

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" 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. 488 & 489/JP/2024  
U/S 12AB of the Act

And

आयकर अपील सं./ITA No. 490/JP/2024  
U/S 80G of the Act

Krishna Nandini Gaudham Charitable Trust F-379, Indira Vihar Kota – 324 005 (Raj)	बनाम Vs.	The ITO Ward 2(1) Kota
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAKAK 1086 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri R.S. Poonia, CA  
राजस्व की ओरसे / Revenue by: Smt. Roshanta Meena, CIT-DR

सुनवाई की तारीख / Date of Hearing : 12/02/2025  
उदघोषणा की तारीख / Date of Pronouncement: 17 /02/2025

आदेश / ORDER

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

These three appeals filed by the assessee are against two different orders of the Ld.CIT (Exemption), Jaipur dated 27-02-2024 and 28-09-2023 passed under section 12AA and 80G of the Income Tax Act, 1961 respectively. The grounds of appeal raised by the assessee in the above mentioned appeals are as under:-

ITA NO. 488/JP/2024 U/S 12AB of I.T. Act, 1961

“ That the order passed by the Id. CIT(E),Jaipur by rejecting application u/s 12AB(1)(b) of the I.T. Act, 1961 is wrong, unwarranted and bad in law. Kindly direct to register the same.

ITA NO. 489/JP/2024 U/S 12AB of I.T. Act, 1961

1. That the Id. CIT(E), 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 Act which is wrong, unwarranted and bad in law. Kindly restore the same.

2. That the Id. CIT(E), 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 and 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 Id CIT(E), Jaipur by rejecting provisional registration u/s 12A of the Act is wrong, unwarranted and bad in law. Kindly restore the same.

ITA NO. 490/JP/2024 U/S 80G of I.T. Act, 1961

2. That the Id. CIT(E), Jaipur has erred in law and in facts of the case by rejecting the 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.

2.1 At the outset of the hearing, the Bench noticed that there is delay of 139 days delay in filing the appeal u/s 80G of the Act for which the ld.AR of the assessee has filed an application for condonation of delay in connection with above mentioned appeals narrating therein as under:-

“1. That the assessee trust filed an appeal on 14-04-2024 against the ex-parte order passed by ld. CIT(E), Jaipur on rejection of approval u/s 80G of the I.T. Act, 1961 with a delay of 139 days. Hence an appeal was filed which is as follows:-

S.N.	Particular	Appeal No.
3.	Rejection order u/s 80G approval (i.e. 80G(5)(iii)	ITA No. 490/JPR/24

2. That at the time vide Circular No. 6 of 2023 dated 24-05-2023, the CBDT allowed to re-apply the application for registration u/s 12A only but re-application for approval u/s 80G was not covered under this Circular.

2. That the delay of 39 days in filing of appeals was due to as there are many recent changes in trust related laws as:-

3. Therefore, after taking legal advice on the situation and not allow to re-applying for approval u/s 80G of the Act to the assessee trust decided to file the appeal before Hon'ble ITAT, Jaipur Bench. Hence, the time taken in process of wait of reply or legal advice regarding whether the remedy is re-apply or filing of appeal in our case

4. That the delay in filing appeal before Hon'ble ITAT, Jaipur Bench was due to time taken in process of legal

KRISHNA NANDINI GAUDHAN CHARITABLE TRUST VS ITO, WARD 2(1), KOTA  
advice taken for re-apply and technical glitches on the Income Tax Portal and the same is considered as reasonable cause for delay in appeal filing before Hon'ble ITAT, Jaipur Bench

In view of above submission, you are requested that kindly consider this as reasonable cause to condone the delay of 139 days and kindly remand back the case to CIT(E), Jaipur, so that proper inquiry can be conducted and substantial justice may be delivered to the appellant.’’

2.2 On the other hand, the ld. DR objected to such delay in filing the appeals by the assessee and submitted that the Court may decide it as deemed fit and proper in the case of the assessee.

2.3 After hearing both the parties and perusing the materials available on record, the Bench noted that there is no force in the submissions of the ld. AR of the assessee as to the condonation of delay in filing the above appeal. Hence, the Bench does not find sufficient cause whereby the assessee was prevented in late filing the appeal. Thus the applications for condonation of delay made by the assessee is dismissed. However, the Bench feels that with a view to providing the substantial justice to the assessee, the appeal is heard on merit.

3.1 Apropos to the ground so raised by the assessee in ITA Nos. 488/JP/2024 and 489/JP/2024, the ld. CIT(E) rejected the assessee's claim of registration u/s 12AB of the Act by observing as under:-

‘’05. In view of the above discussion assessee’s claim of registration u/s 12AB is liable to be rejected and thus being rejected on following grounds:-

- Incomplete Form 10AB
- Rajasthan Public Trust Act, 1959
- Genuineness of Activities.

06. 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 30-11-2022 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 Apropos to the ground so raised by the assessee in ITA No. 490/JP/2024, the ld. CIT(E) has withdrawn the assessee’s claim of exemption u/s 80G of the Act by observing as under:-

‘’2 In response to the above, the applicant has requested for withdrawing the application vide dated 21-09-2023 for approval under clause (iii) of first proviso to sub-section (5) of Section 80G of the Income Tax Act, 1961 and has stated as under:-

‘’.....We request you that assessee-society is not registered under DevasthanVibhag and the same is mandatory for registration under Income Tax Act provisions. So, we are withdrawing the application for permanent registration of society u/s 12AB & 80G of the I.T. Act, 1961.’’

3. In the light of the above facts and applicant's request to withdraw the aforementioned application for approval under clause (iii) of first proviso to sub-section(5) of Section 80G of the Income Tax Act, 1961, the applicant's application for approval under clause(iii) of first proviso to sub-section (5) of Section 80G of the Income Tax Act, 1961 is hereby withdrawn.”

3.3 During the course of hearing, the ld. AR of the assessee in the above appeals mainly submitted that the assessee was not provided adequate opportunity of being heard by the ld. CIT(E) and thus the orders should be quashed being ex-parte orders and 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. Conclusively, the ld AR of the assessee prayed that the assessee trust may be provided one more opportunity to the contest the case before the ld CIT(E) and restore the appeals to the file of ld CIT(E) for afresh adjudication as the assessee was ex-parte before the ld. CIT(E)

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 the ld. CIT(E) has rejected the assessee's claim of registration u/s 12AB of the Act on following grounds:-

- Incomplete Form 10AB

- Rajasthan Public Trust Act, 1959
- Genuineness of Activities.

It is also noticed that the Id.CIT(E) has cancelled the provisional registration of the assessee for the reason that the assessee trust had failed to give proper justification for regularization of provisional registration. It may be noted that the Id.AR of the assessee submitted that the assessee trust has applied for registration under RPT Act, 1959 before the competent authority and the assessee trust is likely to get the same. . Therefore, in these circumstances, we restore the matter back to the file of the Id. 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. The assessee trust is also directed to produce the complete Form 10AB and produce the documents relating to the genuineness of the activities before the Id CIT(E)

3.6 Since we have restored the appeals of the assessee with regard to the registration u/s 12AA of the Act to the file of the Id. CIT(E) for afresh adjudication, therefore, the outcome of appeals of the assessee u/s 80G of the Act are 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 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.

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

Order pronounced in the open court on 17 /02/2025.

Sd/-

(राठोड कमलेशजयन्तभाई )

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 17 /02/2025

\*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Krishna Nandini Gaudhan Charitable Trust, Kota
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(1), Kota
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.488, 489 & 490/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar