

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

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

आयकर अपील सं./ITA No. 468/JPR/2024

Desire Foundation 15, Sukh Vihar, Gurjar Ki Thadi, Mansarover, Jaipur.	बनाम Vs.	The ITO Exemption, Ward-1, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAETD1460F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia (CA)
राजस्व की ओर से / Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 23/10/2024
उद्घोषणा की तारीख / Date of Pronouncement: 06/11/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Because the assessee was aggrieved by the order of the Learned Commissioner of Income Tax (Exemption), Jaipur [herein after referred as Id. "CIT(E)"] dated 08.02.2024, the present appeal is filed. 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"].

2.1 At the outset of hearing, the Bench observed that there is delay of 03 days in filing of the appeal by the assessee for which the Id. AR of the assessee filed application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit also :-

“ 1. That assessee-trust filed an appeal on 11.04.2024 against the ex-parte order passed by Ld. CIT(Exemption), Jaipur on rejection of registration u/s 12A of the I.T. Act, 1961 order dated 08.02.2024, with a delay of 3 days.

2. That the reasonable cause of delay of 3 days in filing of appeal was due to delay in preparation and filing of appeal on account of our counsel's office, which can be treated as reasonable cause.

3. That the same can be considered as a reasonable cause in filing of appeal before Hon'ble ITAT, Jaipur.”

2.2 The Id. AR of the assessee appearing in these appeal submitted that the assessee is serious on the duties and the delay of 03 days in preparation and filing of appeal on account of counsel's office resulted in delay. Since the assessee submitted that the delay of 3 days was on account of the administrative issue at the end of counsel office and thus, the assessee has sufficient reasons. Considering that aspect of the matter and the decision of the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) wherein it was directed the other courts to consider the liber approach in deciding the petition for

condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

2.3. During the course of hearing, the Id. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

2.4 We have heard both the parties and perused the materials available on record. The Bench noted that the reasons advanced by assessee for condonation of delay of 03 days are sufficient to condone the delay and it has merit based on the prayer advanced by the assessee. Thus, we concur with the submission of the assessee and condone the delay 03 days in filing the appeal by the assessee in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee was prevented by sufficient cause.

3. In this appeal, the assessee has raised following grounds: -

"1. That the order passed by Id. Commissioner of Income Tax, Exemption, Jaipur by rejecting application u/s 12AB (1)(b) of the IT Act, 1961 is wrong, unwarranted and bad in law. kindly direct to register the same.

2. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them."

4. The brief facts of the case is that the assessee filed online application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 was filed on 29.09.2023. In this case, the application was rejected vide order dated 21.02.2023 on the grounds of (i) Incomplete form 10AB (ii) Non registration with RPT Act, 1959 (iii) Genuineness of Activities. A notice dated 19.12.2023 was issued at the e-mail/address provided in the application requiring the applicant to submit certain documents / explanations by 29.12.2023. In response to notice dated 19.12.2023, the assessee request for adjournment. Thereafter, an opportunity/adjournment given to the assessee vide notice dated 11.01.2024 and hearing fixed on 22.01.2024, but no compliance has been made by the applicant. Further, again one more opportunity was also provided to the applicant vide notice dated 27.01.2024 to submit complete details/information by 05.02.2024. This time also on given date, the applicant had not produced any details/documents to Id. CIT(E). Since it was a limitation matter, application was disposed off based on material filed by the assessee along with its application in Form no. 10AB. The relevant finding of the Id. CIT(E) is reiterated here in below :-

“However, the applicant has failed to comply with the letters, despite being given three opportunities details of which given in para-I. Similarly, during this proceeding, as earlier also assessee case was rejected on the one of ground Non Compliance. This proves that effectively after 6 opportunities.

The applicant has failed to justify the genuineness of activities. All the above details were sought in order to determine the actual working of the institution. The applicant didn't furnish the sought details. The applicant has not furnished the details along with bill/ vouchers of expenses debited in income and expenditure account for the last three financial years. Further, the assessee was also not submitting the details of bank account for last three financial years. The above details were sought from the applicant to determine the actual purpose/nature of expenditures made and to determine whether the impugned charitable activity had actually been done by the trust or not. Such type of verification is necessary to keep a check and balance on the actual working of the trust. Since, the applicant didn't furnish sought details, in the absence of such documents/details. the justification of impugned activity could not be derived and it is not known whether the applicant is genuinely carrying out charitable activity as per its objects. Hence, the applicant has failed to justify the genuineness of activities and thus falls out of the scope of registration u/s 12AB of the Act.

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

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- Incomplete Form 10AB.
- Rajasthan Public Trust Act, 1959.”

5. Aggrieved from that finding so recorded in the order of the Id. CIT(E), the assessee has preferred the present appeal on the grounds as stated herein above. The Id. AR of the assessee submitted that in this case principles of nature justice is violated and considering the fact that the activities of the assessee trust is charitable in nature one chance be given to the assessee. The Id. AR thus relied on the decision of Jaipur benches in the case of ITA No. 669/JPR/2023 prayed to restore the matter back to the

file of the Id. CIT(E) in the interest of justice as the order under appeal is passed ex-parte.

6. Per contra, the Id. DR relied on the orders of the Id. CIT(E) and vehemently argued that the assessee remained non-compliant and has not established the genuineness of the activity and even the RPT registration has not been made available on therefore, the registration has rightly been rejected.

7. We have heard the rival contentions and perused material available on record. The Bench noted from the order of the Id. 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 form no 10AB filed was incomplete and the assessee was not registered with the Rajasthan Public Trust Act, 1959 coupled with the non-compliance of the notices so issued. It is also pertinent to mention that during the course of hearing, the Id. AR of the assessee prayed that they were deprived off availing adequate opportunity of being heard by the Id. CIT(E). The assessee also submitted that in the application for registration all the details are filed even though the reasons was advanced that the form filed was

incomplete. The assessee also submitted that the managing trustee has not received any notice and therefore, response could not be submitted in compliance to the notices so issued. As we do not intend to go into the merit of the case or that of the dispute, but it is imperative that the assessee must be provided adequate opportunity of being heard by the Id. CIT(E). We also note of the fact the assessee trust was given the registration certificate as RPT act vide certificate dated 14.07.2023 as placed on record. In the light of these facts we are of the considered view that the reasons advanced for rejection of the registration to the assessee trust being curable in nature we considered it deem fit to remand the matter to be decided by the Id. CIT(E) in accordance with the submission of the assessee and in accordance with the law. Thus, the assessee is directed to produce all the relevant papers concerning the application so filed before the Id. CIT(E) to settle the dispute raised hereinabove and thus we set aside the issue to the file of the Id. CIT(E).

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 06/11/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/11/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Desire Foundation, Jaipur
2. प्रत्यर्था / The Respondent- ITO(E), Ward-1, 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. 468/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar