

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" 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. 804 & 805/JPR/2024

Kanchan Devi Bhag Chand Jain Foundation G-8, Ground Floor Krishna Kripa-1, Subhash Nagar, Shastri Nagar, HO Jaipur, Jaipur.	बनाम Vs.	The CIT-Exemption Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAICK5593K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shailesh Mantri (C.A.)
राजस्व की ओर से / Revenue by : Shri Ajey Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 20/08/2024
उदघोषणा की तारीख / Date of Pronouncement : 29/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals arise out of order passed by Learned Commissioner of Income Tax (Exemption), Jaipur [hereinafter referred to as Id. CIT(E)] both dated 30.03.2024. The appeal filed in ITA No. 805/JPR/2024 is against the rejection order passed for registration u/s. 12AB while the second one in ITA No. 804/JPR/2024 is against the rejection of recognition u/s. 80G of the Income Tax Act, 1961 [here in after referred to as Act].

2.1 In ITA No. 804/JPR/2024 the assessee has raised following grounds: -

“1That the Id. CIT(E), has erred in facts and in law by cancelling the application u/s 80G (5) for permanent registration and also cancelling the provisional approval under clause (iv) of first proviso to sub-section(5) of section 80G of Income Tax Act, 1961.

2. That the appellant craves to add, amend, and alter the grounds before or at the time of appellate hearing.”

2.2 In ITA No. 805/JPR/2024 the assessee has raised following grounds:-

“That the Id. CIT(E), has erred in facts and in law by cancelling the application of permanent registration u/s 12AB and also cancelling the provisional registration u/s 12AB of the Income Tax Act, 1961.

2. That the appellant craves to add, amend, and alter the grounds before or at the time of appellate hearing.”

3. First, we take up the appeals of the assessee in ITA no. 805/JPR/2024, wherein the brief fact of the case is that the assessee vide application dated 27.09.2023 applied for registration u/s 12AB of the Act while considering the application made by the assessee trust, Id. CIT(E) noted that the assessee trust has given donation to Agarwal Samaj Pravasi Trust. In order to verify the that donation Id. CIT(E) called for the details of the donation given by the assessee to that trust. On perusal of the details so submitted Id. CIT(E) observed that the assessee has given donation to Agarwal Samaj Chorasi Pravasi Trust. That donation was for the

purpose of building hostel which was meant for only girl student of Agarwal Samaj Chorasi Pravasi Trust and not for general public. This action of the assessee trust was considered in violation of provision of Section 13(1)(b) of the Income Tax Act. Thus, the assessee trust was given a show cause notice stating as to why the registration should not be rejected. The assessee filed a detailed reply to the said show cause notice. Ld. CIT(E) did not find the submission of the assessee tenable and he rejected the application of the trust for registration u/s 12AB of the Act.

4. So far as the appeal in ITA No. 804/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 the assessee has not filed the application within six months from the commencement of activities.

5. Feeling dissatisfied with the above order of the Id. CIT(E) the assessee has preferred the present appeals before the Tribunal on the grounds as stated in para 2.1 & 2.2 above. In support of the

various grounds so raised by the Id. AR of the assessee reiterated the written submission which is reproduced hereinbelow: -

“Ground No. 1 (ITA 804/JPR/2024)

That the Ld. CIT (F), has erred in facts and in law by cancelling the application u/s 12AB for permanent registration and also cancelling the provisional registration u/s 12AB of the Income Tax Act, 1961.

Ground No. 1 (ITA 805/JPR/2024)

That the Ld. CIT (E), has erred in facts and in law by cancelling the application u/s 80G(5) for permanent registration and also cancelling the provisional approval under clause (iv) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961.

Facts of the Case:-

1. The assessee is a company incorporated under Section 8 of Companies Act 2013. The assessee is engaged in the charitable activities, it is doing various activities and also doing works for welfare of students and for benefit of public at large.

2. The assessee filed application for seeking registration u/s 12AB and 80G (5) on 27/09/2023. Copy of form 10 AB is enclosed for ready reference at PB:1-6.

3. The CIT (Exemption), vide order dated 30/03/2024 rejected the application and provisional registration u/s 12AB observing as under:-

"In the F.Y. 2021-22, you have made expense on account of construction of women hostels of Rs.200000/- to Agarwal Samaj..... from the deed of Agarwal Samaj as submitted as per Clause-4(1), same is meant for benefit of Agarwal Samaj Girls only. Thus Violation of Section 13(1)(b), specified violation under clause (d).

2.6 As discussed in sub para 1 that assessee trust is making distinction on the basis of religion and restricting several benefits only for Agarwal Samaj Chourasi, it is clear that same is not eligible for registration under section 10/12/80G. Thus, assessee application for registration is liable to be rejected on this ground"

4. The CIT (Exemption), vide order dated 30/03/2024 rejected the application and provisional approval u/s 80G (5) observing as under:-

"As per rule 11AA of the income tax rules, 1962 the registration u/s 124/12AB is a precondition for granting approval u/s 80G of the Income Tax Act, 1961. As the registration of the assessee

has been denied u/s 12AB, therefore, it is not eligible for exemption u/s 80G of the Income Tax Act, 1961."

Submission:-

1. The assessee company is incorporated under Section 8 of the Companies Act, 2013 on 16th January 2021 for the purpose of promoting education, eradicating poverty, women welfare, promoting rural sports, and other social welfare activities. Copies of the audited financial statements for the FY 2022-23 is at PB 7-17.

The company has undertaken various activities aimed at benefiting the public at large. A summary of the major activities is provided below:

- a) Donation of Cattle Feed in Gaushalas. PB 34 & 35
- b) Payment of school fees for underprivileged students.
- c) Printing of awareness materials for children and also sponsored awareness programmes for Child Safety and Welfare. PB: 36 & 39
- d) Donation to the Shri Agarwal Samaj Chourasi Pravasi Trust for the construction of a women's hostel, with the objective of promoting the education of girls. These all social activities were done with an object to give benefits to public at large.

2. In respect of donation made to the Shri Agarwal Samaj Chourasi Trust, it is to submit that the trust is registered u/s 12A of the Income Tax Act, 1961 and the registration is provided by the Commissioner of Income Tax-Exemption. (PB 22). The donation was made with considering the fact that the trust is registered under Section 12A of the Income Tax Act The assessee was having bonafied belief that the Trust is registered u/s 12A so all the requirements have been complied. This registration confirms that the trust is recognized as a charitable organization considering the said 12A registration the assessee also contributed to the activities being done by the Trust.

3. The donation for the construction of the women's hostel was made with the intention of the welfare of girls and supporting educational initiatives for them. Furthermore, the assessee wasn't aware that the hostel was specifically developed for welfare of girls of a particular community i.e. "Agarwal Samaj Girls", at the time of making donation the assessee was acknowledged by the Trust, that the donation was needed for the purpose of developing Girls Hostel so that the girls can be facilitated with education related accommodation. With respect of same the assessee has also demanded the Trust to provide registration certificate under section 12A, the same was provided by the trust and the assessee relied on the same for making donation. As registration certificate under section 12A is itself a conclusive reason to believe that the trust is a Charitable Organization, and the donation made to it will be eligible for tax benefits to the Donors.

As the Commissioner Exemption granted 12A registration to the Shri Agarwal Samaj Chourasi Trust. Based on this registration, the assessee made a donation to the trust for the construction of a women's hostel, hence the conduct of the assessee in this case is bonafide.

The CIT-E asked the Trust Deed along with 12A registration which was provided by the assessee and after observing the Trust deed the CIT-E raised a query about the trust, then only the assessee come to know about the default which was pointed out by the CIT-E, even though the trust was having the valid registration certificate. Thus the default which was pointed out by the CIT-E, was beyond the control of assessee as the registration u/s 12A was granted to said Trust was after the detailed due verification being done by the CIT-E itself, and the same was sufficient for the assessee to believe, and therefore the activity done by the assessee for contribution made to said trust is bonafide and should not be considered as alleged transaction while considering the assessee registration u/s 12AB and 80G(5) of the Income Tax Act.

Further provided that, the assessee has also made contributions to various social welfare activities, including donations for cattle feed in a gaushala, payment of school fees for underprivileged students, and the printing of awareness materials for children, which shows that the benefits of assessee's activities are not limited to any particular group or being done on the basis of any type of discrimination. (PB 34-39)

The assessee was having bonafide belief that the trust to whom it is contributing is also 12A registered and therefore the rejection of registration of assessee u/s 12AB and 80 G (5) is unjustified and against the natural justice.

Prayer: As the intent of the assessee is bonafide and therefore the rejection of the registration u/s 12AB and 80G(5) by the CIT(E) is against the natural Justice. Hence, it is requested to allow the assessee registration u/s 12AB and 80G(5)."

6. To support the various grounds so raised by the assessee, Id.

AR of the assessee relied upon the following evidences in support of the contentions so raised:-

S. No.	Particulars	Pg No.
1.	Form 10AB for section 80G(v)	1-6

2.	Audit Repot & Financial for AY. 2023-24	7-17
3.	ITR & computation for AY 2023-24	18-20
4.	Form 12A for Shri Agarwal Samaj Chourasi Pravasi Trust	21-22
5.	Trust deed of Shri Agarwal Samaj Chourasi Pravasi Trust	23-23
6.	Evidences of activities carried out by trust	34-39

7. During the course of hearing, the Id. AR of the assessee stated that the assessee is section 8 company registered as charitable entity under the Ministry of Corporate affairs. The objects are charitable in nature. It is not under dispute that the assessee has given donation to Agarwal Samaj Chorasi Pravasi Trust but while giving donation to that trust by the assessee, they were under the bona fide belief that the trust to whom the donation was given are already enjoying the registration u/s 12AB of the Act and also that trust i.e. Agarwal Samaj Chorasi Pravasi Trust is also having the recognition under section 80G of the Act.

The Id. AR of the assessee also pointed out that on being aware about the activity of that trust i.e. Agarwal Samaj Chorasi Pravasi Trust there is no mention of any action taken by the Id. CIT(E) in that trust's case. Therefore, the assessee was under the bona fide belief that the activities of that trust i.e. Agarwal Samaj

Chorasi Pravasi Trust are charitable in nature. Therefore, merely on that aspect of the matter the registration of the assessee trust cannot be denied.

8. Per contra, the Id. DR submitted that the assessee has specifically violated the provisions of Section 13(1)(b) of the Act and therefore when the donation is used in a particular community and caste and the object are not charitable in nature. Considering that specific provision of the Act and there cannot be moderate interpretation to that provision. Therefore, registration u/s 12AB of the Act has rightly been denied to the assessee. The Id. DR also submitted that while giving donation that the assessee was not aware about the fact that Agarwal Samaj Chorasi Pravasi Trust was engaged in building a particular community benefited women's hostel and in that case how donation given by the assessee to that trust be given the moderate view. The Id. DR also pointed out from the constitution of Agarwal Samaj Chorasi Pravasi Trust that they are engaged in the benefit of caste and community. Even the membership is also given to that community only. Based on this submission, the Id. DR relied upon the orders of the Id. CIT(E).

9. We have heard the rival contentions and perused material available on record. The facts related to the dispute is that the assessee vide application dated 27.09.2023 applied for registration u/s 12AB of the Act. While examining that application Id. CIT(E) noted that the assessee trust has given donations to Agarwal Samaj Chorasi Pravasi Trust. To verify the purpose of that donation Id. CIT(E) called for the details of the donation given by the assessee to that trust. On perusal of the details so submitted Id. CIT(E) observed that the assessee has given donation to Agarwal Samaj Chorasi Pravasi Trust. That donation was for the purpose of building a hostel which was meant for only girl students of Agarwal Samaj Chorasi Pravasi Trust and not for general public.

Ld. CIT(E) considered this act of the assessee in violation of provision of Section 13(1)(b) of the Income Tax Act and therefore, the assessee was given the show cause notice for this violation. Assessee filed a detailed reply to the said show cause notice. Ld. CIT(E) did not find the submission of the assessee tenable, and he rejected the application of the trust for registration u/s 12AB of the Act holding that *“if any charitable or religious cum charitable trust making any distinction on the basis of religion or caste cannot be considered charitable and thus ineligible for registration u/s.*

10/12/80G. Also, submitting of 12A registration of Agarwal Samaj Chorasi is not evidence that donation is given for the objects for which doner trust is created.”

As it is evident from the paper book filed and the order of the Id. CIT(E) that he has not commented upon the particular object of the assessee trust and has relied on the object of the other trust. That other trust is already registered and there is not commented in the order that any action is initiated on being aware on the violation of 13(1)(b) in that case. So merely the assessee has given the donation for which the reliance was placed on the recognition of that done trust should not affect the object of the assessee trust being charitable in nature. The assessee placed on record the nature of activities carried out by them but not the Memorandum of Association and Articles of Association and there is no discussion on the object of the trust in the order under challenge. In the light of these facts, we are of the considered view that the Id. CIT(E), while dealing with the application of the assessee trust should have dealt with the nature of activities of the assessee trust and has to deal with the fact that activities of the assessee are charitable in

nature of not. Since there is no such finding on that aspect of the matter, we considered it deem to set aside the issue of registration of the assessee trust to the file of the Id. CIT(E) who will decide the issue based on the object of the assessee trust. At the same time the assessee is directed to produce all the relevant papers concerning the applications so filed before the Id. CIT(E) to settle the dispute raised hereinabove.

10. As regards the application for recognition u/s 80G is concerned there were two reasons one the assessee was not considered for registration u/s. 12AB and therefore, the same was not considered for recognition u/s. 80G of the Act and second reason was that the assessee has not filed the application within six months from the start of the actives. Since for the issue of filling the application within six month CBDT has extended those six month time line upto 30.06.2024 and since the matter of 12AB registration is set aside we considered it deem to set aside the issue of recognition for 80G of the Act also to the file of the Id. CIT(E).

In view of the above, both the appeals of the assessee relating to registration u/s. 12AB and 80G of the Act are restored back before the Id. CIT(E) for afresh consideration for which the assessee shall submit the desired information / documents before the Id. CIT(E). Based on the discussion recorded herein above the appeals of the assessee are allowed for statistical purposes.

In the result, the appeals of the assessee in ITA No.804 & 805/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open Court on 29/08/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2024

*Santosh

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

1. अपीलार्थी / The Appellant- Kanchan Devi Bhag Chand Jain Foundation, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 804 & 805/JPR/2024 }

Sd/-

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar