

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

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

आयकर अपील सं./ITA No. 732 & 733/JPR/2024
निर्धारण वर्ष/Assessment Year :

ECK Welfare Trust Road No. 1, IPIA, Kota 324 005	बनाम Vs.	The CIT (Exemption) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABTE 1425 E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri Vikash Rajvanshi, CA
राजस्व की ओरसे/ Revenue by: Shri Arvind Kumar, CIT-DR

सुनवाई की तारीख/Date of Hearing : 23/10/2024
उदघोषणा की तारीख/Date of Pronouncement: 10 /12/2024

आदेश/ORDER

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

These are two appeals filed by the assessee against two different orders of the Ld.CIT (Exemption), Jaipur both dated 30-03-2024 passed under section 12AA and 80G of the Income Tax Act, 1961 respectively. The grounds of appeal raised by the assessee in both the appeals are as under:-

ITA NO. 732/JP/2024 U/S 12AA of I.T. Act, 1961

“The Id. CIT(E) has wrongly rejected the application for registration of assessee trust u/s 12AA stating that trust is not registered with Rajasthan Public Trust Act, 1959 whereas the trust is duly registered with Sub-Registrar, Kota under the Rajasthan Public Trust Act, 1959 vide Registration Endorsement Serial No. 202102127002219 dated 10-03-

2021 issued by the Sub-Registrar, Kota of Trust under the State Government of Rajasthan. Hence, Id. CIT(E) order should be made null and void and Id. CIT(E) may be directed for granting 12AA registration.

ITA NO. 733/JP/2024 U/S 80G of I.T. Act, 1961

“The Id.CIT(E) has wrongly rejected the application for registration of assessee trust u/s 80G stating that approval u/s 80G cannot be granted without registration u/s 12AB and commencement of activities. Assessee is charitable trust that works for public welfare activities that the associated with Engineering College, Kota and to help financially and supporting the families of deceased college mates or any other person from general public or any of college mates if he / she is facing some kind of hardship due to natural calamity or critical illness of him or his / her family members, ensure the college mates life by way of group insurance, help financially challenge students studying in school/ college or in any educational institution in any discipline by way of providing books, financial support for the payment of their college fees, for best preparation for higher education. The trust has also done charitable activities at the time of Covid-19 and also engaged in medical relief of the poor and needy people. Hence, Id. CIT(E) order should be made null and void and Id.CT(E) may be directed for granting 80G exemption.

3.1 Apropos to the ground so raised by the assessee in ITA No. 732/JP/2024, the Id. CIT(E) rejected the assessee’s claim of registration u/s 12AA of the Act by observing as under:-

2.5. Assessee vide letter dated 14.12.2023 and reminder letter dated 06-01-2024 was required to submit documents/explanation, 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 the same should not be considered as violation of section 12AB(1)(b)(i)(B) of the income Tax Act read with sec 17 of the Rajsathan 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 and 19-10-2022 and why the application filed by you should not be rejected.

Vide reply 25-12-2023, the applicant stated that:- '*the trust is duly registered under the Sub-Registrar, Kota-II....*' Thus it is clear that the applicant is not registered under RPT Act, 1959. Therefore, in light of above discussion and in the absence of registration under Rajasthan Public Trust Act, 1959, the applicant is not eligible for registration u/s 12AB. Thus the application of the assessee is liable to be rejected on this ground.

03. 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.

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 28.05.2021 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 Apropos to the ground so raised by the assessee in ITA No. 733/JP/2024, the ld. CIT(E) rejected the assessee's claim of exemption u/s 80G of the Act by observing as under:-

“3.4. 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 applicant's application for 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

5. 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 31.05.2021 is also being cancelled. Further assessor has failed to give proper justification for regularization of provisional approval, thus with this order provisional approval is also lapsed and canceled.’’

3.3 During the course of hearing, the ld. AR of the assessee in both the appeals mainly submitted that the assessee was not provided adequate opportunity of being heard by the ld. CIT(E) and thus both the orders should be quashed being against the principles of natural justice. Further, the ld. AR of the assessee stated at Bar that the assessee trust is in the process of applying the registration under RPT Act before the competent authority and it is likely to get the same (PB 56-59. This being the sole reason the assessee prayed for one more chance. It is also noted that the ld.AR of the assessee relied upon following decisions of ITAT Jaipur Benches on the similar issue praying therein that it case may also be set aside for statistical purposes and set aside to CIT(E).

.1 Paraedise Sarv Kalyan Sansthan vs CIT(E) (ITA No.401 & 402/JPR/2024 dated 10-0702024 (PB 124-129)

2. Acharya Shri Hira Laxmi Guru Jain Gaushala Sansthan vs CIT (E) (ITA Nos.697 & 608/JPR 2024 dated 14-08-2024 [PB 130-142]

3. Bhaamashah Sunderlal Daga Charitable Trust vs CIT(E) (ITA No.278/Jodh/2023 dated 10-11-2023

3.4. Per contra, the ld. DR relied on the orders of the ld. CIT(E).

3.5 After hearing both parties and perusing the materials available on record, we noticed that an application for registration u/s 12AA of the Act was rejected by the ld CIT(E) on the ground that the assessee is not registered under RPT Act, 1959 and in this regard, the ld. AR of the assessee stated at Bar that the assessee trust is in the process of applying the same before the competent authority and it is likely to get the same. Therefore, in these circumstances, we restore the matter back to the file of the ld. CIT(E) with the direction that as and when the assessee trust produces the copy of the Registration under RPT Act, 1959 then the application of the assessee trust for registration u/s 12AA of the Act be decided afresh in accordance with law.

3.6 Since we have restored the appeal of the assessee with regard to the registration u/s 12AA of the Act to the file of the ld. CIT(E) for afresh

adjudication, therefore, the outcome of appeal of the assessee u/s 80G of the Act is consequential in nature.

3.7 Before parting, we may make it clear that our decision to restore the matter back (supra) 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.

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

Order pronounced in the open court on 10/12/2024

Sd/-

(राठोड कमलेशजयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /12/2024

*Mishra

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- M/s. ECK Welfare , Kota
2. प्रत्यर्थी / The Respondent- The ld CIT(E), Jaipur
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 732 & 733/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar