

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

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

आयकर अपील सं./ITA. No. 1239 & 1240/JPR/2024

Badhate Kadam Gaushala Sansthan Kekri Suraj Colony Dhand Ka Rastha, Kekri, Ajmer.	बनाम Vs.	The CIT Exemption, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADTB9576A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajat Choudhary, Adv.
राजस्व की ओर से / Revenue by : Shri Bhanwar Singh Ratnu, CIT

सुनवाई की तारीख / Date of Hearing : 06/03/2025
उदघोषणा की तारीख / Date of Pronouncement : 03/04/2025

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 11.04.2023 and 10.05.2023 [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 483 & 819 days in filing of the appeals by the assessee for

which the assessee filed application for condonation of delay with following prayers supported with an affidavit :-

“1. That assessee is a trust and filed 2 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 483 days. Hence total 2 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. 1239/JAI/2024
2.	Rejection order u/s 80G appeal [i.e. u/s 80G(5)(iii)]	ITA No. 1240/JAI/2024

2. That the delay of 483 days in filing of appeals was due to as there are many recent changes in trust-related laws as whether, what is the exact legal remedy available to the trust viz. re-apply or appeal.

3. That the time was consumed in taking the final advice that the appeal before Hon'ble ITAT is the only remedy available to the appellant.

4. That the appellant-trust is situated in a very remote area of Rajasthan (i.e. Kekri). Therefore, we have to visit either Jodhpur or Jaipur to take legal advice.

5. That thereafter, after taking proper legal advice that the proper remedy with us is to file appeal before ITAT, we engaged a counsel and prepare the appeal & filed the same before ITAT, Jaipur Bench on 05.10.2024 (i.e. with a delay of 483 days).

6. Therefore, the delay in filing of appeal was due to confusion of non-clarity 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 483 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.”

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 483 & 819 days in filling the appeal were based on the reasons stated herein prayer for condonation. It is also a fact that the assessee run a Gaushala in a remote area. Considering 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 that they work in village their activities are charitable in nature but because of the legal advise they could not decide about the remedy available and thereby it

has resulted delay in filling the present appeal. The contention raised were declared by filling an affidavit and are sufficient to condone the delay. As it is held by Higher courts that by filling the appeal late the assessee runs a risk and it was not a case of negligent delay on the part of the assessee. The contention raised being supported by an affidavit are sufficient to condone the delay and therefore, considering 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. Based on this observation we condone the delay in filling both the appeals.

3.1 In ITA No.1239/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)(b) 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 ITANo.1240/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.”

4. First, we take up the appeal of the assessee in ITA no. 1239/JPR/2024, wherein the brief fact of the case are that the application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 was filed by the assessee-applicant online on 04.10.2022. A letter/notice dated 05-03-2023 was issued at the e-mail/address provided in the application requiring the assessee-applicant to submit certain documents/explanations by 20.03.2023, but no compliance was made by the assessee-applicant. Thereafter, a reminder letter was issued vide notice dated 21.03.2023 to submit certain documents/explanations by 28.03.2023. However, again no further compliance was made by the assessee-applicant. In view of principle of natural justice, one more opportunity was provided to the assessee-applicant dated 30.03.2023 as final opportunity through which date of submission was fixed as 06.04.2023. But this time also on a given date no reply was filed by the assessee-applicant. Since it is a limitation matter, therefore, the case is decided based on material filed by the

applicant along with its application in Form no. 10AB. Thereby the registration u/s. 12AB was rejected on the following grounds:

- Incomplete form 10AB.
- Non registration with RPT Act, 1959.
- Genuineness of activities.

5. Whereas in the application for recognition u/s. 80G of the Act, that application was rejected on the ground that the assessee was not granted registration u/s 12AB of the Act and therefore, recognition u/s 80G of the Act cannot be granted.

6. The Id. AR of the assessee vehemently argued that the only three notice were issued in a month and thereby the time given was very much less. Assessee being from remote are could not file the required details. Ld. AR of the assessee prayed to grant one more opportunity to the assessee in the interest of the justice as the reasons advanced being curable in nature the assessee may be granted one more opportunity to represent the merits Based on that he prayed for one chance to consider the merits of the registration of the assessee-applicant trust.

7. Per contra, Id. DR replied upon the orders of the Id. CIT(E) and stated that the assessee was not registered under RPT Act as

on the date of application and therefore, the order of the Id. CIT(E) be sustained.

8. We have heard the rival contentions and perused material available on record. The Bench noted that Id. CIT(E) rejected the application of the registration of the applicant assessee-trust on the contention that the form filed was incomplete in Form 10AB, the assessee-applicant was not registered under RPT Act, 1959 and there were questions on the Genuineness of activities. As is evident that recently in the Budget session Hon'ble Finance Minister presented a view that the small assessee trust can be given 10 years registration instead of five and the assessee being very small the reasons for rejection being curable in nature we are of the considered view that the assessee- applicant shall appear and submit all the related details regarding their application for registration. Considering that aspect of the matter, the Bench we restore the matter of the registration u/s 12AB of the Act to the file of the Id. CIT(E) be decided afresh. The Bench also noted that recognition u/s 80G of the Act was denied because the applicant-assessee trust was not registered u/s 12AB of the Act. Since we have restored

the matter of registration u/s 12AB of the Act to the file of the Id. CIT(E) and therefore, we also deem it a fit case to restore the matter of recognition u/s 80G of the Act to the file of the Id. CIT(E). Based on the discussion so recorded here in above we restored the matter back to the file of the Id. CIT(E).

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.1239/JPR/2024 and ITA No. 1240/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open Court on 03/04/2025.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/04/2025

*Santosh

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

1. अपीलार्थी / The Appellant- Badhate Kadam Gaushala Sansthan Kekri, Ajmer.
2. प्रत्यर्थी / The Respondent- CIT(E), 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. 1239 & 1240/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar