

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 551 & 552/JPR/2024

Shri Baba Balaknath Seva Sansthan, Shivank 69/12 New Sanganer Road, Near Dhanwantry Hospital, Mansarovar, Jaipur.	बनाम Vs.	The CIT-Exemption, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABGAS9583G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Vishal Gupta (C.A.) (through V.C.)
राजस्व की ओरसे / Revenue by: Ms. Alka Gautam (CIT)

सुनवाई की तारीख / Date of Hearing : 15/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 15/10/2024

आदेश / ORDER

PER: NARINDER KUMAR, Judicial Member.

These two appeals filed by the appellant arise out of two separate orders dated 29.03.2024 passed by Learned Commissioner of Income Tax (Exemption), Jaipur [hereinafter referred to as CIT(E)].

Vide one order, application filed by the applicant trust, in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), has been rejected.

Vide second order, separate application filed by the applicant trust, in Form No. 10AB seeking registration u/s 80G of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), has been rejected.

Feeling aggrieved, the applicant Trust is before this Appellate Tribunal by way of above-captioned two appeals..

2. Arguments heard. File perused.

ITA No. 551/JPR/2024

3. Present appeal has been preferred as prayer for registration of the applicant trust u/s 12AB of the Act has been rejected. It has been disallowed on two grounds, *firstly*, that objects no. 3 and 6 as available in the MAO/deed of the applicant relate to activities are commercial/business in nature, and *secondly*, that the activities carried out by the applicant are not in accordance with the objects of the trust.

4. Ld. AR for the applicant has referred to the paper book filed here to highlight objects of the applicant trust, and submitted that no such activity as specified in object No.3 and 6, has ever been carried out by the applicant trust. In this regard, he has also referred to statement of Income and Expenditure Account of the last 5 years. The contention is that since no such activity has ever been carried out, rejection of prayer seeking registration of the applicant trust on this ground was not called for.

Whether any object of the trust has been found to be profit making?

5. The concerned objects no. 3 and 6 of the applicant trust, as per its MAO/deed read as under:-

“3-लघु कुटीर उद्योगों, शिल्पकारी फर्नीचर बढई बढई, मुर्ति कला, फल प्रबोधन (आचार- मुरबे) अनाज दाल प्रबोधन तथा मसाले आदि के विकास एवं प्रषिक्षण हेतू कार्य करना एवं उत्पादित वस्तुओं के उत्पादन तथा उनका विक्रय आदि का कार्य करना।”

“6-महिला एवं बाल विकास योजनाओं को प्रोत्साहित करना तथा हस्तकला, सिलाई, कढाई, बुनाई गृह विश्राम, पाक कला, संगीत एवं महिला षिक्षा एवं उनके उत्थान के लिए विभिन्न योजनाएं बनाना एवं क्रियान्वयन हेतु आय करना। विधालय खोलना एवं उनका संचालन करना आदि।”

On perusal of the statements of Income and expenditure Account for the period from 01.04.2018 to 31.03.2019, 01.04.2019 to 31.03.2020. from 01.04.2020 to 31.03.2021, and from 01.04.2021 to 31.03.2022 (page 39 to 42 of the paper book) we find that same do not depict if any such activity as mentioned in object no. 3 and 6 of the MAO/deed was carried out by the applicant trust.

While passing the impugned order, Ld. CIT(E) relied on decision in **ACIT(E) vs. Ahmedabad Urban Development Authority**, Civil Appeal 21762 of 2017 by Hon'ble Apex Court on 19.10.2022, wherein it was clarified that the assessee advancing general public utility cannot engage

itself in any trade, commerce or business or provide service in relation thereto for any consideration.

Section 2(15) of the Act defines “charitable purposes”. Learned AR for the appellant has pointed out that in the MOA/deed, it has been specifically mentioned that the activities or objects of the trust specified therein would not be to earn profit.

In **India Trade Promotion Organisation v. DGIT**, 371 ITR 333, Hon’ble High Court of Delhi while upholding the constitutional validity of the proviso to section 2(15) of the Act held that same would apply where the dominant intention of a trust or the institution is profit making.

Here, nothing has been brought to our notice from the side of the department to suggest that any of the objects of the trust was found to be profit oriented/making.

Whether any activity was conducted by the trust against its objects?

6. As noticed above, the second ground for rejection of the application for registration of the trust is that the activities conducted by the trust were not in accordance with the objects of the trust.

In this regard, in para 3.2 of the impugned order, Learned CIT(E) referred to certain photographs furnished by the appellant, and observed that said activity could not be said to be part of its object. Learned CIT(E)

also observed that no expenses were shown in the Income and Expenditure Account statements, to have been incurred on the above activities.

7. As a part of the Paper Book, Ld. AR for the applicant has submitted copies of two pamphlets. One was circulated regarding activity of celebration of birthday of Lord Krishna i.e. Laddu Gopal, and the other regarding activity of distribution of Tulsi plants by the applicant trust.

Learned AR for the applicant has stated at Bar that these events were not organized by the applicant trust, and rather these were organized by one Ms. Ritu Agarwal, as specifically mentioned in the pamphlets.

8. It is true that on these two pamphlets regarding two events one held on 03.09.2023, and the other organized on 11.07.2023, emblem of the applicant trust is there.

But when it finds mentioned therein that the events were organized by Ms. Ritu Agarwal, it cannot be said that any activity was conducted by the applicant trust against its objects, particularly, and when Learned CIT(E) has clearly mentioned in para 3.2 of the impugned order that no expenses are shown to have been incurred on the said activity, as per Income and Expenditure Account statements submitted before him. This

supports the contention raised by the applicant trust that it did not conduct any such activity.

9. In view of the above discussion, we find that Learned CIT(E) fell in error in arriving at the conclusion that activities of the applicant trust were found to be not in accordance with its objects.

As a result, the impugned order deserves to be set aside. Accordingly, this appeal is disposed of and the impugned order rejecting prayer of the applicant trust seeking registration under section 12 AA is set aside. Learned CIT(E) to do the needful for registration of the applicant trust in accordance with law.

ITA No. 552/JPR/2024

10. By way of present appeal applicant trust has challenged order dated 29.03.2024 passed by the Learned CIT(E), Jaipur whereby its application filed in Form 10AB seeking approval u/s 80G of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), has been rejected on following two grounds:-

- Registration of application in registration u/s 12AB.
- Commencement of activities.

11. Arguments heard. File perused.

12. Learned CIT(E) has rejected application under section 80G of the Act while observing that the applicant was required to file application in Form No.10AB, under clause (iii) of first proviso to sub-section (5) of section 80G of the Act within the time period of atleast 6 months prior to expiry of period of the provisional approval or within 6 months of commencements of its activities, whichever is earlier. He went on to observe that the extension of due date by CBDT from time to time in filing form 10AB for application under clause (iii) of the first proviso to section 80G of the Act had not been extended.

As observed in the order, applicant had begun its activities since FY 2021-22 itself. Ultimately, Learned CIT(E) dismissed the application being barred by time.

13. Impugned order is dated 29.3.2024.

14. At this stage, it is significant to mention that Vide circular No.7 of 25.4.2024, CBDT extended time for filing of suchlike applications. Relevant portion of the circular is extracted hereunder:

“....3. On consideration of the matter, with a view to avoid and mitigate genuine hardship in such cases, the Board, in exercise of the powers conferred under section 119 of the Act, hereby extends the due date of making an application/intimation electronically in

(i) Form No. IOA, in case of an application under clause (i) of the first proviso to clause (23C) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G or in case of an intimation under fifth proviso of sub section (I) of section 35 of the Act, till 30.06.2024;

(ii) Form No. IOAB, in case of an application under clause (iii) of the first proviso to clause (23C) of section 10 or under sub-clause (iii) of clause (ac) of sub-section (I) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, till 30.06.2024.”

15. It is true that the impugned order came to be passed even before the above-said circular was issued. But, it is significant to note that vide above-said circular, CBDT went on to issue directions in cases where any trust, institution or fund had already made an application in Form No. IOAB, and where the Principal Commissioner or Commissioner had passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date or that the application had been furnished under the wrong section of the

Act, it might furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 3(ii) i.e. 30.06.2024.

Present appeal came to be presented well before 30.6.2024. So, the applicant opted to avail of this remedy available under the law. The applicant trust, if so advised, could withdraw this appeal and file fresh application by 30.6.2024 as per the time extended by CBDT. But, it appears that the other application filed under section 12 AA of the Act having also been disallowed, the appellant opted to proceed with this appeal.

16. As noticed above, vide separate order of even date in ITA No. 552/JPR/2024 filed by the applicant trust has been disposed off, thereby setting aside the order dated 29.03.2024 passed by Learned CIT(E) vide which prayer for registration of the applicant trust u/s 12AB of the Act was rejected.

17. Having regard to setting aside of the order rejecting prayer in registration u/s 12AB of the Act, the impugned order disallowing approval u/s 80G of the Act also deserves to be set aside.

As a result, the impugned order is set aside and while disposing of the appeal, matter is remanded to Learned CIT(E), for decision on the

application under section 80G of the Act, afresh in accordance with law, after providing reasonable opportunity to the applicant of being heard.

Result

18. Consequently, both these appeals are disposed of.
19. Copy of the common order be placed in the connected appeal file No.ITA 552/JP/2024.
20. Files of appeals be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 15/10/2024.

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

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/10/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Baba Balaknath Seva Sansthan, Jaipur.
2. प्रत्यर्था / The Respondent- CIT(Exemption), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 551 & 552/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar