

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. 125 & 126/JPR/2024

BE Positive Sansthan Govindam Chamber, Near Petrol Pump Hatoj Kalwar Road, Jaipur.	बनाम Vs.	The CIT(E), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACTB9840R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sharwan Kumar Gupta (Adv.)  
राजस्व की ओर से / Revenue by : Shri Ajey Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 02/09/2024  
उदघोषणा की तारीख / Date of Pronouncement : 04/09/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals arise out of order passed by Learned Commissioner of Income Tax (Exemption), Jaipur [ for short Id. CIT(E) ] both dated 16.02.2023. The appeal filed in ITA No. 125/JPR/2024 is against the rejection order passed for registration u/s. 12AB while the second one in ITA No. 126/JPR/2024 is against the rejection of recognition u/s. 80G of the Income Tax Act, 1961 [ for short Act ].

2.1 In ITA No. 125/JPR/2024 the assessee has raised following

grounds: -

“1. The impugned order u/s 12AB of the Act dated 16.02.2023 is bad in law and on facts, without providing adequate & reasonable opportunity of being heard, being without jurisdiction and for various other reasons and hence the same may kindly be quashed.

2. The Ld. CIT(E) erred in law as well as on the facts of the case in rejecting the application for grant Registration/approval u/s 12AB and in not granting registration/approval. The rejection so made and refusal to grant registration/approval u/s 12AB is contrary to the provisions of law and facts of the case. The same kindly be quashed.

3. That the impugned order so passed was in the contravention of the law prevalent at the relevant point of time and also on fact and hence may kindly be quashed. Also erred in passing the ex-party order. The Ld. CIT(E) be directed to grant registration/approval from the dated of application.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

2.2 In ITA No. 126/JPR/2024 the assessee has raised following

grounds:-

“The impugned order u/s 80G of the Act dated 16.02.2023 is bad in law and on facts, without providing adequate & reasonable opportunity of being heard, being without jurisdiction and for various other reasons and hence the same may kindly be quashed.

2. The Ld. CIT(E) erred in law as well as on the facts of the case in rejecting the application for grant Registration/approval u/s 80G and in not granting registration/approval. The rejection so made and refusal to grant registration/approval u/s 80G is contrary to the provisions of law and facts of the case. The same kindly be quashed.

3. That the impugned order so passed was in the contravention of the law prevalent at the relevant point of time and also on fact and hence may kindly be quashed. Also erred in passing the ex-party order. The Ld. CIT(E) be directed to grant registration/approval from the dated of application.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

3.1 First, we take up the appeal of the assessee in ITA No. 125/JPR/2024. At the outset of the hearing of the appeal it is noted the appeals in ITA No. 125 & 126/JPR/2024 filed are delayed by 298 days. The Id. AR of the assessee relied upon the petition for condonation of delay with following prayers in ITA No. 125/JPR/2024:-

“1. In this connection it is submitted that the applicant is Trust/Society. The assessee has filed application before CIT(Exemption), Jaipur for registration u/ 12AB and 80G(5). The Id. CIT(E) rejected the application of the assessee on dt. 16.02.2023 on the reason assessee not registered under the RPT Act 1959. The order was received on portal on dt. 16.02.2023, which was not served upon the assessee physical. However as per date of order the appeal was to be filed on or before 17.04.2023 but the same is being filed on by 09.02.2024 i.e by delay of about 9 month 22 days. Although actually there is no delay if following facts are being considered.

2. The reason of late filing was that the assessee is a society, the order was probably sent on the email id:-shreegovindaamprime@gmail.com which belongs to some other member of the Society, it may be possible that while registering the PAN this email id has been mentioned. The person whose this email id belongs was not in the habit to check the email id regularly that is why lateron the email id has been changed on the e-portal and in the returns filed by the assessee for the later years. the has given its email id which is pushpendrayadav1121@gmail.com and this email id available with the department while issuing the notices and orders. And no notices or orders were received on this pushpendrayadav1121@gmail.com. despite the order was sent on old email id. As the person at whose email id the notices or order were sent has not seen the email or escaped from him. Thus the assessee has never come earlier about the orders and notices, that is why neither the compliance has been made nor order has come in the notice, recently when while seeing the income tax portal, the assessee has come to about the exparty orders and notice. The assessee were

under impression that they would have been received orders and notices on new email id.

3. That thereafter our counsel has started to prepare the appeal and the appeal has been prepared on 08.02.2024 and sent to us for singe.

4. Thus there was no also negligence's of either assessee nor the counsels nor office bearers. Thus due to this reason the appeal could not be filed within time. In support of these contention an affidavit of the trustee is enclosed.

5. It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:

"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression sufficient cause employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."

The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.

6. The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N. Balakrishnan v. M. Krishna Murthy (1998) 7 SCC 123 published in 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Anothers 118 ITR 507.

That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(All), N. Balakrishnan v/s M. Krishanmurthy 7 SSC123.

7. The Hon'ble Jaipur Bench of ITAT has also condoned the delay in the case of Ganesh Himalaya Pvt.Ltd. v. ACIT 22 Tax World 415 (Jp) where the filing was delayed because the son of the Managing Director had become victim of some misdeeds committed by the Holigans, particularly when on the similar points in the earlier four years, the appeals were filed in time.

In the instant case also, the appeal could not be filed in time because of the above time taking a various process which were bonafide and was a sufficient cause and there was no mala fide intention.

8. Recent Decision of Apex Court: in a recent decision, the apex court have again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'ble court have also held that advancing of substantial justice should be of prime importance. Kindly refer Vedbal vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC).

Prayer In view of above facts and circumstance and with the sympathy and settled legal position, the delay so caused may kindly be condoned."

In support of the contentions raised the Authorized signatory filed an affidavit to support the contentions raised in the prayer for condonation of delay in filing the appeal so filed.

3.2 The Id. AR of the assessee appearing in these appeals submitted that the assessee is serious on the duties and the delay of 298 days is on account of the miss communication on account of not receipt of the email on the registered mail id of the assessee which resulted delay. He submitted that the based on the contention raised in the condonation petition and considering the

various judicial precedent prayed to condone the delay. He upon relying on the apex court's decision in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

3.3 On 20.06.2024 Id. DR sought time to submit the report from the office of the Id. CIT(E) to counter the submission made by the assessee contending that the assessee as per ROI mail id is [puspendrayadav1121@gmail.com](mailto:puspendrayadav1121@gmail.com). This mail id was referred to before the filling of 12AB and 80G application filed by the assessee whereas notices were served upon the email id [shreegovindamprime@gmail.com](mailto:shreegovindamprime@gmail.com). This mail id was not regularly used by the trustee this has resulted in the noncompliance and delay in filling the present appeal. The Id. DR filed the report of the Id. CIT(E) dated 27.06.2024 wherein it was confirmed that the notices were issued on 02.01.2023, 20.1.2023 and 01.02.2023 on the email id [shreegovindamprime@gmail.com](mailto:shreegovindamprime@gmail.com). Ld. DR referring to the report of the Id. CIT(E) submitted that the assessee was given three opportunities which they have not availed and the filling of

appeal with a substantial delay is not required to be condoned as the reasons advanced are not sufficient.

3.4 We have heard both the parties and perused the materials available on record. The Bench Noted that to substantiate the delay of 298 days, the assessee contended that the assessee as per ROI mail id is [puspendrayadav1121@gmail.com](mailto:puspendrayadav1121@gmail.com). This mail id was referred to before the filling of 12AB and 80G application filed by the assessee. Whereas notices were served upon the email id [shreegovindamprime@gmail.com](mailto:shreegovindamprime@gmail.com). This mail id was not regularly used by the trustee this has resulted in noncompliance and delay in filling the present appeal. The fact placed on record has not been controverted therefore, we concur with the submission of the assessee and condone the delay of 298 days in filing the appeal by the assessee.

4. First, we take up the appeals of the assessee in ITA no. 125/JPR/2024, wherein the brief facts of the case is that the application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 was filed by the assessee online on

30.09.2022 A notice dated 02.01.2023 was issued at the e-mail/address provided in the application requiring the assessee to submit certain documents/explanations by 17.01.2023, but no compliance was made by the assessee. Thereafter, a reminder letter was issued vide notice dated 20.01.2023 to submit certain documents/explanations by 30.01.2023. However, again no further compliance was made by the assessee. In view of principle of natural justice, one more opportunity was provided to the assessee vide notice dated 01.02.2023 as final opportunity through which date of submission was fixed as 09.02.2023. But this time also on given date no reply was filed by the assessee. Since it is a limitation matter, therefore, the case is decided on the basis of material filed by the assessee along with its application in Form no. 10AB and thereby the registration u/s. 12AB was rejected by observing as under:-

"3.4 Assessee vide notice dated 02.01.2023 was given a show cause to submit documents/explanation by 17.01.2023, which is reproduced as under: -

"whether the institution is not registered under Rajasthan Public Trust Act, 1959, if not, please give explanation that why same should not be considered violation of law, and accordingly why your application should not be rejected."

Further, opportunities were also provided vide notice dated 20.01.2023 and 01.02.2023. However, assessee has failed to prove that assessee is registered under RPT Act, 1959 as discussed above. In light of

above discussion and in the absence of registration under Rajasthan Public Trust Act, 1959 assessee is not eligible for registration u/s 12AB 04. Genuineness of Activities & non-compliance

4.1. It is important to mention here that while examining the claim of the assessee u/s 12AB of IT. Act, the Commissioner of Income-tax has been empowered to call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf. Under such powers vested in CIT (E), the applicant was asked to file details like:-

- List of donors
- Bills and vouchers of expenses.
- Photograph of activities
- Details of Social handle.
  
- Digital footprint.
- Details of Bank account details of last three years.

However, the applicant has failed to comply with the letters, despite being given three opportunities details of which given in para-I. In the absence of such documents, it could not be determined whether the applicant is genuinely carrying out charitable activity as per its objects. Therefore, assessee claim of registration u/s 12AB is also liable to be rejected on ground of not proving its genuineness of activity.

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.
- Non registration with RPT ACT, 1959.
- Genuineness of Activities.”

5. So far as the appeal in ITA No. 126/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.

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 satisfy 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 was prayed. The Id. AR of the assessee in support of this plea submitted that the notices were issued for the short time period on were issued on the email id [shreegovindamprime@gmail.com](mailto:shreegovindamprime@gmail.com) and not on the email id on [puspendrayadav1121@gmail.com](mailto:puspendrayadav1121@gmail.com) which was considered as the mail id of the trust and even the same was referred in the return of income filed by the assessee before filling the application for 12AB and 80G application filed by the assessee. Whereas notices were served upon the email id [shreegovindamprime@gmail.com](mailto:shreegovindamprime@gmail.com). This mail id was not regularly used by the trustee this has resulted in noncompliance.

7. Per contra, the Id. DR relied on the orders of the Id. CIT(E) and submitted that the assessee even various opportunities were given assessee has not submitted required details and therefore, the plea of the assessee is not maintainable.

8. We have heard the rival contentions and perused material available on record. 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. For the alleged non compliance on the part of the assessee the assessee submitted by filling an affidavit the fact that notices were issued on email id [shreegovindamprime@gmail.com](mailto:shreegovindamprime@gmail.com) and not on the email id on [puspendrayadav1121@gmail.com](mailto:puspendrayadav1121@gmail.com) which was considered as the mail id of the trust. Even that mail id was referred in the return of income filed by the assessee before filling the application for 12AB and 80G application filed by the assessee, therefore, the notices were sent on the one of the trustee on his mail id [shreegovindamprime@gmail.com](mailto:shreegovindamprime@gmail.com) which was not regularly

checked. Even out of the three notices two were issued in the January and third one on 01.02.2023 so the period in one month all the three notices were issued. Based on these reasons the assessee was deprived of the principles of natural justice and prayed that the assessee has not been given chance to represent the merits of the case. Considering the overall facts as narrated herein above, we are of the considered view that the assessee be given a chance so as to submit the details and clarify the issue raised by Id. CIT(E) on merits. 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 the opportunity of being heard in respect of both the applications of the assessee. The Bench does not want to go into the merits of the case but it is imperative that the assessee must be provided adequate opportunity of being heard by the Id. CIT(E).

Based on the discussion so recorded 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 and details

concerning both the applications so filed before the Id. CIT(E) to settle the dispute raised hereinabove.

9. 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, the appeals of the assessee in ITA No. 125 & 126/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open Court on 04/09/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 04/09/2024

\*Santosh

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

1. अपीलार्थी / The Appellant- Be Positive Sansthan, 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.125 & 126/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar