

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 791 & 792/JPR/2024

Giniya Devi Badangaria Charitable Trust, House No. 947k, Ward-12 Near Modi Hospital Malsisar, Jhunjhunu.	बनाम Vs.	The CIT(E), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AAZTS6766J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby :Shri P.C. Parwal (C.A.)
राजस्व की ओरसे / Revenue by: Shri Ajey Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 02/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 23/09/2024

आदेश / ORDER

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

Both these appeals have been filed by the assessee against two different orders of the ld. CIT (Exemption), Jaipur dated 30-03-2024 thereby rejecting the registration of the assessee trust u/s 12AB of the Income Tax Act (in short Act) and recognition u/s 80G of the Act. The Bench thought it fit to dispose off both the above mentioned appeals through a consolidated order

2.1 In ITA No.791/JP/2024 the assessee has raised the following grounds:-

“1. The Ld. CIT(E) has erred on facts and in law in rejecting the application filed by the assessee u/s 12A(1)(ac)(iii) in Form No.10AB seeking registration u/s 12AB of IT Act, 1961 on the ground that (i) assessee is not

registered under Rajasthan Public Trust Act, 1959 (ii) objects of assessee are business/commercial in nature and (iii) assessee has not proved the genuineness of its activities.

2. The Ld. CIT(E) has further erred on facts and in law in cancelling the provisional registration dt. 27.05.2021 granted by CIT u/s 12A(1)(ac)(vi) of IT Act, 1961.

2.2 In ITA No.792/JP/2024 the assessee has raised the following grounds:-

1. The Ld. CIT(E) has erred on facts and in law in rejecting the application filed by the assessee in Form No.10AB seeking approval under clause (iii) of first proviso to section 80G(5) of IT Act, 1961 on the ground that (i) approval u/s 80G cannot be granted without registration u/s 12AB and (ii) application filed in Form No.10AB is not within the time limit.

2.3 First of all, we take up the appeal of assessee in ITA No.791/JP/2024 wherein the brief facts of the case are that assessee filed online application on 29.09.2023 in Form No.10AB seeking registration u/s 12AB of the Act. A letter/notice dated 19.12.2023 was issued at the e-mail address to submit certain documents/explanation by 29.12.2023 but no compliance was made. Thereafter in response to the letter dated 11.01.2024 & 31.01.2024 assessee filed the reply in Dak on 07.02.2024 but noticing certain discrepancies a show cause letter was given on 08.02.2024 but the reply was not furnished. Thereafter a final opportunity was given on 09.03.2024. Considering the reply, the Id. CIT(E) rejected the application of the assessee on the ground that it is not registered under Rajasthan Public Act, 1959, its object clause is having clause (c), (d), (f) & (k) which are business object and the genuineness of the activities is not proved

inasmuch as receipt and confirmation of corpus donation is not furnished, payments are made in cash but cash withdrawal is not seen in the bank account except of Rs.10,000/- on 27.06.2022, bill of dress is not in the name of applicant trust and the details of beneficiaries is not given. Therefore the assessee was not considered as eligible for registration u/s 12AB of the Act and the provisional registration granted was also cancelled.

2.4 So far as the appeal in ITA No.792/JP/2024 is concerned, 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 assessee is not registered u/s 12AB of the Act & application filed is not within the time limit and therefore the assessee was not considered as eligible for approval u/s 80G of the Act.

2.5 The Ld. A/R of the assessee contended that the assessee is registered under Rajasthan Public Trust Act, 1959 on 17.05.2024 and in support of that the registration certificate issued by the Assistant Commissioner, Devasthan Vibhag was placed at Paper Book Pg 13. In respect of the business object, it is contended that the object clause no. (c), (d) & (f) are for imparting of education and for maintenance of parks, gardens, sports, clubs, dharamshalas and rest houses for use by the public in general which cannot be considered as involving any commerciality. The object clause (k) is to develop and provide housing colonies but since all the activities of the trust are for the welfare of general public carried

out without any profit motive and without any distinction of cast, creed, color and religion, the said object cannot be said to be a business object and even the Hon'ble Supreme Court in case of Ahmedabad Development Authorities has considered the object of housing development as an advancement of the object of general public utility. In respect of the genuineness of activities it is contended that assessee has furnished the name, address, mobile no., PAN, date and amount of donation given by various persons and confirmation of such corpus donation was filed before us. It is further explained that expenditure incurred in cash under various heads are of petty amount which is out of cash donation received as is evident from the Income & Expenditure Account. In respect of bill of dresses it was pointed out that all the bills are in the name of assessee but only in the payment voucher, by mistake the amount paid to NarnoliaVastraBhandar is incorrectly mentioned as paid to Agarwal Textiles in support of which the payment voucher, bill of NarnoliaVastra Bhandar, confirmation of NarnoliaVastra Bhandar and the list of beneficiaries of such dress was furnished at Paper Book Pg89-94. It was thus contended that all the three reasons for which registration is refused are not correct and therefore the Ld. CIT(E) be directed to allow registration u/s 12AB of the Act.

2.6 Per contra, the ld. DR relied on the detailed order of the ld. CIT(E).

2.7 We have heard the rival contentions and perused material available on record. The bench noted that the first ground for which the application of assessee for registration u/s 12AB was rejected was for the reason that the assessee is not registered under the Rajasthan Public Trust Act, 1959. However, the assessee is registered under Rajasthan Public Trust Act, 1959 on 17.05.2024 and therefore, this ground of rejection no more survives.

2.8 The second ground of rejection is the business object of the assessee. For this purpose it would be relevant to extract clause (c), (d), (f) & (k) as under:-

c) To construct, establish, run, schools, colleges, libraries, reading rooms, universities, laboratories, research and other institutions of the like nature in india for development and advancement of education and diffusion of knowledge amongst the public in general and to grant aid or other financial assistance to such institutions.

d) To establish maintain and run studentship, scholarship and render other kind of aid to students including supply of books, stipends, medals and other incentives to study, without any distinction as to the caste, creed color, race or sex etc.

f) To construct, establish, maintain or grant aid for the establishment and/ or maintenance of parks, gardens, sports, clubs, dharamashals and rest houses, for use by public in general.

k) To develop and provide housing colonies.

2.9 We note that from these objects it cannot be presumed that these are business objects more particularly when the trust is carrying out its activities on no profit no loss basis, section 2(15) of the Act provides for taxability of the income

of the trust if any activity in the nature of trade, commerce or business exceeds the prescribed limit and on the basis of such object the assessee has been registered as a charitable institution by Rajasthan Public Trust Act, 1959. Thus this observation of Ld. CIT(E) will not come in way of refusing the registration but at the most it is to be considered at the time of framing the assessment but not at the time of grant of registration.

2.10 The third ground of rejection is about the genuineness of the activities but from the details and the documents furnished before us we find that assessee has furnished the complete details of corpus donation before the Ld.CIT(E) along with the complete address and mobile no. but no enquiry was made by him. Before us the confirmation of corpus donation is filed. The expenditure incurred in FY 2020-21 is Rs.21,676/- (PBP 35), for FY 2021-22 is Rs.27,162/-(PBP 51) & for FY 2022-23 is Rs.96,092/- (PBP 69) and the details of all the expenses including the bills of dresses & beneficiaries of such dresses has been furnished. Therefore, we are of the view that assessee is genuinely carrying out its charitable objects. In view of the above discussion, we set aside the order of Ld. CIT(E) and direct him to decide the application afresh in accordance with law

2.11 In ITA No.792/JP/2024, the assessee has challenged the order of Ld. CIT(E) rejecting the 80G recognition application vide order dt.30.03.2024. While doing so,

Ld. CIT(E) advanced two reason, one the assessee is not registered u/s 12AB of the Act and the assessee has filed the application after a delay of more than six months. Since we restoring 12AB Application to the file of the ld. CIT(E) and as regards the contention of making application of Section 80G within 06 months, the CBDT Circular No. 7/2024 dated 25-04-2024 come at the rescue of the assessee and ld CIT(E) is directed to decide the application afresh.

3.0 In the result both the appeals of the assessee are allowed for statistical purposes as indicated hereinabove.

Order pronounced in the open court on 23/09/2024.

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

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

दिनांक / Dated:- 23/09/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Giniya Devi Badangaria Charitable Trust, Jhunjhunu.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकरआयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 791 & 792/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar