

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. 1243 & 1244/JPR/2024

Shri OP Dargar Foundation P. N D-29, Janpath Shyam Nagar, Jaipur.	बनाम Vs.	The CIT-Exemption, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABGCS7209B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia (C.A.)
राजस्व की ओर से / Revenue by : Mrs. Meenakshi Vohar, (C.A.) (Th. V.C.),
Shri Kamlesh Kumar Meena (CIT) Proxy DR

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

आदेश / ORDER

PER: SUDHIR PAREEK, JM

These are two appeals preferred by the assessee/appellant aggrieved from the orders of the Learned Commissioner of Income Tax (Exemption), Jaipur [herein after referred as Id. "CIT(E)"] dated 24.02.2024 as per provision of under Section 12AB of the Income Tax Act [in short, hereinafter the Act].

2.1 At the outset of hearing, the Bench observed that there is delay of 164 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 :-

“1. That assessee-company is a Section 8 company and filed 4 appeals on 05.10.2024 against the ex-parte order passed by Ld. CIT (Exemption), Jaipur on rejection of registration u/s. 12A & rejection of approval u/s. 80G of the I.T. Act, 1961, with a delay of 164 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. 1243/JPR/2024
2	Cancellation order of provisional registration u/s 12A [i.e. u/s 12A(1)(ac)(vi)]	ITA No. 1244/JPR/2024
3.	Rejection order u/s 80G approval [i.e. 80G(5)(iii)]	ITA No. 1245/JPR/2024
4	Cancellation order of provisional approval u/s 80G [i.e. 80G(5)iv]]	ITA No. 1246/JPR/2024

2. That the delay of 164 days in filing of appeals was due to 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.

3. That thereafter, after taking proper legal advice that the proper remedy with assessee-company is to file appeal before ITAT, then assessee-company engage a counsel and prepare appeal & filed the same before Hon'ble ITAT, Jaipur Bench on 05.10.2024 (i.e. with a delay of 164 days).

4. Therefore, the non compliance was due to confusion of non- clarity of about the exact and right legal remedy available to the trust viz. re-apply or appeal. Therefore, the same can be treated as sufficient cause for delay in filing of appeal.

In view of above submission you are requested that kindly consider this as reasonable cause to condone the delay of 164 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.”

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 after taking proper legal advice that the proper remedy with assessee-company engage a counsel and prepare appeal and so filed and it was only due to confusion of non-clarity of about the exact and right legal remedy available to the trust viz. re-apply or appeal, so the same may be treated as sufficient cause delay in filing appeals is serious on the duties and the delay. Since the assessee submitted that the delay of 164 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 liberal 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 164 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 164 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 and inclined to decide the appeal on its merits.

3.1 In ITA No. 1243/JPR/2024 the assessee has raised following grounds:-

"1. That the order passed by Ld. Commissioner of Income Tax, Exemption, Jaipur by rejecting application u/s 12AB(1)9b) of the I.T. 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.”

3.2 In ITA No. 1244/JPR/2024 the assessee has raised following grounds:-

“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 L.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 L.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the same.

4. 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 facts as culled out from the records are that the assessee filed an online application in Form No. 10AB seeking registration u/s 12AB 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, but no compliance has been made by the assessee. Thereafter, a reminder letter was issued to the assessee vide notice dated 06.02.2024 wherein date of hearing was fixed on 09.02.2024, but again no compliance has been made by the assessee. However, one more opportunity was again provided to the assessee vide notice dated 10.02.2024 wherein date of hearing was fixed on 15.02.2024. But, this time also on given date, the assessee had not produced any details/documents. Therefore, the case is decided on the basis of material filed by the applicant along with its application in Form no. 10AB.

4.1 Upon verification of the application in Form 10AB filed by the assessee, Id. CIT(E) noted that the application was not complete. The documents required to be accompanied with Form 10AB were not furnished. The Id. CIT(E) also noted that the assessee has failed to prove that the assessee is registered under RPT Act, 1959 or not. As the assessee failed to comply with the letters, despite being given three opportunities the assessee did not furnish the details as sought.

4.2 Since, the assessee did not furnish details which were sought Id. CIT(E) noted that in the absence of such documents / details, the justification of impugned activity could not be verified. He further noted that it is not known whether the assessee is genuinely carrying out charitable activity as per its objects or not. Hence, the assessee has failed to justify the genuineness of activities and thus falls out of the scope of registration u/s 12AB of the Act. Thus, Id. CIT(E) rejected the claim of the assessee's for registration section 12AB on following grounds:-

- Incomplete Form 10AB.
- Registration under Rajasthan Public Trust Act, 1959.
- Genuineness of Activities and non compliance.

5. Feeling dissatisfied with the finding of the Id. CIT(E), the assessee preferred appeal before this Bench with the prayer that the Id. CIT(E) is not justified in not granting the registration and the order passed is against the principles of nature justice.

6. Per contra, the Id. DR relied on the orders of the Id. CIT(E), but at the same he did not object to specific prayer of the assessee to set aside the matter before Id. CIT(E).

7. Heard the rival contentions and perused material available on record. The bench noted that the Id. CIT(E) advanced three reasons for rejection of application of the assessee for registration. Out of the three reasons one of the reasons is that the assessee has not supplied the copy of the registration under Rajasthan Public Trust Act, 1959 (for short RPT Act). The assessee on being aware about the requirement of registration under RPT Act immediately applied and the matter is under active consideration with the State Government agency. Therefore, the reasons advance for non granting of registration as to non genuineness of the activity is needs reconsideration and the assessee assured that if given a opportunity he will be able to submit all the details required to prove the genuineness of the activities. So far as the third reasons for refusal of registration is incomplete form and incomplete details, wherein only last year audited balance sheet which was not attached as the same was not finalized, so not submitted. But the assessee, if given are more opportunity will ensure to submit that also. Thus, the reasons advanced by the Id. CIT(E) being curable in nature. Thus, considering the facts presented by the assessee for which the Id. DR did not object to the fact that defects pointed out

are being curable we are of the considered view that the assessee be given one more opportunity so as to deal with their correct facts in the interest of justice. In the light of the facts and circumstances so discussed and considering the principles of natural justice we do not wish to enter into the merits of the case but after hearing the rival contention we are of the considered view that let the Id. CIT(E) decide the issue based on the submission of the assessee and after providing proper opportunity of being heard to the assessee and making necessary enquiry in accordance with the law. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during proceedings before the Id. CIT(E).

In the result, the appeal of the assessee is allowed for statistical purposes.

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

Sd/-

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

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- Shri OP Dargar Foundation, Jaipur.
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. 1243 & 1244/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar