBDT &Anr. (2024) 8 NYPCTR 418/ 161 Taxmann.com 209 has held that the cl. (ii) of the Circular dt. 24th May, 2023 is arbitrary and violative of Art. 14 of the Constitution of India and accordingly, would be ultra vires the Constitution and therefore directed to consider the applications of the petitioners as to the recognition/approval u/s 80G(5). The head note of the decision reads as under:-

Deduction under s. 80G-Recognition of institution, etc. under s. 80G(5)-Validity of Circular No. 6 of 2023, dt. 24th May. 2023 regarding extension of time-On a combined reading of the earlier Circular No. 8 of 2022 and the impugned Circular No. 6 of 2023, it can be clear that the only reason which is shown for the exercise of the powers is that these trusts faced hardship since they could not apply on time-No reason whatsoever is mentioned to omit "the cl. (i) of the first proviso to sub-s. (5) of s. 80G" in respect of the new trusts applying under Form No. 10AB alone-Even though the new trusts as well as the existing trusts have no right to demand for extension of time as a matter of right, when the respondents have thought it fit to extend the time, considering the hardship, there is no material which is placed before this Court nor any reasoning is contained in the impugned order that the new trusts did not face the hardship in respect of filing of the application under s. 80G(5) alone-Therefore, leaving out the clause in respect of s. 80G(5) alone that too only in respect of the new trusts does not in any manner relate to the object sought to be achieved by the impugned circular nor does it provide any basis for the discrimination/classification-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- Discrimination is artificial-Respondents are evasive and could not provide any rationale for such a classification-Accordingly, the impugned cl. (ii) of the Circular, dt. 24th May, 2023 is arbitrary and violative of Art. 14 of the Constitution of India and accordingly, would be ultra vires the Constitution-First respondent is directed to consider the applications of the petitioners as to the recognition/approval under s. 80G(5).

7. It is further submitted that the Ld. CIT(E) has also cancelled the provisional registration by referring to section 12AB(1)(b)(ii)(B) and the provisional approval by referring to second proviso to section 80G(5). It may be noted that as per the above sections if the Commissioner is not satisfied, he can reject the application for permanent registration/approval and also cancelled its registration/approval. However, there is no provision which gives the power to the CIT(E) to cancel the provisional registration/approval from inception. At the most the registration/approval can be cancelled from the date of order rejecting the permanent registration/approval. Hence the order passed by CIT(E) cancelling the provisional registration and provisional approval from 22.03.2022 is illegal & bad in law.

In view of above, Ld. CIT(E) be directed to grant permanent registration u/s 12AB and permanent approval u/s 80G(5) of the Act.”

6.1 To support the various grounds so raised by the Id. AR of the assessee and has relied upon the following evidences in support of the contentions so raised:-

| S. No. | Particulars   | Pg No. |
|--------|---|--------|
| 1.     | Copy of registration certificate under Rajasthan Societies Registration Act, 1958   | 1      |
| 2.     | Copy of the constitution of society   | 2-14   |
| 3.     | Copy of Form 10AC dt.22.03.2022 for provisional registration u/s 12A(1)(ac)(vi) for A.Y. 2022-23 to A.Y. 2024-25            | 15-17  |
| 4.     | Copy of acknowledgement for reply filed on 10.01.2024 in response to notice dt.26.12.2023                                   | 18-19  |
| 5.     | Copy of Balance Sheet and Income & Expenditure A/c of Aacharya Shri Hira Laxmi Guru Jain Gaushala Sansthan for F.Y. 2022-23 | 20-21  |
| 6.     | Copy of Balance Sheet and Income & Expenditure A/c of Aacharya Shri Hira Laxmi Guru Jain Gaushala Sansthan for F.Y. 2021-22 | 22-23  |
| 7.     | Copy of notice dt.20.02.2024 for proceedings u/s 12A(1)(ac)(iii)  | 24-25  |
| 8.     | Copy of reply dt.26.02.2024 filed in response to notice dt.20.02.2024.  | 26-31  |
| 9.     | Copy of ledger account of Grants received from Government in the books of assessee  | 32     |
| 10.    | Copy of ledger account of Donations received in F.Y. 2022-23  | 33-35  |
| 11.    | Copy of ledger account of Chara (Animal Fodder) along with vouchers for F.Y. 2022-23  | 36-45  |
| 12.    | Copy of sanction order dt.14.12.2023 for grant by Joint Commissioner Animal Husbandry Department, Ajmer                     | 46-49  |
| 13.    | Copy of verification report dt.23.09.2023 by Tehsildar  | 50-51  |
| 14.    | Details of cows with tag no, colour, age, etc. as on 13.12.2023   | 52-56  |
| 15.    | Copy of gift deed of land   | 57-62  |
| 16.    | Copy of notice dt.14.12.2023 u/s 80G(5)(iii) of the Act   | 63     |
| 17.    | Copy of reply dt.10.01.2024 filed against the above notice  | 64-65  |

7. During hearing, the Id. AR of the assessee so far as in relation to one of reason for rejection of 12AB was that the assessee not registered under the Rajasthan Public Trust Act, 1959. On the hand the Id. AR of the assessee contended that the assessee is not required to be registered as the assessee is already recognized under the Rajasthan Gaushala Act, 1960 and therefore, assessee is not required to get registered under the Rajasthan Public Trust Act 1959 [ RPT Act ] and on the other hand the assessee has without going into that dispute already made application for Registration under RPT Act and therefore, submitted that the assessee be given one chance to get cure the this aspect of the matter As regards the genuineness of the activities the assessee submitted all the details Id. CIT(E) contended that the assessee has not provided any agreement for receipt of Anudan so as decide that the activities are commercial or business in nature or not. The observation of land in the books of account appearing in 20-21 and 21-22 but not shown in 2022-23 is not correct and if given a chance on these aspect of the matter the assessee will place on record all the related documents before the Id. CIT(E). As regards the application for the recognition of the assessee trust u/s. 80G of the

Act the same was rejected as the assessee is not approved u/s. 12AB of the Act.

8. Per contra, the Id. DR relied on the detailed order of the Id. CIT(E) and did not raise any specific objection to the prayer of the assessee for setting aside the order to the file of Id. CIT(E) for deciding a fresh.

9. We have heard the rival contentions and perused material available on record. The bench noted the application of the assessee for registration u/s. 12AB was rejected on the objection of fact that the assessee is not registered under the Rajasthan Public Trust Act, 1959, for the assessee has made an application for registration and as regards the genuineness of activities the observation made by Id. CIT(E) is curable in nature and therefore, considering the arguments of the parties we are of the considered view that so far the issue of registration u/s. 12AB of the Act the assessee require one more opportunity to represent the correct fact and produce the registration certificate under RPT Act. Thus, looking to the interest of justice and considering the prayer of the Id. AR of the assessee submitted that the assessee be given a chance to defend the issues on its merit before the Id. CIT(E) and the observation made are curable in nature we considered the prayer of the assessee to remind the case to the file

of Id. CIT(E) for making a decision a fresh and thus we set aside the order dated 22.03.2024 passed for rejecting the registration of the trust u/s. 12AB of the Act with a direction to the assessee to produce all the related to the issue. Based on this observation the appeal of the assessee in ITA no. 697/JP/2024 stands allowed for statistical purpose.

10. In ITA no. 698/JP/2024 the assessee challenged the order of the Id. CIT(E) rejecting the 80G recognition application vide order dated 22.03.2024. While doing Id. CIT(E) advanced two reason one the assessee is not registered u/s. 12AB of the Act and the assessee has not made application within six months from the commence of the Activities. Since, we are set aside the order in 697/JP/2024 for taking a fresh decision of registration of trust u/s. 12AB of the Act and as regards not making the application within six month recently board has relaxed this aspect and the assessee permitted to make the application we feel that the similar treatment be given to the assessee trust. Based on this discussion we also deem it fit to set aside the order of the Id. CIT(E) for recognition of the trust u/s. 80G of the Act and Id. CIT(E) should decide both the application a fresh.

In the result the appeal of the assessee in ITA no. 698/JP/2024 stands allowed for statistical purpose.

In the result, for statistical purposes, both the appeals are treated as allowed.

Order pronounced in the open court on 14/08/2024.

Sd/-

(संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant जयपुर / Jaipur

दिनांक / Dated:- 14/08/2024

\*Santosh

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

1. The Appellant-Aacharya Shri Hira Laxmi Guru Jain Gaushala Sansthan, Ajmer.
2. प्रत्यर्थी / The Respondent- CIT(E), 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 No. 697 & 698/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar