

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 176 &177/JPR/2024

Shree Shree Uttam Gopal Krishna Goshala Samiti Aara VOP Aara, Post- Aara, The- Sagwara, Dungarpur.	बनाम Vs.	The CIT Exemption Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:ABBT5125N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vedant Agarwal (Adv.)
राजस्व की ओर से / Revenue by: Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing :24/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 13/09/2024

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 15.12.2022 passed under section 12AB and 80G of the Income Tax Act, 1961 respectively.

2.1 In ITA No. 176/JPR/2024 the assessee has raised following grounds: -

“1. On the facts and circumstances of the case and in law also Ld. CIT (Exemption), Jaipur grossly erred in rejecting the application for registration u/s 12AB of the Income Tax Act, 1961.

2. On the facts and circumstances of the case and in law also Ld. CIT (Exemption) grossly erred in not offering a reasonable opportunity of being heard before rejecting the application for registration.

3. On the facts and circumstances of the case Ld. CIT (Exemption) Jaipur grossly erred in not considering the fact that the activities of society are genuine and the society has fulfilled all the necessary conditions of registration.

4. That the appellant craves his indulgence to add, amend, alter or delete the grounds of appeal.”

2.2 In ITA No. 177/JPR/2024 the assessee has raised following grounds: -

“1. On the facts and circumstances of the case and in law also Ld. CIT (Exemption), Jaipur grossly erred in rejecting the application for registration u/s 80G of the Income Tax Act, 1961.

2. On the facts and circumstances of the case and in law also Ld. CIT (Exemption), Jaipur grossly erred in not offering a reasonable opportunity of being heard before rejecting the application for registration.

3. On the facts and circumstances of the case and in law also Ld. CIT (Exemption), Jaipur grossly erred in not considering the fact that the activities of society are genuine and the society has fulfilled all the necessary conditions of registration.

4. That the appellant craves his indulgence to add, amend, alter or delete the grounds of appeal.”

3.1 At the outset of the hearing of the appeal, it is noted the appeals in ITA No. 176&177/JPR/2024 filed are delayed by 369 days. The Id. AR of the assessee relied upon the petition for condonation of delay with following prayers:-

“In this case the due date to file the appeal was 13/02/2023 but filed on dated 17-02-2024.

Yourhonour's the assessee Samiti was not aware about the rejection order passed by the Ld CIT Exemption, Jaipur for granting registration U/s 12AB and 80G, because all the notice and rejection order has been send by the department on the mail id GAUSHALASAGWARA@GMAIL.COM, The said mail id does not belong to the Samiti. No notice and rejection order has been served on registered mail id of Samiti, which is carajat4100@gmail.com. Assessee did not receive any real time alert through SMS from the department regarding issue of notice or rejection order.

Assessee received show cause notice dated 14-02-2024 during the assessment proceedings U/s 143(3) on the mail id carajat4100@gmail.com and from the perusal of show cause notice, it came to knowledge of assessee, that Ld CIT exemption vide his order dated 15-12-2022 has rejected application filed for permanent registration u/s 12AB and 80G.”

3.2 The Id. AR of the assessee appearing in this appeals submitted that the assessee is serious on the duties and the delay of 369 days is on account of the grievance of the assessee for non receipt of notice by the Id. CIT(E) on the ground that it was sent to the e-mail ID of gaushalasagwara@gmail.com instead of carajat4100@gmail.com . In this situation the assessee was unable to respond to the notice sent by the Id. CIT(E) at wrong address. Thus, there is violation of

principles of natural justice and without serving of notice on the correct mail order has been passed against the assessee. Even the Hon'ble Apex Court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liberal 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 the other hand ld. DR opposed the submissions of the ld. AR of the assessee but submitted that the Court may decide this issue as deem fit and proper in the case.

3.4 We have heard both the parties and perused the materials available on record. The Bench noted that the assessee for condonation of delay of 369 days has merit and we concur with the submissions of the assessee. As there is a violation of principles of natural justice and without serving of notice on the correct mail order has been passed and thus there is a delay. Thus the delay of 369 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

4. Brief facts of this 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 18.06.2022. A letter/notice No. ITBA/EXM/F/EXM43/2022-23/1047450376(1) dated 16.11.2022 was issued at the e- mail/address provided in the application requiring the assessee to submit certain documents/explanations by 21.11.2022. However, no reply was filed by the assessee. Again a reminder letter was also issued vide letter DIN & Notice No. ITBA/EXM/F/EXM43/2022-23/1047618944(1) dated 24.11.2022 to submit certain documents/explanations by 28.11.2022. In view of principle of natural justice, one more opportunity was provided vide Letter No. ITBA/EXM/F/EXM43/2022-23/1047774099(1) dated 02.12.2022 as final opportunity through which date of submission was fixed as 08.12.2022. But that time also on given date no reply was filed by the assessee. Since it was is a limitation matter the case was decided on the basis of material filed by the assessee along with its application in Form no. 10AB.The assessee is also not registered under the Rajasthan Public Trust Act. Since the registration of 12AB was rejected even the application for registration u/s. 80G of the Act was also rejected.

4.1 Whereas in the application for registration u/s. 80G of the Act the ld. CIT(E) noted that as the assessee is also not registered under the Rajasthan Public Trust

Act and consequently the registration of 12AB was rejected and thereby the application for registration u/s. 80G of the Act was also rejected.

5. Feeling dissatisfied with the order of the Id. CIT(E), the assessee has preferred the present appeal before us challenging the finding recorded in that order of Id. CIT(E). 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	Page No.
1.	Copy of mail received on registration at Income Tax E-filing portal dated 05.10.2021.	1-1
2.	Copy of mail received on filing of Form 10A dated 06.12.2021.	2-2
3.	Copy of mail received on filing of Form 10AB dated 21.06.2022.	4-4
4.	Screen shot of notices issued by the CIT(E), Jaipur dated 16.11.2022, 24.11.2022 and 02.12.2022.	5-7
5.	Screen shot of notice issued U/s 143(2) of the Act for A.Y. 2022-23 dated 28.06.2023.	8-8

6. To this effect, the assessee has filed an affidavit reads as under:-

“I, Lalit Panchal S/o Shri Shubhendra Panchal, aged about 49 years, president of the assessee samiti, M/s shree Shree Uttam gopal Krishna Goshala Samiti, Sagwara, Durngarpur, Rajasthan, do solemnly affirm and declare as follows:

1. That the mail id GAUSHALASAGWARA@GMAIL.COM” on which all the notice and rejection order send by the department neither belongs to assessee samiti nor any member of Samiti.

2. That in form no. 10A (application for provisional registration) and form no. 10AB (application for permanent registration), no such mail id has been mentioned. Copy for no. 10A and 10AB are enclosed.
 3. We humbly request that in the interest of justice, kindly remand of the matter to the file of the CIT Exemption for reconsideration in light of the circumstances mentioned herein. I further assure that we will cooperate and appear before the Ld. Lower Authorities, if awarded the opportunity.”
7. The ld. AR of the assessee submitted that in the present case effective orders have been passed without giving notice of hearing on the correct mail ID. Therefore, Ld. CIT(E) be directed to pass order after providing opportunity of being heard to the assessee and the orders under appeal needs to be set aside.
8. 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 assessee has not submitted required details and therefore, the plea of the assessee is not maintainable.
9. We have heard the rival contentions and perused material available on record. The Bench noted that ld. 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. We note that the ld. AR for the assessee submitted that the notices for compliance as is evident from the affidavit that mail id GAUSHALASAGWARA@GMAIL.COM” on which all the notice and rejection order send by the department neither belongs to assessee samiti nor any member of

Samiti. To support the arguments, the ld. AR for the assessee has submitted an affidavit before us on 02.07.2024 stating that the e-mail ID GAUSHALASAGWARA@GMAIL.COM on which the notices and rejection order send by the department neither belong to the assessee samiti or any member of the samiti and further we note that from Form 10A application for provisional registration and form 10AB application for permanent registration no such e-mail ID has been mentioned. Therefore, considering the request of the ld.AR of the assessee we are restoring the matter to the file of the CIT(E) with direction to grant opportunity of being heard in respect of both the applications of the assessee. The Bench does not want to go into merit of the case but it is imperative that the assessee must be provided adequate opportunity of being heard by the ld. CIT(E). In this view of the matter, the Bench feels that the assessee should be given one more chance to contest the case before the ld. CIT(E) and the assessee is directed to produce all the relevant papers concerning both the applications so filed before the ld. CIT(E) to settle the dispute raised hereinabove.

10. 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 the ld. CIT(E) independently in accordance with law.

In the result, the appeals of the assessee in ITA No. 176 & 177/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open court on 13/09/2024.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 13/09/2024

*Santosh

आदेश की प्रतिलिपि

अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shree Shree Uttam Gopal Krishna Goshala Samiti, Durngarpur.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त (अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File ITA No. 176&177/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar