

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,

आयकर अपील सं./ITA No. 819/JPR/2024

Shree Ji Sewa Sansthan Lawa Lawa Malpura, Tonk.	बनाम Vs.	The CIT Exemption, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABBTS7768P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Mrs. Suhani Maharwal (CA) (V.C.)
राजस्व की ओर से / Revenue by : Smt. Alka Gautam (CIT)

सुनवाई की तारीख / Date of Hearing : 06/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 06/11/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Because the assessee was aggrieved with the finding so recorded in the order passed by the Learned Commissioner of Income Tax (Exemption), Jaipur [for short "CIT(E)"] dated 29.03.2024 preferred the present appeal. That order was passed by the Id. CIT(E) while disposing of an application filed by the applicant – assessee trust seeking approval u/s. 80G of the Income Tax Act [for short Act].

2.1 At the outset of hearing, the Bench observed that there is delay of 02 days in filing the present appeal by the assessee for which the Id. AR of the assessee fairly submitted that to arrange all the papers and filling the same online it has resulted delay of only 02 days which may kindly be condoned and at the same time she has assured that in future she will take care to comply and adhere to the time line.

2.2 During the course of hearing, the Id. DR fairly not objected to assessee's application for condonation of delay and submitted that Court may decide the issue as deem fit in the interest of justice.

2.3 We have heard both the parties and perused the materials available on record. The Bench Noted that before us the Id. AR of the assessee fairly accepted that it was because of her the appeal was filed with a delay of 02 days and considering the fact that the assessee has paid the appeal fees and same was immediately filed on the same day and that was on the part of the counsel of the assessee. Considering that aspect of the matter we concur with the submission of the assessee and condone the delay of 02 days in filing the appeal by the assessee, considering 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 is prevented by sufficient cause.

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

“1. On the facts and in the circumstances of the case Ld. CIT (exemption) erred in holding application of the assessee for grant of approval under clause (iii) of first provision to section 80G(5) as non maintainable which should have been decided liberally and to be allowed.

2. Assessee deserves right to amend, alter, delete and modify any ground of appeal on or before the date of hearing of appeal.”

4. The brief facts of the case is that the assessee filed online application in Form No. 10AB seeking approval u/s 80G of the Income Tax Act, 1961 was filed on 30.09.2023. A letter/notice dated 25.01.2024 was issued at the e-mail/address provided in the application requiring the assessee to submit certain documents/explanations by 05.02.2024. While dealing with the application Id. CIT(E) noted that the provisions of clause (iii) of first proviso to sub-section (5) of sec. 80G of the Act, prescribed various time limit within which the applicant/assessee is required to file application for approval of Trust/Institution depending upon the various circumstances mentioned therein. In the present case, the applicant/assessee is provisionally registered u/s clause (iv) of first proviso to sub-section (5) of sec. 80G of the Act and therefore, the applicant/assessee was required to file application in Form No. 10AB u/s clause (iii) of first proviso to sub-section (5) of sec. 80G of the Act within the time period of at least six months prior to expiry of period of the provisional

approval or within six months of commencements of its activities, whichever is earlier. From the provisions of clause (iii) of first proviso to sub-section (5) of sec. 80G of the Act, it is evident that the time limits prescribed therein is mandatory and the Commissioner of Income Tax has no power to condone the delay in filing application in Form No. 10AB. Based on those observations the application of the assessee was rejected as the same was not filed within the statutory time limit.

5. Aggrieved from that finding so recorded in the order of the Id. CIT(E), the assessee has preferred the present appeal on the single ground that Id. CIT(E) has erred in law as well as on fact in rejecting the recognition application u/s. 80G of the Act. Apropos to the ground so raised the Id. AR of the assessee cited the CBDT circular no. 7/2024 dated 25.04.2024 by which the Board has extended the time limit for filling the application for 80G where those trust could not file the same within six month as contended by the Id. CIT(E) and since that circular being applicable to the facts of the case of the assessee the case be remanded to the file of the Id. CIT(E) based on that circular of the CBDT.

6. Per contra, the Id. DR representing the revenue relied upon the finding recorded in the order of the Id. CIT(E) but at the same time she has

not opposed to restored the matter to the file of Id. CIT(E) based on the CBDT circular cited by the Id. AR of the assessee.

7. We have heard the rival contentions and perused the material placed on record. As is evident from the record that the application of the applicant – assessee trust was rejected merely on the ground that the applicant - assessee is provisionally registered u/s clause (iv) of first proviso to sub-section (5) of sec. 80G of the Act and therefore, the applicant/assessee was required to file application in Form No. 10AB u/s clause (iii) of first proviso to sub-section (5) of sec. 80G of the Act within the time period of at least six months prior to expiry of period of the provisional approval or within six months of commencements of its activities, whichever is earlier. From the provisions of clause (iii) of first proviso to sub-section (5) of sec. 80G of the Act, it is evident that the time limits prescribed therein is mandatory and the Commissioner of Income Tax has no power to condone the delay in filing application in Form No. 10AB. Based on that observation the application of the assessee was rejected as the same was not filed within the statutory time limit. The bench noted that aforesaid time limit of filling the application for recognition u/s. 80G of the Act has been extended by the Board upto 30.06.2024 considering the genuine hardship faced by the trust. Even we note that on earlier occasion the CBDT has vide

circulate no. 6/2023 dated 24.05.2023 extended the time limit of six month till 30.09.2023 and the same further extended to 30.06.2024. But in fact the assessee applied on 30.09.2023 and therefore, the reasons advanced that Id. CIT(E) has no power to condone the delay but when the same has been extended by the CBDT vide aforesaid circular the benefit of that circular cannot be denied to the assessee. Looking to that non disputed aspect of the matter we are of the considered opinion that the matter requires a fresh consideration based on the CBDT circular as the time limit was extended by the board and therefore, we set aside the matter of recognition of the assessee trust to the file of Id. CIT(E) who will decide the issue in accordance with law after providing sufficient opportunity of being heard to the assessee- applicant trust.

In the light of this fact and circumstances of the case the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 06/11/2024.

Sd/-

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

जयपुर / Jaipur
दिनांक / Dated:- 06/11/2024

*Santosh

Sd/-

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

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shree Ji Sewa Sansthan Lawa, Tonk.
2. प्रत्यर्धी / 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. 819/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar