

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. 1245 & 1246/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, (CIT) (Th. V.C.)
Shri Kemlesh Kumar Meena (Addl. CIT,
Proxy DR)

सुनवाई की तारीख / Date of Hearing : 19/12/2024
उद्घोषणा 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 80G 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. 1245/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 80G(5)(iii) 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. 1246/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 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 1.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 on 30.09.2023 in Form No. 10AB for seeking approval u/s 80G (5) (iii) of the Income Tax Act, 1961. The assessee was issued a letter/notice dated 25.01.2024 requesting it to furnish certain documents/explanations by 05.02.2024, but no compliance has been made by the assessee. Thereafter, a reminder letter was issued vide notice dated 06.02.2024 wherein date of hearing was fixed as 09.02.2024, but again no compliance has been made the assessee. Further, again one more opportunity was also provided to the assessee vide notice dated 10.02.2024 to submit complete details/information by 15.02.2024. This time also on given date, the assessee had not produced any details/documents. Also, during the present proceedings, the assessee has also failed to furnish any replies. Since, it is a limitation matter, therefore, the case is decided on the basis of material filed by the assessee along with its application in Form no. 10AB for approval u/s 80G was rejected by the Id. CIT(E) by observing as under :-

“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 07.03.2023 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.”

5. Feeling dissatisfied with the above finding of the Id. CIT(E) the assessee has preferred this appeal on the grounds as reiterated here in above para 2.

6. Per contra, the Id. DR representing the revenue categorically submitted that the assessee was given sufficient time but assessee miserably failed to substantiate the delay in making the application for recognition. Therefore, he supported the order of the Id. CIT(E) and submitted that the application for registration has rightly been rejected and he also relied on the judgment cited by the Id. CIT(E).

7. Heard rival submissions and perused the material available on record. The Bench noted that Id. CIT(E) has rejected the applications of the assessee u/s 80G(5) of the Act as narrated above in the respective orders that the applicant failed to submit the details called for. Further, it is also noted that Id. CIT(E) in the appeal of the assessee pertaining to

granting approval u/s 80G of the Act has been rejected with following observation.

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

It is also pertinent to mention that during the course of hearing in the appeal, the Id. AR of the assessee prayed that he was deprived off availing adequate opportunity of being heard by the Id. CIT(E) in the application for registration/recognition. The Bench does not want to go into merit of the case but in the interest of justice it is imperative that the assessee must be provided adequate opportunity and meaningful of being heard by the Id. CIT(E). In this view of the matter, the Bench feels that the assessee should be given one more chance to contest the case before the Id. CIT(E) and the Id. AR of the assessee is directed to produce all the relevant papers concerning the application so filed before the Id. CIT(E) to settle the dispute raised hereinabove.

8. 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, appeal of the assessee is allowed for statistical purpose.

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. 1245 & 1246/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar