

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

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

आयकर अपील सं./ITA No. 990/JPR/2024

Pande Family Charitable Trust, 69, Bajaj Nagar Enclave, Jaipur.	बनाम Vs.	The CIT Exemption, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAFTP5737N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Dheeraj Borad (C.A.) (Th. V.C.)
राजस्व की ओरसे / Revenue by: Ms. Alka Gautam (CIT) (Th. V.C.)

सुनवाई की तारीख / Date of Hearing : 23/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 30/10/2024

आदेश / ORDER

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

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income (Exemption), Jaipur [herein after referred to as "Id.CIT(E)"] dated 21.05.2024. The order under challenge is passed rejecting the application of the assessee in Form no. 10AD for registration as per provision of section 12AB of the Income Tax Act [here in after referred to as "the Act"].

2. The assessee has raised the following grounds of appeal:-

“1. That on the facts and in law the impugned order dated 21.05.2024 on form 10AD passed by CIT Exemption not allowing assessee’s claim of registration u/s 12AB of the I.T. Act, 1961 is most arbitrary, unjust and untenable and liable to be vacated.

2. That on the facts and in law the learned CIT Exemption grossly erred in holding that in the absence of registration under Rajasthan Public Trust Act, 1959 assessee is not eligible for registration u/s 12AB of the I.T. Act, 1961.

3. That the Learned CIT Exemption failed to provide reasonable and sufficient opportunity of being heard to the assessee.

4. That the Learned CIT Exemption failed to discharge the burden of proof which squarely lay upon him before rejecting the assessee’s application claiming registration u/s 12AB of the I.T. Act, 1961.

5. That the appellant craves leave to add, alter, amend and/or substitute one or more grounds of appeal as and when necessary.”

3. Brief facts of the case are that the assessee filed an online application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 was filed on 07.11.2023. A letter/notice dated 28.02.2024 was issued at the e-mail/address provided in the application requiring the assessee to submit certain documents/explanations by 14.03.2024. In response of the same the assessee has not submit any submission. Therefore, one more opportunity was provided vide notice dated 04.04.2024 & 11.04.2024. Sh. A.K.Pande trustee and Id. AR for the assessee attended and submit the relevant submission but not found tenable. Therefore, vide notesheet dated 07.05.2024 the assessee was asked to submit the relevant information. In response of the same no information was provided by the assessee till date.

Since it was a limitation matter therefore, the case was decided on the basis of material filed by the assessee along with its application in Form no. 10AB. While dealing with the application for registration the Id. CIT(E) has passed the order by observing as under:-

“It is important to note here that provisions and definition of public trust in Rajasthan Public trust and Bombay Public Trust Act, 1950 are analogous. Thus, this decision, further clarify that if an NGO is for public religious or public charitable or both purposes, registration under public trust is mandatory. Further Hon'ble Rajasthan High Court in case of Public Trust ShriGeeta Satsang Bhawanvs. Om Prakash Mr. D.C. Sharma, Civil Appeal no. 300 of 2006, has further held in para 5 that earlier requirement of minimum income and property has been done away and since 1982 onward every public trust irrespective of its income or properties need to be registered under Rajasthan Public trust Act, 1959. Further, as discussed in earlier paras, the Hon'ble Supreme Court in its para no. 64-70 of order dated 19.10.2022 in the case of M/s New Noble Education Society in civil appeal no. 3795 of 2014 has held that registration under respective public trust acts or charities act is mandatory. It is important to mention here that New Noble education society was also registered under Andhra Pradesh Societies Registration Act, 2001, and Assessee has pleaded before Hon'ble Apex Court on same ground that once registered under societies Act, no need to register under public trust act. Respective plea of assessee in that case is available on para 14 of Hon'ble Apex Court namely....."as long as trust was registered under some law (such as Andhra Pradesh Societies Registration act) or even a not for profit duly incorporated no other requirement under any other state law". And after considering this argument, Hon'ble Apex Court has, by discussing all the provisions of public trust Act, has held that such registration is mandatory. So, the recent Apex Court decision has made it clear that any NGO whether registered as Society, or formed as trust or even section 8 company, must register under public trust act, if it claims that it is for the benefit of public, and claims itself as public charitable or public religious organization.

2.5. Assessee vide letter dated 28.02.2024 was given a show cause to submit documents/explanation, by 14.03.2024, the relevant portion of which is reproduced as under.

"Whether the institution is registered under Rajasthan Public Trust Act, 1959. If not, please give explanation that why same should not be considered violation of section 12AB(1)(b)(i)(B) of the Income Tax Act read with sec 17 of the Rajasthan Public Trust Act, 1959 and decision of Hon'ble Apex Court in the case of New Noble Education Society Civil Appeal No. 3795 of 2014 dated 19.10.2022 and why the application should not be rejected."

In response of the same the applicant has furnished its reply but not found tenable therefore vide notesheet dated 07.05.2024 the applicant was asked to submit the following information on or before 14.05.2024.

In your reply dated 07.05.2024, you have claimed that you are registered under Rajasthan Public Trust Act, however no certification has been submitted. Please submit copy of Registration with RPT, otherwise application would be COME TAX DEPARTMEN rejected.

In response of the same the applicant has not submitted any submission. In light of above discussion and in the absence of registration under Rajasthan Public Trust Act, 1959, assessee is not eligible for registration u/s 12AB.

03. In view of above discussion assessee's claim of registration section 12AB is liable to be rejected and thus being rejected on following grounds: -

Rajasthan Public Trust Act, 1959.

1. 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 31.12.2021 is also being cancelled. Further assessee has failed to give proper justification for regularization of provisional registration, thus with this order provisional registration is also lapsed and cancelled."

4. Feeling dissatisfied from the order of the Id. CIT(E), the assessee has preferred an appeal before us. The assessee has filed a detailed written submissions which is reproduced hereinbelow:-

“1. That in this appeal the main issue is against rejection of assessee's application for registration u/s 12AB of the L.T. Act, 1961 by the CIT Exemption of assessee's application for registration u/s 12AB of the I.T. Act, 1961 for the reason, "in the absence of registration under Rajasthan Public Trust Act, 1959, assessee is not eligible for registration u/s 12AB".

2. That vide the reply dated 07/05/2024 by the assessee filed with the Id. CIT Exemption the assessee informed the CIT Exemption that it has applied for obtaining registration of trust under Rajasthan Public Trust Act, 1959. As the assessee had not received registration certificate under Rajasthan Public Trust Act, 1959, the same could not be filed before the Id. CIT Exemption. This fact is corroborated by the Id. CIT Exemption itself at page 7 of the impugned order.

3. That the Id. CIT Exemption failed to provide reasonable and sufficient opportunity of being heard to the assessee.

4. That the hon'ble bench will very kindly find that as on date the certificate of registration under Rajasthan Public Trust Act, 1959, has been issued to the assessee under Rajasthan Public Trust Act, 1959. A copy of this certificate is enclosed for the kind consideration.

5. That with the grant of the registration to the assessee under Rajasthan Public Trust Act, 1959, the very basis of rejecting by the Id. CIT Exemption application for registration u/s. 12AB of the I.T. Act, 1961 no more subsists.

6. That on the requisition of the Id. CIT Exemption the assessee could not submit copy of registration under Rajasthan Public Trust Act, 1959 for the reason that by that time certificate of registration by the registering authority was not provided to the assessee. Under these circumstances the assessee was prevented by sufficient cause from producing the evidence i.e. copy of registration under Rajasthan Public Trust Act, 1959, which he was called upon to produce by the Id. CIT Exemption.

7. That not producing by the assessee aforesaid evidence i.e. copy of registration under Rajasthan Public Trust Act, 1959, which is relevant to each ground of appeal, and rather specifically relevant to the main reason of rejecting by the Id. CIT Exemption assessee's application for registration u/s 12AB of the I.T. Act, 1961.

8. That it is respectfully submitted that the hon'ble Bench i.e. the Hon'ble Income tax Appellate Tribunal is the last fact finding body under the hierarchy of legal authorities. Under such facts and circumstances if the hon'ble bench does not take into consideration the enclosed evidence which is the main document in the absence of which registration

u/s 12AB has been rejected, the assessee trust will be put to irreparable loss of serving the suffering humanity and allied charitable purposes.

9. That to support above mentioned submissions the assessee inter alia places reliance on the judgment in the case of Laxmandas v UOI 234 ITR 261 wherein it was held, "that where a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature and extend the application of the rules even to the exclude categories".

10. That it is humbly prayer that relief as per I.T. Act and rules and other legal provisions may kindly be granted so that the assessee could get registration u/s 12AB of the I.T. Act, 1961 and the assessee could serve the poor, needy and the downtrodden."

5.1 During the course of hearing, the Ld. AR for the assessee prayed that the Id. CIT(E) has passed the order without providing adequate opportunity of being heard to the assessee. The Id. AR for the assessee submitted that they have submitted all the details on 07.05.2024 and on the same day order is passed. The Id. AR of the assessee also prayed to consider the prayer made under Rule 29 which reads as under:-

"1. That in this appeal the main issue is against rejection of assessee's application for registration u/s 12AB of the I.T. Act, 1961 by the CIT Exemption of assessee's application for registration u/s 12AB of the I.T. Act, 1961 for the reason, "in the absence of registration under Rajasthan Public Trust Act, 1959, assessee is not eligible for registration u/s 12AB".

2. That vide the reply dated 07/05/2024 by the assessee filed with the Id. CIT Exemption the assessee informed the CIT Exemption that it has applied for obtaining registration of trust under Rajasthan Public Trust Act, 1959. As the assessee had not received registration certificate under Rajasthan Public Trust Act, 1959, the same could not be filed before the Id. CIT Exemption. This fact is corroborated by the Id. CIT Exemption itself at page 7 of the impugned order.

3. That the Id. CIT Exemption failed to provide reasonable and sufficient opportunity of being heard to the assessee.
4. That the hon'ble bench will very kindly find that as on date the certificate of registration under Rajasthan Public Trust Act, 1959, has been issued to the assessee under Rajasthan Public Trust Act, 1959. A copy of this certificate is enclosed for the kind consideration.
5. That with the grant of the registration to the assessee under Rajasthan Public Trust Act, 1959, the very basis of rejecting by the Id. CIT Exemption application for registration u/s. 12AB of the I.T. Act, 1961 no more subsists.
6. That on the requisition of the Id. CIT Exemption the assessee could not submit copy of registration under Rajasthan Public Trust Act, 1959 for the reason that by that time certificate of registration by the registering authority was not provided to the assessee. Under these circumstances the assessee was prevented by sufficient cause from producing the evidence i.e. copy of registration under Rajasthan Public Trust Act, 1959, which he was called upon to produce by the Id. CIT Exemption.
7. That not producing by the assessee aforesaid evidence i.e. copy of registration under Rajasthan Public Trust Act, 1959, which is relevant to each ground of appeal, and rather specifically relevant to the main reason of rejecting by the Id. CIT Exemption assessee's application for registration u/s 12AB of the I.T. Act, 1961.
8. That it is respectfully submitted that the hon'ble Bench i.e. the Hon'ble Income tax Appellate Tribunal is the last fact finding body under the hierarchy of legal authorities. Under such facts and circumstances if the hon'ble bench does not take into consideration the enclosed evidence which is the main document in the absence of which registration u/s 12AB has been rejected, the assessee trust will be put to irreparable loss of serving the suffering humanity and allied charitable purposes.
9. That to support above mentioned submissions the assessee inter alia places reliance on the judgment in the case of Laxmandas v UOI 234 ITR 261 wherein it was held, "that where a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature and extend the application of the rules even to the exclude categories".
10. That it is humbly prayer that relief as per I.T. Act and rules and other legal provisions may kindly the granted so that the assessee could get registration u/s 12AB of the LT. Act, 1961 and the assessee could serve the poor, needy and the downtrodden."

Considering that additional evidence so filed and referred the ld. AR of the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. CIT(E).

6. Per contra, the ld. DR relied on the orders of the ld. CIT(E) and submitted that various opportunities were granted but the assessee has not filed details in time and therefore, the appeal of the assessee is required to be dismissed..

7. We have heard the rival contentions and perused material available on record. The Bench noted from the order of the ld. CIT(E) that he has rejected the application of the assessee pertaining to registration of the society u/s 12AB of the Act on the ground of Non-registration of the assessee with RPT Act, 1959. It is also pertinent to mention that during the course of hearing, the ld. AR of the assessee prayed that he was deprived off availing adequate opportunity of being heard by the ld. CIT(E) in the application for registration/recognition. We note from the records available and show cause notice were issued by the ld. CIT(E) and reply has been filed by the assessee in response to notice. Further, we note that ld. CIT(E) has issued another notice with certain query which the assessee alleged that reply filed on 07.05.2024 but the same was not considered by the Ld. CIT(E). The ld. AR for the assessee submitted that the assessee was not

aware of the subsequent notice issued by the ld. CIT(E) and therefore, response could not be submitted. We note that the ld. CIT(E) has passed the order without providing adequate opportunity of hearing. Further 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).

8. Further, we note that the learned Commissioner of income tax (exemption) has denied the registration merely on the sole ground that the assessee is not registered under the Rajasthan Public Trust Act and therefore, the registration was denied. We note from the record that the order under challenge was passed on 21.05.2024, whereas RPT Act registration was granted to the assessee on 05.09.2024 which was filed as additional evidence. It is also pertinent to mention that during the course of hearing, the ld. AR of the assessee prayed that he was deprived off availing adequate opportunity of being heard by the ld. CIT(E) in the application for registration/recognition.

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 the application so filed before the ld. CIT(E) to settle the dispute raised hereinabove.

9. 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 appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30/10/2024.

Sd/-

(राठौड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 30/10/2024

*Santosh

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

1. The Appellant- Pande Family Charitable Trust, jaipur.
2. प्रत्यर्था / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 990/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar