

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

श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य एवं श्री सुधीर पारीक, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI SUDHIR PAREEK, JM

आयकर अपील सं./ITA. No. 735 & 736/JPR/2024

Nidhivan Foundation Bangan Ka Nangla, Samoochi Kathumar, Alwar.	बनाम Vs.	The CIT-Exemption, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAETN0117H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anoop Bhatia (C.A.)  
राजस्व की ओर से / Revenue by : Mrs. Meenakshi Vohra ( CIT ) ( Th. V.C.)

सुनवाई की तारीख / Date of Hearing : 18/12/2024  
उदघोषणा की तारीख / Date of Pronouncement : 19/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present two appeals filed by assessee, are arising out of the order of the learned Commissioner of Income Tax (Exemptions), Jaipur both dated 22.03.2024 [ for short "CIT(E)"] passed for registration U/s 12AB and 80G of the Income Tax Act [ for short Act ] respectively.

2.1 At the outset of hearing, the Bench observed that there is delay of 01 days in filing of the appeals by the assessee for which the Id. AR of the assessee filed applications for condonation of

delay with following prayers and the assessee to this effect also filed an affidavit also :-

“In the aforesaid context, it is humbly submitted that appeal against the order passed by Id. CIT(Exemption) was served on the assessee on 22.03.2024 and appeal against the said order was supposed to have been filed latest by 21.05.2024. But due to the reason that, the documents could not send the counsel office on time due to inadvertent mistake of the accountant therefore, the filing of appeal got marginally delayed by one day.”

In support of the contentions so raised the Authorized signatory filed an affidavit to support the contentions raised in the prayer for condonation of delay in filing the appeal.

2.2 The Id. AR of the assessee appearing in these appeals submitted that the assessee is serious on the duties and the delay of 01 days in preparation and filing of appeals on account of counsel's office resulted in delay and delayed receipt of signed document from post. The assessee submitted that the delay of 01 days was on account of the documents could not send the counsel office on time due to inadvertent mistake 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 did not 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 the assessee for condonation of delay of 01 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 01 days in filing the appeals 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.

3.1 In ITA No.736/JPR/2024 the assessee has raised following grounds: -

“1. Under the facts and circumstances of the case and in law Learned CIT, Exemptions has erred in denying the approval to the assessee under Section 12AB of the Income Tax Act 1961.

2. Under the facts and circumstances of the case and in law Ld. CIT,

Exemptions has erred in rejecting the application of approval under section 12AB of the Income Tax Act 1961 on the technical grounds, such action being absolutely unjustified, unlawful as well as against the concept of natural justice hence the order passed by Ld. CIT, Exemptions deserves to be quashed.

3. Under the facts and circumstances of the case and in law Ld. CIT, Exemptions has erred in rejecting the application on the ground that appellant trust was not able to substantiate the genuineness of activities which is absolutely incorrect. Appellant prays rejecting the application without considering or rebutting the documents and material filed before the Ld. CIT being bad in law and in violations to the principles of natural justice deserves to be rolled back.

4. The appellant reserves the right to add, amend, modify, or alter any ground or grounds of appeal.”

3.2 In ITANo.735/JPR/2024 the assessee has raised following grounds: -

*“1. Under the facts and circumstances of the case and in law Learned CIT, Exemptions has erred in denying the approval to the assessee under Section 80G of the Income Tax Act 1961.*

*2. Under the facts and circumstances of the case and in law Ld. CIT, Exemptions has erred in rejecting the application of approval under section 80G of the Income Tax Act 1961 on the technical grounds, such action being absolutely unjustified, unlawful as well as against the concept of natural justice hence the order passed by Ld. CIT, Exemptions deserves to be quashed.*

*3. The appellant reserves the right to add, amend, modify, or alter any ground or grounds of appeal.”*

4. First, we take up the appeals of the assessee in ITA no. 736/JPR/2024, wherein the brief fact 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

14.09.2023. A letter/notice dated 02.12.2023 was issued at the e-mail/address provided in the application requiring the assessee to submit certain documents/explanations by 12.12.2024, in response no reply furnished. Further reminder given vide letter dated 27.12.2023 fixing the case on 10.01.2024, in response assessee filed reply on 10.01.2024. On examination of reply some discrepancies found. A show cause letter was given vide letter dated 20.02.2024 fixing the case on 26.02.2024, in response assessee filed reply dated 01.03.2024 which was examined and assessee not found eligible for the registration u/s 12AB. Thereby the registration u/s. 12AB rejected on the following grounds:

- Non registration under Rajasthan Public Trust Act, 1959.
- Benefit to interested person.
- Non genuineness of activities.

5. So far as the appeal in ITA No. 735/JPR/2024 we note that the said application for registration u/s. 80G of the Act was rejected on the following grounds:-

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

Ld. CIT(E) also noted that since the assessee failed to give proper justification for regularization of provisional approval, he also cancelled the provisional registration granted to the assessee.

6. Assessee aggrieved from the rejection of approval / recognition has preferred the present appeal on the grounds as raised here in above. Apropos to the ground so raised the Id. AR of the assessee submitted that the reasons advanced for rejection are curable and the assessee was not given sufficient opportunity of being heard before the Id. CIT(E). The Id. AR also submitted that the trust has already applied for registration under the Rajasthan Public Trust Act also and copy of the registration certificate granted to the assessee trust placed on record. As regards the bill dated 20.03.2024 submitted on 01.03.2024 Id. AR of the assessee submitted affidavit of that party that it was their part mistake and for that the assessee should not be penalized. Other observations are curable and therefore, he prayed to remand the matter to the file of Id. CIT(E).

7. Per contra, the Id. DR relied on the orders of the Id. CIT(E) and submitted that the assessee even though various opportunities were given has not submitted required details and therefore, the plea of the assessee is not maintainable. How the assessee can

submit the invoice dated 20.03.2024 vide reply dated 01.03.2024. Based on that observation she supported the order of the Id. CIT(E).

8. We have heard the rival contentions and perused material available on record. The Bench noted that the Id. CIT(E) in the application of the assessee pertaining to registration application u/s 12AB of the Act has been rejected on the ground of Non-registration with RPT Act, 1959, Benefit to interested person and Non Genuineness of Activities. As regards the registration under RPT Act the same was granted to soon after the registration application rejected. The copy of registration was issued to the assessee on 22.05.2024. As regards the submission of bill dated 20.03.2024 vide letter dated 01.03.2024, Id. AR of the assessee filed an affidavit clarifying that it was the mistake on that supplier part mentioning the date as 20.03.2024 instead of 20.03.2023. Thus, on this aspect also the view taken needs to be viewed based on this affidavit. As regards non genuineness of activities Id. AR of the assessee prayed that the assessee may be given one more

chance to clarify all the issues raised by Id. CIT(E). In the light of the overall facts argued the bench noted that the reasons advanced by the Id. CIT(E) while rejecting the application of the assessee are curable in nature and considering the peculiar facts of the case that the assessee already registered under Rajasthan Public Trust Act and thus, the liberal view of the matter is required to be taken in this case as the defect pointed out are not that much serious and if given a chance the assessee is in a position to clear the defects pointed out by the Id. CIT(E). Considering this aspect of the case the Bench does not want to go into merit of the dispute but it is imperative that the assessee must be provided adequate opportunity of being heard and be given a fair chance by the Id. CIT(E) to cure the defect / non submission of the certain information. In the light of this aspect of the case, the Bench feels that the assessee should be given one more chance to contest the case before the Id. CIT(E) and the assessee is directed to produce all the relevant papers concerning both the application so filed before the Id. CIT(E) to settle the dispute raised hereinabove.

9. 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 appeals of the assessee in ITA No.735/JPR/2024 and ITA No. 736/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open Court on 19/12/2024.

Sd/-

(सुधीर पारीक)

(SUDHIR PAREEK)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2024

\*Santosh

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

1. अपीलार्थी / The Appellant- Nidhivan Foundation, Alwar.
2. प्रत्यर्थी / The Respondent- CIT-Exemption, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 735 & 736/JPR/2024 }

Sd/-

(राठौड़ कमलेश जयन्तभाई )

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar