

आयकरअ पीलीय 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. 848/JPR/2024

Sarvangin Vikas Sanstha 5/30 Neb Housing Board, Alwar.	बनाम Vs.	The CIT Exemption, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAABS1361E		
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 27.04.2024.

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

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

4. 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 07.10.2023. The assessee was issued a letter/notice dated 25.02.2024 requesting it to furnish certain documents/explanations by 11.03.2024, but no compliance has been made by the assessee. Thereafter, a reminder letter was issued on 05.04.2024 wherein date of hearing was fixed as 12.04.2024. In response to the above the assessee furnishes its reply on 09.03.2024, which is thoroughly examined and placed on record by Ld. CIT(E), but observed discrepancies, which were conveyed to the assessee vide show cause notice dated 09.04.2024 wherein date of hearing was fixed on 16.04.2024. In response to show cause notice the assessee furnish its reply on 08.04.2024 & 13.04.2024 through e-mail which were examined and placed on record but not found tenable. Since it was limitation matter, therefore the case was decided on the basis of material available on record with the file of Ld. CIT(E).

4. Apropos to the application so filed by the assessee, the relevant findings of the Id. 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, the appellant furnished its reply on 13.04.2024 at para no. 01 the applicant admitted that the trust society is not registered under Rajasthan Pulic Trust Act, 1959. Relevant reply is as under:-

“To,

The Commissioner of Income Tax (Exemption) Jaipur.

Sub:- Proceeding u/s 12A(1)(ac)(iii) of IT Act 1961.

Respected Sir,

Your good self has issued a notice on dated 09.04.2024 regarding furnishing details/documents for the proceedings u/s 12A(1)(ac) (iii) of IT Act 1961. In this regard point wise written submissions are as under:-

1. That your good self has raised the question that our institution is not registered with Rajasthan Public Trust Act 1959. in this regard it is submitted that The Society Sarvagin Vikas Sansthan has been incorporated for providing higher education to the student, therefore we get registered our society under the Rajasthan Societies Act 1958 and after incorporation the society, we took necessary affiliation the jurisdictional university. We are of opinion that these registration are sufficient to smoothly run the college and society and there are no any authority required us or mandate to get registered under Rajasthan Public Trust Act 1959 Before that. And we are of opinion that Rajasthan Public Trust Act 1959 registration is required to get only that trust, whose incorporation made under trust deed Therefore we did not get registration under Rajasthan Public Trust Act 1959.

We are, not aware that our society is also necessary, to registered under StateAct Like:- Rajasthan Public Trust Act 1959 to obtain 12A registration. As andwhen we comes to know that for obtaining of 12A registration it is necessaryto get registration under Rajasthan Public Trust Act 1959.

We are trying our best to comply the same and we are ongoing to get registered our society in Rajasthan Public Trust Act 1959.

We Humble request that we will submit such registration as soon as available to us. Hence we are requesting to grant the justice and not to reject such application on the basis of Non-registration of Rajasthan Public Trust Act 1959.”

Hence, from the above, it is clear that applicant is not registered under RPT Act, 1959.

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.

04. 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 regularisation of provisional registration, thus with this order provisional registration is also lapsed and cancelled.”

5. During the course of hearing, the ld. 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 28.06.2024 with proof of the application dated 28.06.2024 and that 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. 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 that the assessee is not registered under Rajasthan Public Trust Act, 1959. It is also pertinent to mention that during the course of hearing, the ld. AR of the assessee prayed that they were deprived off availing adequate opportunity of being heard by the ld. CIT(E) in the application for registration/recognition.

We note that the learned Commissioner of income tax (exemption) has denied the registration merely on the 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 they were 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 28.06.2024 with proof

the Application dated 28.06.2024. considering that aspect of the matter we feel that issued of registration be restored back to the file of the Id. CIT(E) as the only reason was that the assessee was not registered under the RPT Act. Considering the overall facet of the fact and since the assessee has produced that registration application dated 28.06.24, 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 Id. 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 Id. CIT(E) is curable.

8. 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/-
(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- Sarvangin Vikash 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. 848/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar