

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

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

आयकर अपील सं./ITA No. 653 & 687/JP/2024
निर्धारण वर्ष / Assessment Year : -

Golok Bhakti Aradhan Trust 6/59, Ashirwad, Pratap Nagar, Beawar	बनाम Vs.	CIT (Exemption) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADTG 4686 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None

राजस्व की ओर से / Revenue by: Shri Ajey Malik Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 20/08/2024

उदघोषणा की तारीख / Date of Pronouncement: 03 /09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

These are two appeals filed by the assessee against orders of the Learned Commissioner of Income Tax (Exemption), Jaipur [hereinafter referred to as "CIT(E)"] both dated 17.02.2024 passed in the matter of section 12AB and 80G of the Income Tax Act, 1961 respectively. The grounds of appeal as mentioned by the assessee in respective appeals are as under:-

ITA NOS. 653 687/JP/2024
GOLOK BHAKTI ARADHAN TRUST, BEAWAR VS CIT (E), JAIPUR
ITA No.653/JP/2024 – 12AB(1)

“On the facts and circumstances of the case, the Id. CIT(E) was not justified in rejecting the application of registration of the Trust u/s 12AB of the Act without giving proper opportunity of being heard to the issued notices which were never received by the applicant trust because the e-mail address mentioned in the notices were never owned by the assessee trust.

On the fact and circumstances of the case, the appellant was prevented by sufficient cause in responding to statutory notices issued and submitting the evidence due to use of “Never Owned” e-mail address provided to the department on ITD Portal which was accessed by the trust.

The assessee request to the Hon’ble Bench to remand back to the said matter to the Id. CIT(E) Jaipur to allow the assessee trust to put their submissions and relevant documents so as to obtain the registration under the Act.’”

ITA No.687/JP/2024 – 80G

“On the facts and circumstances of the case, the Id. CIT(E) was not justified in rejecting the application of registration of the Trust u/s 12AB of the Act without giving proper opportunity of being heard to the issued notices which were never received by the applicant trust because the e-mail address mentioned in the notices were never owned by the assessee trust.

On the fact and circumstances of the case, the appellant was prevented by sufficient cause in responding to statutory notices issued and submitting the evidence due to use of “Never Owned” e-mail address provided to the department on ITD Portal which was accessed by the trust.

The assessee request to the Hon'ble Bench to remand back to the said matter to the Id. CIT(E) Jaipur to allow the assessee trust to put their submissions and relevant documents so as to obtain the registration under the Act.'''

2.1 None appeared on behalf of the assessee when the case was called out for hearing nor any adjournment application was filed by the assessee. Hence, in this situation the Bench feels to decide to dispose off the appeals ex-parte based on the materials and documents placed by the assessee on record.

3.1 At the outset of the hearing, the Bench noticed that there is delay of 21 days and 27 days in filing the respective appeals which pertain to Section 12AB and 80G of the Act for which the trustee Shri Om Prakash Moondra filed condonation application in relation to both the appeals and submitted that the order was passed by the Id.CIT(E) on 17-02-2024 and the same was received by his authorized representative on 22-02-2024. However, he was out of India till 22-04-2024 and subsequently on some health issue the appeals could not be filed timely and the same may be condoned in view of his prayer. To this effect, the trustee Shri Om Prakash Moondra filed affidavits as to the delay made in filing the appals.

3.2 On the other hand, the ld. DR objected to such delay made in filing the appeals but submitted that the Court may decide the issue as deem fit and proper in the case.

3.3 After hearing the ld.DR and perusing the materials available on record including the affidavits of the trustee Shri Om Prakash Moondra, the Bench feels that there is sufficient cause in late filing the above appeals by the assessee trust and thus the delay is condoned.

4.1 As regards the appeals of the assessee in relation to 12AB and 80G of the Act, it is noticed that the ld. CIT(E) has rejected the appeals of the assessee 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 Section 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 rejected without registration u/s 12AB.

* Commencement of activities.

06. Further 2nd Proviso to 80G(5) also stated 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 31-05-2021 is also being cancelled. Further, assessee has failed to give proper justification for regularization of provisional approval, thus with this order provisional approval is also lapsed and cancelled.’’;

4.2 During the course of hearing, the Bench noticed that the trustee Shri Om Prakash Moondra has filed the statement of facts mainly narrating therein that he has had not received any notice from the CIT(E) as to follow up the case before him. The narration as made by him in his prayer is hereunder:-

‘‘Golok Bhakti Aradhan Trust 6/59, Ashirwad, Pratap Naga, Beawar

Appeal Against the Rejection Order of Registration of the Trust
passed by the Ld. CIT (Exemptions), Jaipur

Statement of facts

The applicant Trust had filed an online application in Form No. 10AB seeking registration u/s. 12AB of the Income Tax Act, 1961 on 30.09.2023.

At this point of time only we want to bring into notice of the hon'ble Bench that not a single communication was received by the applicant trust on the e-mail address as updated in the profile section of the trust which is mvabwr@gmail.com. We are attaching the screenshot of the same for your kind verification of the records.

Also we want to bring into your kind attention that the assessee had suffered the loss of not getting the notices is only due to the technical glitch of updation of the e mail address in the name of trustee which was never owned and accessed by the trustee from long time back for the period of 5-6 years.

We can strongly call this as a technical glitch because when we see the profile section of the trust on ITD portal it is showing the e mail address

which is regularly accessed by the trustee of the trust, but when we navigate into the page of notices issued by the department, it shows the e mail address which is of the trustee but not in use from many years. We are attaching the screenshot of the same which will clarify the glitch.

This is because when we link the PAN of an Individual Assessee with his Aadhaar Number, its contact information is updated in the case of every Non Individual Assessee in which he is updated as Principal Contact Information.

The assessee is submitting an Affidavit to this fact to the Hon'ble Bench.

Your Honor's, in presence of such fact which debarred the assessee trust from furnishing the required documents and information time to time in response to the notices issued by the department, it is humble request of the trust to remand back the case to the learned Assessing Officer so as to enable the assessee trust put its submission in response to the notices.

Therefore the rejection by the learned Commissioner of Income Tax (Exemptions), Jaipur on the basis of the material available with him, was the only resolution on his part.

Thus, the rejection made by the leaned Commissioner of Income Tax (Exemptions) without providing the sufficient opportunity of being heard, is arbitrary, injudicious, and bad in law. The same deserves to be remanded back in the interest of equity and justice.

Pray justice,
For Golok Bhakti Aradhan Trust
Sd/-
(OM PRAKASH MOONDRA)
Appellant''

4.3 On the other hand, the ld. DR supported the orders of the ld. CIT(E).

4.4 The Bench heard the ld.DR, perused the orders of the ld. CIT(E) and also taken into consideration the statement of facts of the case placed by the trustee Shri Om Prakash Moondra wherein he mainly requested to remand back the matter to the ld. CIT(E) as he could not put forth his submissions before him. Be that as it may since it is an admitted fact that the

assessee is ex-parte before the ld. CIT(E). Therefore, he could not put forth his defence. It was the bounded duty of the assessee trust to appear before the statutory authorities as and when called for. It is noticed that opportunities were provided to the assessee for settling the issue but the assessee remained lethargic and unserious in pursuing his case for which a cost of Rs.2.000/- is imposed upon the assessee which will be deposited by the assessee in the Prime Minister Relief Fund. However, we are of the view that the dispute between the parties has to be decided on merits so that nobody's rights could be scuttled down without providing 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. Thus the appeal of the assessee is 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 ld. 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 ld. 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 03/09/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 03 /09/2024

*Mishra

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

1. The Appellant- Golok Bhakti Aradhan Trust, Beawar
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 653 & 687/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar