

आयकर अपीलिय 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. 595 & 596/JPR/2024

All India Derawal Bhatia Biradari Trust 4, Gurunanakpura Rajapark, Jaipur.	बनाम Vs.	ITO Ward-1 (Exemption), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AADTA 8838P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri R.S. Poonia (C.A.) (Th. V.C.) &
Shri Rajat Choudhary (Adv.)
राजस्व की ओरसे / Revenue by: Shri Anil Dhaka (CIT)

सुनवाई की तारीख / Date of Hearing : 01/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 10/09/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are two appeals filed by the assessee against orders of the Learned Commissioner of Income Tax (Exemption), Jaipur [herein after referred to as "CIT(E)"] both dated 05.03.2024 passed under section 12AB of the Income Tax Act, 1961 respectively.

2.1 In ITA No. 595/JPR/2024 the assessee has raised following grounds: -

“1. That the order passed by Ld. Commissioner of Income Tax, Exemption, Jaipur by rejecting application u/s 12AB(1)(b) of the I.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the same.

2. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”

2.2 In ITA No. 596/JPR/2024 the assessee has raised following grounds: -

“1. That the Ld. CIT (Exemption), Jaipur has erred in law and in facts of the case by neither recording the independent satisfaction for rejection of provisional registration and nor issued Show Cause Notice for rejection of provisional registration u/s. 12A of the I.T. Act 1961 which is wrong, unwarranted and bad in Law. Kindly restore the same.

2. That the Ld. CIT (Exemption), Jaipur has erred in law and in facts of the case in rejecting the provisional registration u/s. 12A without issuing separate DIN of the rejection order, which is against the circular & notification issued by the CBDT. So, the same is wrong, unwarranted and bad in Law. Kindly restore the same.

3. That the order passed by Ld. Commissioner of Income Tax (Exemption), Jaipur by rejecting provisional registration u/s. 12A of the I.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the same.

4. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”

3. Brief facts of this case is that the assessee filed online application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 on 27.09.2023. In this case, the application was rejected as withdrawn vide order DIN & Notice No. ITBA/EXM/F/EXM45/2022-23/1045815072(1) dated 22.09.2022. A

letter/notice No. ITBA/EXM/F/EXM43/2023-24/1059818947(1) dated 17.01.2024 was issued at the e- mail/address provided in the application requiring the assessee to submit certain documents/explanations by 01.02.2024. In response to letter/notice dated 17.01.2024, the assessee had requested for adjournment. Thereafter, a reminder/adjournment letter was issued vide this office DIN & Notice No. ITBA/EXM/F/EXM43/2023-24/1060575018(1) dated 06.02.2024 wherein date of hearing was fixed as 12.02.2024, but no compliance has been made by the assessee. Further, again one more opportunity was also provided to the assessee vide office DIN & Notice No. ITBA/EXM/F/EXM43/2023-24/1060846436(1) dated 13.02.2024 to submit complete details/information by 19.02.2024. In response to the above, the assessee had requested for adjournment for 15 days. Further, again one more opportunity was also provided to the assessee vide office DIN & Notice No. ITBA/EXM/F/EXM43/2023-24/1061203286(1) dated 20.02.2024 to submit complete details/information by 26.02.2024. Again, the assessee had requested for adjournment. Further, again final opportunity was also provided to the assessee vide office DIN & Notice No. ITBA/EXM/F/EXM43/2023-24/1061576990(1) dated 27.02.2024 to submit complete details/information by 01.03.2024. This time also on given date, the assessee had not produced any details/documents. Despite then five opportunities, assessee has not submitted the details required to prove genuineness of activities

& compliance of other law, proves that assessee is not having anything in its support to give reply or plead or prove its case and it is also seen that the assessee had requested to adjourn the case on the fixed dates again and again. Therefore, the case was decided on the basis of material filed by the assessee along with its application in Form no. 10AB by the Ld. CIT(E).

3. While dealing with the application the Id. CIT(E) rejected the assessee's claim of registration 12AB of the Act by observing as under:-

“However, the applicant had failed to comply with the letters, despite being given three opportunities details of which given in para-1. All the above details were sought in order to determine the actual working of the institution. The applicant did not furnish the sought details. The applicant has not furnished the details along with bill/vouchers of expenses debited in income and expenditure account for the last three financial years. Further, the assessee was also not submitting the details of bank account & financial statement for last three financial years and details of note on activities carried out by the institution/trust. The above details were sought from the applicant to determine the actual purpose/nature of expenditures made and to determine whether the impugned charitable activity had actually been done by the trust or not. Such type of verification is necessary to keep a check and balance on the actual working of the trust. Since, the applicant didn't furnish sought details, in the absence of such documents/details, the justification of impugned activity could not be derived and it is not known whether the applicant is genuinely carrying out charitable activity as per its objects. Hence, the applicant has failed to justify the genuineness of activities and thus falls out of the scope of registration u/s 12AB of the Act.

06. 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.
- Rajasthan Public Trust Act, 1959.
- Genuineness of Activities.

07. 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 27.05.2021 is also being cancelled. Further assessee has failed to give proper justification for regularisation of provisional registration, thus with this order provisional registration is also lapsed and cancelled.”

4. During the course of hearing, the ld. AR of the assessee submitted that in both the appeals that the assessee if given an opportunity will be able to satisfied the queries/ issues raised / details to be submitted and thus in both the case the ld. AR of the assessee prayed that one more chance of presenting the case of the assessee be given as the reasons advanced for rejection are curable in nature.

5. Per contra, the ld. DR relied on the orders of the ld. CIT(E) and submitted that the assessee even though various opportunities were given the assessee has not submitted required details. Therefore, the plea of the assessee is not maintainable, considering the non serious approach of the assessee cost be imposed on the assessee.

6. We have heard the rival contentions and perused material available on record. The Bench noted that the assessee has submitted that the ld. CIT(E) has rejected the assessee’s claim for registration u/s 12AB of the

Act on the following grounds i.e. incomplete form 10AB, Rajasthan Public Trust Act, 1959 and Genuineness of activities. We note that the Id. CIT(E) has given five opportunities to the assessee to furnish the details bills/ vouchers, in income and expenditure account for the last three financial years and the details of the bank account and financial statement for last three financial years and details of note on activities carried out by the trust. Before us, Ld. AR for the assessee prayed to give one more chance to advance of submit the above documents as desired by the Id. CIT(E) and argue the case to settle the issue in question. Hence, in view of matter, we restore the matter back to the file of the Id.CIT(E) to decide it afresh by providing one more opportunity of being heard to the assessee. The assessee is directed to produce all the relevant papers concerning the issue in question before the Id.CIT(E). As is evident that inspite of giving five opportunities, the assessee unable to give complete details. Considering that lapses on the part of assessee Rs. 2500/- for each appeal cost to be deposited in to "Prime Minister Relief Funds" before start of the proceedings before Ld. CIT(E) and receipt be presented before him. Thus the appeal of the assessee is allowed for statistical purpose.

7. 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. 595/JPR/2024 and ITA No. 596/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open court on 10/09/2024.

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

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/09/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- All India Derawal Bhatia Biradari Trust, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1 (Exemption), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. आयकरआयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 595 & 596/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar