

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. 333/JPR/2024

Gau Jeev Parmarth Sewa Sanstha 3/444, Kala Kua Housing Board Sewa Sthal Upcharadheen Ward, Bhawani Top, Alwar.	बनाम Vs.	The CIT Exemption, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADTG1614K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assesseeby : Shri P. C. Parwal (C.A.)
राजस्व की ओर से / Revenue by: Ms Alka Gautam (CIT) (V.H.)

सुनवाई की तारीख / Date of Hearing : 24/09/2024
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 "ld.CIT(E)"] dated 30.01.2024.

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

"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 assessee is not registered under Rajasthan Public Trust Act, 1959.

2. The appellant craves to alter, amend and modify any ground of appeal.

3. Necessary cost be awarded to the assessee."

3. Brief facts of the case are that the assessee filed online application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 was filed on 01.07.2023. A letter/notice dated 20.10.2023 was issued at the e-mail/address provided in the application requiring the assessee to submit certain documents/explanations by 01.11.2023, but no compliance has been made by the assessee. Thereafter, a reminder letter was issued vide this office DIN & Notice dated 28.11.2023 wherein date of hearing was fixed as 06.12.2023 in compliance of the same the A/R of the assessee has submitted the sought details, but some discrepancy was noticed. Thereafter, a show cause notice was issued vide DIN & Notice dated 09.01.2024 wherein date of hearing was fixed as 15.01.2024. This time the assessee sought adjournment. Therefore, the case was adjourned till 22.01.2024 vide this office DIN & Notice dated 17.01.2024. In response of the same the assessee has submitted its submission on 25.01.2024 but not found tenable by Ld. CIT(E). Since it was a limitation matter, therefore, the case was decided on the basis of material filed by the applicant along with its application in Form no. 10AB.

4. Apropos to the application so filed by the assessee, the relevant findings of the Ld. CIT(E) is reproduced here in below:-

“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 in mandatory. Further Hon'ble Rajasthan High Court in case of Public Trust Shri Geeta 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 20.10.2023 was given a show cause to submit documents/explanation, by 01.11.2023, 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 filed by you should not be rejected."

In response of the same the applicant furnished its reply and stated that "As Institution was registered under society registration act and there was no completion at the time of formation of society to get himself registered under Rajasthan Public Trust, 1959 accordingly not register. If your goodself would require that it would be essential then we will apply and after registration, we well provide copy of registration to your kind consideration."

Thereafter, again applicant was provided another opportunity show cause dated 15.01.2024 to prove that the society is registered under RPT Act, the relevant portion is reproduced as under: -

"Vide reply dated 21.12.2023, you have stated that 'As institution was registered under society registration act and there was no compulsion at the time of formation of society to get himself registered under Rajasthan Public Trust, 1959..... The Hon'ble Apex Court in case of New Noble Education Society after considering every fact held that despite having registration under Societies Act, if society claim itself for benefit of public, has to register under respective Public Trust, if mandated by Public Chantable Trust Act. Section 2(11) of the RPT Act, which include religious trust/ societies also in is ambit if they are meant for benefit of public and section 17(1), which makes registration is mandatory, in view of the above, furnish an explanation as to why the same should not be considered as violation of section 12AB(1)(b)(1)(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 filed by you should not be rejected."

In response of the same, the applicant has furnished submission on 25.01.2024. The relevant portion of the submission is reproduced as under-

"Gau jeev parmARTH sewa sanatha is society registered under society registration act to provide medical relief of ill animal and giving medical treatment. Therefore, we were not in knowledge to register the society under "DEVSTHAN" So the process of registration are under process, whenever registration will be granted it will be submitted to you goodself

As discussed above, the assessee has failed to prove that assessee is not registered under RPT Act, 1959. In light of above discussion and in the absence of registration under Rajasthan Public Trust Act, 1950, assessee is not eligible for registration u/s 12AB.

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

- Non-registration under Rajasthan Public Trust Act, 1959."

5. During the course of hearing, the Id. AR of the assessee in the appeal mainly submitted that the assessee if given an opportunity will be able to satisfy the queries/ issues raised / details to be submitted and the Ld. AR for the assessee submitted that the assessee has filed an application for

registration under RPT Act, 1959 on 14.03.2024 with proof the Application dated 14.03.2024 and which was the sole reason for denying registration by 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 failed to prove that the assessee is registered under RPT Act,1959 .

7. We have heard the rival contentions and perused material available on record. We note from the records available and show cause notices were issued by the Ld. CIT(E) on 20.10.2023 but no compliance has been made by the assessee on dated 01.11.2023 in response to notice dated 20.01.2023.

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. It is also pertinent to mention that during the course of hearing, the ld. AR of the assessee prayed that assessee was deprived off availing adequate opportunity of being heard by the ld. CIT(E) in the application for registration/recognition and further submitted that the assessee has filed an application for registration under RPT act,1959 on 14.03.2024 with proof of the Application dated 14.03.2024. Based on that overall

facts we feel it proper to restore back to the matter to the file of the ld. CIT(E) as the only reason for denial of registration on was that the assessee is not registered under the RPT Act. Since the assessee has produced that registration application was made on 14.03.2024, we found force that the assessee merely on that aspect of the matter cannot be denied the registration. Therefore, we set aside the matter of registration under [section 12](#) AB before the ld. CIT(E) to decide the matter of registration based on the these aspect of the matter in accordance with the law as the reason advanced the ld. CIT(E) is curable.

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 appeal of the assessee is allowed for statistical purposes.

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

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 30/10/2024
*Santosh

Sd/-

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

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

1. The Appellant- Gau Jeev Parmarth Sewa Sanstha, Alwar.
2. प्रत्यर्थी / The Respondent- CIT Exemption, 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. 333/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar