

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, AM

आयकर अपील सं./ITA No. 832 TO 835/JPR/2024
निर्धारण वर्ष/Assessment Years :-

Shree Nand Gopal Gaushala Samittee Ajronda Baran Baran	बनाम Vs.	The ITO, Baran Baran
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABNAS 3579f		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assesseeby : Shri R.S. Poonia, C.A.
राजस्व की ओर से/ Revenue by : Shri Arvind Kumar, CIT-DR

सुनवाई की तारीख/Date of Hearing : 23/10/2024
उदघोषणा की तारीख/Date of Pronouncement: 29 /11/2024

आदेश / ORDER

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

These are four appeals filed by the assessee against four different orders of the Id.CIT(E) dated 26-03-2024 out of which two relate to Section 12AB of the Act and other two relates to Section 80G of the Act. In these appeals, the assessee has raised following grounds of appeal.

ITA No. 832/JP/2024 - u/s 12AB of the Act

“1. That the order passed by Ld. 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.”

ITA No. 833/JPR/2024 – u/s 12AB of the Act

“1. That the Ld. CIT (Exemption), Jaipur has erred in law and in facts of the case by neither recording the independent satisfaction for rejection of provisional registration and nor issued Show Cause Notice for rejection of provisional registration u/s. 12A of the I.T. Act 1961 which is wrong, unwarranted and bad in Law. Kindly restore the same.

2. That the Ld. CIT (Exemption), Jaipur has erred in law and in facts of the case in rejecting the provisional registration u/s. 12A without issuing separate DIN of the rejection order, which is against the circular & notification issued by the CBDT. So, the same is wrong, unwarranted and bad in Law. Kindly restore the same.

3. That the order passed by Ld. Commissioner of Income Tax (Exemption), Jaipur by rejecting provisional registration u/s. 12A of the I.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the same.

ITA No. 834/JPR/2024 u/s 80G of the Act the assessee

“1. That the order passed by Ld. Commissioner of Income Tax, Exemption, Jaipur by rejecting application u/s. 80G(5)(iii) of the I.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the appellant.

ITA No. 835/JPR/2024 – 80 G of Act

“1. That the Ld. CIT (Exemption), Jaipur has erred in law and in facts of the case by neither recording the independent satisfaction for rejection of provisional approval and nor issued Show Cause Notice for rejection of provisional approval u/s. 80G of the I.T. Act 1961 which is wrong, unwarranted and bad in Law. Kindly restore the same.

2. That the Ld. CIT (Exemption), Jaipur has erred in law and in facts of the case in rejecting the provisional approval u/s. 80G without issuing separate DIN of the rejection order, which is against the circular & notification issued by the CBDT. So, the same is wrong, unwarranted and bad in Law. Kindly restore the same.

3. That the order passed by Ld. Commissioner of Income Tax (Exemption), Jaipur by rejecting provisional approval u/s. 80G of the I.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the same.

2.1 At the outset of hearing, the Bench observed that there is delay of 06 days in filing of the respective appeals (supra) by the assessee for which the ld. AR of the assessee filed an application for condonation of delay with following prayers:

“Sub: Regarding acceptance of application for condonation of delay in case of M/s. Shree Nand Gopal Gaushala Samittee Ajronda Baran having appeal No. ITA 832/JPR/2024, ITA No. 833/JPR/24, ITA NO. 834/JPR/24 and ITA No. 835/ITR/24 (PAN: ABNAS3579F).

Respected Members,

With reference to above subject we request you that:-

1. That assessee-society filed 4 appeals on 31.05.2024 against the ex-parte order passed by Ld. CIT (Exemption), Jaipur on rejection of

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registration u/s. 12A & rejection of approval u/s. 80G of the I.T. Act, 1961, with a delay of 6 days. Simultaneously, by the same rejection orders the Ld. CIT (Exemption), Jaipur cancelled the provisional registration/approval granted by the PCIT/CIT, CPC hence total 4 appeals were filed, which are as follows:-

Sr No.	Particular	Appeal No.
1	Rejection Order u/s. 12A registration [i.e. u/s. 12A(1)(ac)(iii)]	ITA No. 832/JPR/24
2	Cancellation order of provisional registration u/s. 12A [i.e. u/s. 12A(1)(ac)(vi)]	ITA No. 833/JPR/24
3	Rejection Order u/s. 80G approval [i.e. 80G(5)(iii)]	ITA No. 834/JPR/24
4	Cancellation order of provisional approval u/s. 80G [i.e. 80G(5)(iv)]	ITA No. 835/JPR/24

2. That reasonable cause of delay of 6 days in filing of appeals was due to delay in engage a counsel, who is well-versed by the latest development related to latest law related to registration of charitable trust under Section 12A & 80G of the I.T. Act 1961, as there are many recent changes in trust related laws as:-

- (i). Whether the registration under RPT Act, 1959 is must or not.
- (ii). Whether, what is the exact legal remedy available to the trust viz. re-apply or appeal.
- (iii). And many more other issues.

That more or less most of charitable trusts and consultants are not well-versed with the latest development of Income Tax Laws related to registration u/s. 12A & 80G of the Act. Therefore, the Parliament has amended many times in recent past to clarify the Law & CBDT has also issued around 4-5 circulars to extend the due dates & clarify the Law to remove the genuine hardship faced by the charitable trusts.

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4. That in the circumstances as mentioned in above Para No. 2 and 3, the delay is due to delay in engage a counsel who is well-versed with the law related to charitable trust.

In view of above submission you are requested that kindly consider this as reasonable cause to condone the delay of 6 days and kindly remand back the case to CIT(Exemption), Jaipur. So, that proper inquiry can be conducted and substantial justice may be delivered to the appellant.’’

To this effect, the ld. AR of the assessee (President of the Gaushala) has filed an affidavit deposing the above facts as to the delay made in filing the appeals.

2.2. During the course of hearing, the ld. DR objected to assessee’s application for condonation of delay and submitted that Court may decide the issue as deem fit and proper in the case

2.3 We have heard the rival contention of the parties and perused the materials available on record. The Bench noted that the prayer as made by the assessee for condonation of delay of six days in respective appeals has merit and we concur with the submission of the assessee. Thus the delay of six days in filing the above appeals by the assessee is condoned 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 is prevented by sufficient cause.

3.1 First of all, we take up the appeal of the assessee relating to Section 12A of the Act which was rejected by the ld. CIT(E), Jaipur by observing as under:-

“04. In view of above discussion applicant's application for registration u/s 12AB is liable to be rejected and thus being rejected on following grounds: -

- Registration under Rajasthan Public Trust Act, 1959.
- Genuineness of activities & Non-compliance.

05. 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 18.03.2022 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.”

3.2 During the course of hearing, the ld.AR of the assessee submitted that the ld. CIT(E) has passed an ex-parte order and he may be allowed one more opportunity to contest the case before him.

3.3 On the other hand, the ld. DR has relied upon the order of the ld. CIT(E).

3.4 We have heard both the parties and perused the materials available on record. In this case, it is noted that the ld. CIT(E) has passed an ex-

parte order as to registration of the trust u/s 12AB of the Act by holding that the assessee could not provide the following details.

- Registration under Rajasthan Public Trust Act, 1959
- Genuineness of activities and Non-compliance.

It is also noted that during the course of hearing, the Id. AR of the assessee has filed a certificate dated 21-03-2024 issued from the Office SAHAYAK AAYUKT DEVSTHANVIBHAG KOTA, KHAND KOTA (Rajasthan Govt.) which shows that the assessee has complied with the direction of the Id.CIT(E) as to the Registration of the Trust under Rajasthan Public Trust Act, 1959. As regards the genuineness of the activities of the Trust, the assessee has prayed that the same will be submitted before the Id. CIT(E) to settle the issue. Hence, in this view of the matter, the Bench is of the view that the matter as to registration of the Assessee trust needs to restore back to the file of the Id.CIT(E) to decide it afresh in view of its obtaining the certificate from Devsthan Vibhag, Jaipur Khand, Jaipur and provide one more opportunity of being heard to the assessee. The assessee is also directed to produce the certificate obtained from Devsthan Vibhag, Jaipur Khand. Jaipur to settle the dispute of Registration u/s 12AB of the

Act. Accordingly both the appeals of the assessee in ITA No.832 & 833/JP/2024 are allowed for statistical purposes.

4.1 As regards the appeals of the relating to approval u/s 80G of the Act, it is noted that the Id.CIT(E) has rejected both the appeals of the assessee by observing as under:-

“3.5 In view of the above, the present application filed in Form No.10AB under clause (iii) of first proviso to sub-section (5) of sec. 80G of the Act is liable to be rejected as non-maintainable.

04. In view of above discussion assessee's claim of approval u/s 80G is liable to be rejected and thus being rejected on following grounds: -

- Approval u/s 80G cannot be granted without registration u/s 12AB
- Commencement of activities.

05. Further 2nd proviso to 80G(5) also state that if CIT is not satisfied has to pass order rejecting such application and also cancelling its earlier approval. Thus, it is clarified that applicant provisional approval under clause (iv) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 dated 18.03.2022 is also being cancelled. Further assessee has failed to give proper justification for regularization of provisional approval, thus with this order provisional approval is also lapsed and cancelled.”

4.2 After hearing both the parties and considering the material available on record as to the approval u/s 80G of the Act, the Bench noted that since it is consequential to registration of the Trust u/s 12AB of the Act, the Id. CIT(E) is directed to consider approval u/s 80G in accordance with Income Tax Act, 1961 in set aside proceedings.

5.1 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.

6.0 In the result, the appeals of the assessee and are allowed for statistical purposes.

Order pronounced in the open court on 29 /11/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 29/11/2024

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

1. The Appellant- Shree Nand Gopal Gaushala Samittee Ajronda Baran, .
2. प्रत्यर्थी / The Respondent- The ITO, Ward-Baran.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 832 to 835/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar