

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

डॉ. 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. 1015 & 1021/JPR/2024

Arya Samaj Mandir, 1, Dayanand Marg, Bhilwara.	बनाम Vs.	The Commissioner of Income-tax (Exemption), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABAA7514R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Devang Gargieya, Advocate &
Shri Hemang Gargieya, Advocate.
राजस्व की ओरसे / Revenue by : Smt. Runi Pal, CIT-DR

सुनवाई की तारीख / Date of Hearing : 18/02/2025
उदघोषणा की तारीख / Date of Pronouncement : 22/04/2025

आदेश / ORDER

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

These are two appeals filed by the assessee against two separate orders of the Ld. CIT (Exemption), Jaipur dated 27.06.2024 & 28.06.2024 for the assessment year 2019-20 passed under section 12AA and 80G of the Income Tax Act, 1961 respectively. The assessee has raised following grounds:-

ITA NO. 1015/JPR/2024 :

“1. The impugned order dated 28.06.2024 of the Act is bad in law and on facts of the case for want of jurisdiction and various other reasons and hence, the same kindly be quashed.

2. The Id. CIT (Exemption) erred in law as well as on the facts of the case in cancelling the registration in Sec. 12AA of the Act. The cancellation of the registration by the Id. CIT (Exemption) is bad in law and on facts of the case and hence the same may kindly be quashed.

3. The appellant prays your honour to add, amend or alter any of the grounds of the appeal on or before the date of hearing.”

ITA NO. 1021/JPR/2024 :

“1. The impugned order dated 28.06.2024 of the Act is bad in law and on facts of the case for want of jurisdiction and various other reasons and hence, the same kindly be quashed.

2. The Id. CIT (Exemption) erred in law as well as on the facts of the case in rejecting the application for granting the approval u/s 80G. The rejection so made and exemption so denied u/s 80G is totally contrary to the provisions of law and on facts of the case and hence the same may kindly be quashed.

3. The appellant prays your honour to add, amend or alter any of the grounds of the appeal on or before the date of hearing.”

Both these appeals are inter-related and inter-connected, therefore, first of all, we deal with the grounds of the assessee raised in ITA No.1015/JP/2024.

2. The brief facts of the case are that the assessee society had filed an online application under section 12AA dated 12.01.2019 in Form No.10A seeking registration under section 12AA of the IT Act, 1961. However, the said

application of the assessee rejected by the ld. CIT (Exemption) vide order dated 31.07.2019 on the ground that the assessee had not submitted original documents regarding the establishment of trust/society as well as evidences in support of its claim even after sufficient opportunities have been provided to the applicant to produce details and documents in support of his claim for registration under section 12AA of the IT Act, 1961. Aggrieved by the order of ld. CIT (Exemption), assessee preferred appeal before the ITAT Jaipur. The ITAT vide appeal no. 1081/JP/2019 dated 03.09.2020 set aside the matter to the file of ld. CIT (Exemption) for afresh examination of the issue in question, along with 80G as approval under section 80G is inter-connected with the appeal relating to registration under section 12AA of the Act. Following the directions of the ITAT, notices were issued to the assessee and in compliance reply submitted by assessee. The ld. CIT (Exemption) being not satisfied with the reply of the assessee, again denied registration under section 12AA vide his order dated 27.06.2024 on the ground of Non genuineness of activities and Non registration under the RPT Act, 1959.

ITA No. 1021/JPR/2024 :

3. So far as the appeal in ITA No. 1021/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 12AA.
- Religious objects violation of 80G(5)(ii).
- Meant expressed for benefit of particular community violating section 80G(5)(iii).
- Religious expenses are more than 5%, thus violation of section 80G(5B).

4. Aggrieved by the order of the Id. CIT (Exemption), the assessee preferred the present appeals before us on the grounds mentioned hereinabove. All the grounds raised by the assessee are inter-related and inter-connected and relates to challenging the order of Id. CIT (Exemption) in denying registration under section 12AA and approval under section 80G of the IT Act, 1961. Therefore, for the sake of convenience, we dispose off all the grounds through a consolidated order.

5. Before us, the Id. A/R of the assessee reiterated the arguments as were raised by him before the Id. CIT (Exemption) and also relied on the written submission submitted before us which are reproduced as under :

“Brief Facts: The appellant is a charitable society, established long back and engaged in promoting nationality, education, personality development of the students without any discrimination of caste, creed and sex (Refer amended trust deed at PB5-32).

The facts, of the 1st round, as noted by the Id. CIT(E) is that the appellant filed an online application u/s 12AA dt. 12.01.2019 in Form No.10A for seeking registration u/s 12AA of the Act along with application u/s 80G dt 12.01.2019. In response, the CIT(E) issued notice dt. 01.04.2019 requesting to submit certain documents/ explanations and also to produce original RC/MOA for verification. In compliance thereto, Shri G.P. Singhal, CA/AR attended and furnished details on various dates. The CIT(E) vide its notice dt. 01/02.07.2019 asked the assessee-society to produce the certified copy of the MOA for verification, however upon non-

furnishing of the same, the CIT(E) rejected the application for registration u/s 12AA vide its order dated 31.07.2019, the relevant extract is under :

“05. As discussed above, the appellant did not submit original documents regarding establishment of the trust/society as well as evidences in support of his claim. Under Rule 17A of Income Tax Rules, 1962 the appellant is required, to produce original/ certified instrument regarding establishing of the trust/society for verification but the same has not be done by the appellant.

06. Sufficient opportunities have been provided to the appellant to produce details and documents in support of his claim for registration u/s 12AA of the Income Tax Act, 1961 but appellant have failed to do so. In the light of the above facts, the application seeking registration u/s 12AA is hereby rejected and filed.”

and also rejected the application for registration u/s 80G vide order dated 31.07.2019 stating that *the approval u/s 12AA is a precondition for granting approval u/s 80G and thus, the assessee is not eligible for exemption u/s 80G.*

Thus, the crux of the order of Id. CIT(E) is that as per Rule 17A r/w S.12AA(1)(b) of the Act, certified copy of instrument establishing the trust needs to be verified with original. The CIT(E) is empowered to call for such document/ information to satisfy himself of the genuineness of the activities or to make necessary enquires. U/r 17A appellant is required to produce original/ certified instrument establishing the institution for verification and alleging failure to comply this part, he denied the registration.

Thereafter, aggrieved by this order, appellant preferred appeals before the Hon’ble ITAT, Jaipur. The Hon’ble ITAT in ITA No. 1081-82/JP/2019, vide order dated 03.09.2020, set-aside the above-mentioned orders of the CIT(E) and further observed that:

“In view of the above discussions, we are of the considered view that as per amended rule 17A of the Income Tax Rules, which are applicable in the case of the assessee, the assessee was not required to furnish the original copy of the documents rather self-attested or self-certified copy of each and every documents/instruments was sufficient for the purpose of verification by the Id. CIT (E). Therefore, taking into consideration all these facts and circumstances of the case, this appeal of the assessee society is restored to the file of the Id. CIT(E) for afresh examination of the issue in question and act accordingly. Thus the appeal of the assessee in ITA No. 1081/JP/2019 is allowed for Statistical purposes.”

Thereafter, in compliance of the directions of the Hon'ble ITAT, the Id. CIT(E) (*in this 2nd round*) issued Notice dt. 16.03.2022 (PB 68-71), in response to which the assessee filed a detailed replies dt. 21.03.2022 & 10.06.2024 (PB 72-74 & 79-82 respectively). Unfortunately, however, the CIT(E) without consider the same, again rejected the application for registration u/s 12AA vide impugned order on dt. 27.06.2024, on various new grounds (which were not raised during the 1st round) i.e (a) Non-genuineness of activities and (b) Non-registration of Rajasthan Public Trust Act.

Similarly, the application for exemption u/s 80G was also rejected vide order dated 28.06.2024 on various grounds i.e (a) Approval u/s 80G cannot be granted without registration u/s 12AA (b) Religious object violated u/s 80G(5)(ii) (c) meant for particular community (d) Religious Exp. are more than 5%
Hence this appeal.

Submission:

GOA 1 : Impugned Order dt. 27.06.2024 is bad-in law :

1. The Passing of the impugned order is barred by the limitation u/s 153(3). In this connection, your kind attention is drawn that the order of Honb'ble ITAT, Jaipur Bench, Jaipur in 1081 & 1082/JP/2019 (PB 47-62)

1.1 We would like to draw your kind attention towards S. 153(3) which clearly stipulates that an order for fresh assessment pursuant to an order under S. 254 or S. 263 or S. 264 of the Act may be made at any time before the expiry of a period of Nine months, further extended to twelve months for orders passed on or after 01.04.2019. The said provision further encapsulates that the aforesaid period has to be calculated from the end of the financial year in which the order under S. 254 of the Act is received by the authorities. For the sake of clarity, S.153(3) of the Act is extracted hereunder as:

“S. 153 (3) Notwithstanding anything contained in sub-sections (1) 42[, (1A)] and (2), an order of fresh assessment 43[or fresh order under section 92CA, as the case may be,] in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, 43[or an order under section 92CA, as the case may be], may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the 44[Principal Chief

Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :

Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the 44[Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,] on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

X

X

X

X

(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] wholly or partly, otherwise than by making a fresh assessment or reassessment [or fresh order under section 92CA, as the case may be], such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the 48[Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] ”

1.2 In the facts of the present case, the Hon’ble ITAT after considering all the facts and circumstances of the matter, passed an order dated 03.09.2020 (PB 47-62), restoring the issue to the Id. CIT(E) for afresh examination on the limited issue i.e. applicability of Rule 17A, for requirement to furnish the original copy of the documents, rather than self-attested/ self-certified copy, which was decided in the favour of the assessee, only and simply with a view to ensure that the applicant assessee in compliance of Rule 17A has filed Self attested/ self-certified copy on record. The Hon’ble ITAT never meant to touch upon issues which were never part of them. Further considering the legal provisions laid down by S. 153(3) of the Act, the order in this case must be passed by the concerned authority, within twelve months from the receipt of the order i.e. by 31st March 2022.

1.3 It is further submitted that the Appellant despite having raised this specific objection of passing of the order barred by the limitation in the context of S. 153(3) of the act, has not whispered a word in the impugned order. Hence the impugned order having been passed after the last date of the limitation u/s 153(3) dated 31.03.2022(or 31.03.2021), must be considered as

barred by limitation in the sense that the Appellant cannot be made to suffer because of the fault committed by the CIT(E) in not taking a decision. The issue of the registration, restored to him by the Hon'ble ITAT as dated 03.09.2020

1.4 However, it is important to note that substantial time has passed since the limitation, as laid down u/s 153(3) of the Act has elapsed, considering such circumstances, the application filed by assessee u/s 12AA and 80G of the Act must be deemed accepted and registration must be treated as granted.

2.1 Limitation of 6 months prescribed u/s 12AA(2) violated, hence deemed Registered. Another aspect of the matter is that provisions of the S. 12AA(2) of the Act mandatorily requires the CIT(E) to pass an order granting registration or otherwise, within a period of 6 months from the end of the month in which the application was made or the date of the ITAT, which in the present case is dt. 03.09.2020 (PB 47-62). However, the Ld. CIT(E) not having disposed off the application within the statutorily prescribed period of 6 months, its authority/discretion to refuse registration stands barred by limitation. In other words, not having acted within the prescribed period, the registration sought by the Appellant must be deemed to have granted registration, as categorically held by the Hon'ble Apex Court in CIT(E) vs Society for Promn. of Edn., Allahabad [2016] 67 taxmann.com 264 (SC) (DC 45-46) as under:

“Section 12A, read with section 12AA of the Income-tax Act, 1961 - Charitable or religious trust - Registration of (Deemed registration) - Whether where assessee-society filed an application under section 12A for grant of registration on 24-2-2003 and same was not responded to within six months, registration of application was to be deemed to have taken effect from 24-8-2003 - Held, yes

Para 3. The short issue is with regard to the deemed registration of an application under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.

Para 5. We see no basis for such an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income Tax Act in the case of the respondent shall take effect from 24.08.2003.”

2.2 Also the Hon'ble Rajasthan High court in the case of CIT(E) Vs Gettwell Health and Education Samiti, Sikar (Raj.) [2020] 115 taxmann.com 66 (Rajasthan)(DC 47-50) is directly

applicable which is also a case based on almost similar facts. In that case also, the Hon'ble Tribunal remanded the matter back to the Id. CIT(E) on dt. 22.07.2011. The CIT(E), however passed fresh order only on dt. 09.10.2015 rejecting the application on certain grounds. In that context it was held as under,

“7. While arriving on the aforesaid conclusion, the Tribunal also relied upon the judgment of the Karnataka High Court in CIT v. Islamic Academy of Education [2015] 54 taxmann.com 255/229 Taxman 274 and decision of this Court in CIT v. Vijay Vargiya Vani Charitable Trust [2015] 58 taxmann.com 335/232 Taxman340/[2014] 369 ITR 360 (Raj.). The Tribunal also noted that once the matter was remanded back to the CIT(E) then the limitation for passing the order/decision cannot be more than the limitation provided for deciding the application under section 12AA of the Act. There is no dispute that as per the provisions of section 12AA(2) of the Act, limitation for granting or refusing the registration is prescribed as before expiry of six months from the end of the month in which the application was received. Relying on the judgment of the Supreme Court in CIT v. Society for the Promn. of Edn. [2016] 67 taxmann.com 264/238 Taxman 330/382ITR 6 which upheld the judgment of Allahabad High Court and judgment of this Court in CIT v. Sahitya Sadawart Samiti [2017] 88 taxmann.com 703/396 ITR 46 (Raj.), the Tribunal held that once the limitation prescribed under section 12AA of the Act expired and the consequential default on the part of the CIT(E) in deciding the application would result deemed grant of registration is a settled proposition. Therefore, it has been held by the Tribunal that the judgment of the CIT(E) is reversed on merits and registration would stand granted to the assessee by prescription of law made in section 12AA(2) of the Act. The Tribunal in this behalf relied on the judgment of Lucknow Bench of the Tribunal in Harshit Foundation v. CIT [2013] 38 taxmann.com 309/60 SOT 147 (URO) in which case it was held that where the Commissioner does not pass any order even after six months from receipt of Tribunal's order remitting the matter to him, the registration will be deemed to have been granted. This is subject to exercise of Commissioner's power under section 12AA(3) of the Act in appropriate cases.”

2.3 Earlier also, in the case of CIT(E) vs Sahitya Sadawart Samiti Jaipur[2017] 88 taxmann.com 703 (Rajasthan) (DC 51-53)it is held that

“In all the circumstances either due to defect in the application or on merits of it the Commissioner, under sub-section (2) of section 12AA is supposed to grant or refuse registration within 6 months from the end of months in which application was received, where the Commissioner disposed of application with delay of around three years, the Tribunal was justified in granting registration with effect from the date of application.”

II. Limited Scope under Remand Orders

3.1 That the sole reasons behind rejection of application of registration by the ld. CIT (E) in the first round was that no certified copy of MOA was produced by the assessee for verification (*the relevant extract of the said order is reproduced above at Pg 1 of this W/s*). Aggrieved by this order appellant preferred appeal before the Hon'ble ITAT, Jaipur, wherein the Hon'ble ITAT vide order dt. 03.09.2020, rejected the findings of the CIT(E) and set-aside the said order over specific issue for granting registration u/s 12AA and exemption u/s 80G. The relevant extract of the order (PB 47-62) is reproduced hereunder: -

“In view of the above discussions, we are of the considered view that as per amended rule 17A of the Income Tax Rules, which are applicable in the case of the assessee, the assessee was not required to furnish the original copy of the documents rather self attested or self certified copy of each and every documents/ instruments was sufficient for the purpose of verification by the ld. CIT (E). Therefore, taking into consideration all these facts and circumstances of the case, this appeal of the assessee society is restored to the file of the ld. CIT(E) for afresh examination of the issue in question and act accordingly. Thus the appeal of the assessee in ITA No. 1062/JP/2019 is allowed for Statistical purposes. 3.1 As regards the appeal of the assessee u/s 80G(5)(vi) of the Income Tax Act against the order 31-07-2019 of the ld. CIT(E), the Bench finds that the appeal of the assessee as to grant of approval u/s 80G is interconnected with the appeal of the assessee relating to registration u/s 12AA of the Act. Therefore, this appeal of the assessee is also restored to the file of the ld. CIT(E) for afresh consideration and act accordingly. Thus, the appeal of the assessee in ITA No. 1063/JP/2019 is allowed for Statistical purposes”.

Hence, the CIT(E) could not touch the other issues.

3.2 Supporting Case Laws:-

3.2.1 In the case of *Edunxt Global SDN - BHD vs. Deputy Commissioner of Income-tax [2024] 169 taxmann.com 113 (Bangalore - Trib.)(DC 30-36)*, it was held that “*Section 9 of the Income-tax Act, 1961, read with article 12 of the DTAA between India and Malaysia - Income - Deemed to Accrue or Arise in India (Royalties or Fees For Technical Services-Others) - Assessment year 2014-15 - Assessee-company entered into a master service agreement with 'ABMC' to offer a customized programme for employees of 'ABMC' - Assessing Officer in original proceedings treated income as 'royalty' under section 9(1)(vi) - Tribunal remanded matter to Assessing Officer to examine issue in light of judgment of Supreme Court in Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 432 ITR 71 - In remand proceedings, Assessing Officer*

taxed receipts from 'ABMC' as Fees for Technical Services (FTS) as against bringing it to tax as 'royalty' in original assessment - Whether Assessing Officer had clearly exceeded his jurisdiction by taxing income of assessee as FTS which was not subject matter of appeal before Tribunal nor had Tribunal given an open remand to Assessing Officer - Held, yes - Whether since examination by Tribunal was limited to taxability of receipts only in light of judgment of Supreme Court in Engineering Analysis case (supra) which dealt with taxability of receipt as 'royalty' under section 9(1)(vi), impugned addition was to be deleted on technical grounds - Held, yes [Paras 9-14] [In favour of assessee]”

3.2.2 Reference is also placed on the decision of the Andhra Pradesh High Court in Pulipati Subbarao and Co. v. Appellate Assistant Commissioner [1959] 35 ITR 673(DC 43-44), wherein it was held that *“Pursuant to the order passed by the Appellate Assistant Commissioner it is open to the Income-tax Officer to consider the one and the only question referred to him, viz., whether the firm's application for registration should be allowed. There is no other question before the Income-tax Officer and he would certainly be transgressing the limits set down by law if he were to embark upon a fresh enquiry as to the quantum of the income or the loss incurred by the petitioner.”*

3.3.3 Also, in the case of Murlidhar Bhagwandas vs. Commissioner of Income-tax [2000] 111 Taxman 619 (Bombay)(DC 37-42), it was held that *“Section 143, read with section 251, of the Income-tax Act, 1961 - Assessment - On remand - Assessment years 1956-57 to 1958-59 - Whether Assessing Officer does not have powers to go into validity or legality of reassessment under section 147 in proceedings for fresh assessment pursuant to directions of AAC for purpose of re-computation of income after giving proper hearing to assessee, when issues regarding legality and/or validity of those proceedings have already been decided by AAC while remitting matter to Assessing Officer - Held, yes - Whether, similarly, first appellate authority, in an appeal against order of Assessing Officer passed after fresh assessment, has no power or authority to examine and decide very same issue once again which has been decided in earlier appeal - Held, yes”*

4. Analogous Law u/s 263: Applicable

4.1 In this regard, attention is drawn to Section 263 - Explanation 1 – Clause c, which states that Section 263 shall extend only to such matter which were not subject matter of appeal. Thus, once an issue is a subject matter of appeal, the CIT/PCIT has no jurisdiction to invoke revisionary powers u/s 263 on the same subject matter. Kindly refer the judgment of this Hon’ble ITAT in JR industries V. PCIT [2021] 132 taxmann.com 302 (Jaipur - Trib.), held that:-

“It is evident that the power of Commissioner under section 263 extends to such matters which had not been considered and decided in such appeal. The use of the word 'considered and decided' leaves no room for doubt that if some issue is decided by Commissioner (Appeals) in an appeal against the assessment order passed by the Assessing Officer, then, that issue cannot be subject matter of proceedings under section 263. Thus, it is evident from the above that the Explanation 1(c) to section 263 is based on the Doctrine of Merger, according to which there cannot be more than one decree or an operative order governing the same subject-matter at a given point of time... [Para 12]

ON MERITS

III. NON-GENUINNESS OF ACTIVITIES

5. All documents and Information already submitted:

5.1. The facts are not denied that a copy of the Amended Memorandum of Association/ Deed attested by the notary public was already filed and is available on record, as admitted by the Ld. CIT (E) also in the impugned order dt. 27.06.2024 (Pr. 2 Pg. 1 of). Moreover, the original Amended deed was again produced vide reply dt 25.05.2019 (Pr. 3) - (PB36-43).

5.2. All other conditions already fulfilled[in first round]: Pertinently, the Id. CIT(E) raised voluminous queries vide letter dt. 01.04.2019 (PB 33-35) raising as many as 26 queries/ issues and all of them were duly replied time to time, filing explanation and the required details were submitted by vide various letters dt. 25.05.19 (PB36-43), 10.06.19 (PB44) and 15.07.19 (PB45-46). Thereapart, the appellatant also submitted a statement of activity carried out during the relevant F.Y. 2018-19 in accordance with the object which are undoubtedly charitable in nature. The audited financial statements of accounts signed by independent Statutory Auditor are also available on record (PB 38-43) as admitted by the Ld. CIT(E). Further, the objects are admittedly charitable in nature as per S. 2(15) of the Act.

5.3 The Id. CIT(E) could not raise any other adverse issues and felt satisfied on all other aspects i.e. the genuineness of the activities and objects of the institution being in accordance with law but the only basis of the rejection remained non-filing of the initial document establishing the institution, in original, which was a mis-conception on his part as submitted above.

5.4 Certified copy of original now available- Existence of Samaj proved: Further, the appellatant having been created long back in the year 1896 with registration no. 1/1898, the appellatant expressed its inability to the Id. CIT vide its letter dated 25.05.19 (PB 36-43). At the same time

the appellant also made a request to the Registrar Society Bhilwara under Right to Information Act, 2005 vide letter dated 15.07.19 (PB45-46). In response, the Registrar vide their letter no. 1482 dated 13.08.19 (PB supplied the certificate copy of the original Constitution, registration certificate and various other papers placed (PB 5-32).

III. The Rajasthan Public Act – Not Applicable :

6. The Hon'ble ITAT has recently in the case of APJ Abdul Kalam Education and Welfare Trust Vs CIT(E) vide ITA No. 567/JPR/2024 dated 06.01.2025 (DC 54-67), adjudicated upon similar issue whether a trust is mandatorily required to obtain registration under the Rajasthan Public Trust Act, 1959 from the Devasthan Vibhag for the purpose of seeking registration u/s 12AA/12AB of the Income Tax Act. In this landmark decision, the Hon'ble Tribunal has categorically held that the absence of such registration does not render the application for registration untenable. The Hon'ble ITAT, has held as under:

“2. The assessee submitted before us the copy of application filed online before the Devasthan Vibhag, Rajasthan vides dated: 22.09.2024, as required by the Ld. CIT (E), Jaipur. Although the requirement of obtaining registration with the Devasthan Vibhag, Rajasthan as per the Rajasthan Public Trust Act, 1959 is really required or not in the context of section 12AB (1) (b) (ii) (b) of the Act, is a matter raised before us by the counsel of the assessee and certainly a question of law to be decided by us in the coming paras of this order considering the provisions of section 12AB (1) (b) (ii) (B) of the Act, Judicial Pronouncements relied upon by the Ld. CIT(E), Jaipur. For sake of clarity and ready reference we are reproducing herein below the relevant provisions of section 12AB of the Act as under:

Procedure for fresh registration.

12AB. (1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall, —

- (a) Where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;*
- (b) Where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) [or item (B) of sub-clause (vi)] of the said clause, —*
 - (i) Call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy him about—*
 - (A) The genuineness of activities of the trust or institution; and*

(B) *the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;*

(ii) *after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i), —*

(A) *Pass an order in writing registering the trust or institution for a period of five years; or*

(B) *If he is not so satisfied, pass an order in writing, —*

(I) *in a case referred to in sub-clause (ii) or sub-clause (iii) or sub-clause (v) of clause (ac) of subsection (1) of section 12A rejecting such application and also cancelling its registration;*

(II) *In a case referred to in sub-clause (iv) or in item (B) of sub-clause (vi) of subsection (1) of section 12A, rejecting such application, after affording a reasonable opportunity of being heard.*

4. *The relevant provisions reproduced (supra) in bold and underlined, is an attempt by us to analyze the provision in proper perspective of Law in the light of Judicial Pronouncement of Hon'ble Apex Court, specifically the citations being relied upon by the Ld. CIT (E), Jaipur, i.e. [2012] 20 taxmann.com 46 (A.P.) Aurora Educational Society vs. CCIT, relevant paras are reproduced as under:*

“10. The scope and amplitude of section 10(23C) (vi) of the Income-tax Act, the provisos there under and the rules and forms applicable thereto, which were the subject-matter of examination in New Noble Educational Society vs. Chief CIT [2011] 334 ITR 303/201 Taxman 33/ 12 taxmann.com 267(AP) and in R. R. M. Educational Society vs. Chief CIT [2011] 339 ITR 323 (AP) can, conveniently, be summarized as under:

1. As section 20A of the A. P. Education Act prohibits individuals from establishing educational institutions, it is only societies/associations/ trusts which can establish educational institutions in the State of Andhra Pradesh.”

“19. On a conjoint reading of sub-sections (3) and (4) of section 8 of the A. P. Societies Registration Act, 2001, it is only when the amendment to the objects of a society (educational agency) is intimated and the Registrar, on being satisfied that the amendment is not contrary to the provisions of the Act, registers and certifies such an alteration, would it be a valid alteration under the Act. It is only from the date the Registrar certifies the alteration that the amendment, to the objects of the society, comes into force.”

5. Above discussed, judicial pronouncement is specifically applicable to the educational institutions, where a specific law is there to regulate such type of institutions and are in harmony with the provisions of section 12AB (1) (b) (ii) (B) of the Act, i.e. the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects. In the matter under consideration, the Ld. CIT (E), Jaipur is duty bound to establish that how the compliance with RPT Act, 1959 is material for the purpose of achieving its objects. In our opinion, both the statutes, i.e. The Income Tax Act, 1961 and RPT Act, 1959. All the authorities relied upon by the assessee (Sic- CIT(E)) are w.r.t. educational institutions, where context is different, i.e. students at large and issues like capitation fee, allocation of seats, pay scale of teachers and curriculum of the syllabus etc. are in focus. For public benefit and reasonability, such regulations are there, specifically the states where big institutions are indulged in imparting education in the field of Medical, Engineering and Managements etc.

6. The next judicial pronouncement relied upon by the Ld. CIT (E), Jaipur is from the court of Hon'ble Apex Court as under: [2022] 143 taxmann.com 276 (SC) New Noble Educational Society vs. CCIT, relevant paras are reproduced as under:

“It is held that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc. This reasoning is reinforced by the recent insertion of another proviso of section 10(23C) with effect from 1-4-2021. [Para 76]”

7. Again referring our considered opinion as discussed (supra) vide para 5, this citation relied upon by the Ld. CIT (E), Jaipur is again w.r.t. an educational institution and our findings (supra) again confirmed. It is also observed that in both the citations discussed (supra) also discussed and relied upon the judicial precedents applicable to educational institutions only. None of the precedents discussed in the case of Aurora Educational Society vs. CCIT and New Noble Educational Society vs. CCIT matches with character of the assessee under consideration, which is being further fortified with the language of the Income Tax Act, 1961 itself as mentioned (supra). Plain reading of section 12AB (1) (b) (ii) (B) of the Act speaks in a way that compliance of requirement of any other law is required if compliance under the Act is material for achieving its objects.

8. There is no law which is required to be complied with for achieving the objects of the assessee trust. Section 17 of the RPT Act, 1959 requires that trustees of the trust has to apply for registration of a public trust, however, there is no section in the RPT Act, 1959

which prohibits a trust to carry out its objects if it is not registered under the RPT Act, 1959. In our considered opinion, both the statutes have their own provisions and implications and none of them have overriding effect. Even if, the assessee trust is not registered with the RPT Act, 1959 and the concerned officials under the RPT Act, 1959 deems it necessary to get the entity registered under section 17 of the RPT Act, 1959, appropriate action can be taken and against the trustees of the trust. But this issue can't be a hurdle in getting registration before the Income Tax Department u/s. 12AB of the Act.

9. In view of discussion (supra), we do not find any force in the findings of the Ld. CIT (E), Jaipur while holding registration application untenable in the absence of registration under the RPT Act, 1959.”

This decision is directly applicable to the facts of the present matter and provides a binding precedent in support of the assessee's case. Accordingly, it is submitted that the rejection of the assessee's registration application solely on the ground of non-registration under the Rajasthan Public Trust Act, 1959 is untenable and deserves to be set aside.

7. Other Objections of CIT(E) – in 2nd Round:

7.1 Sec.12AA(1) requires the ld. CIT(E) to grant or to refuse registration on the examination/satisfaction of certain conditions. The law is by now well settled that while granting registration the only requirement is that the ld. CIT(E) has to satisfy himself about the objects of the trust and genuineness of the activities and nothing more than that. The law has made specific requirements, the scope of which cannot be expanded. This is evident from various case laws given in different situations where the department rejected such applications on the grounds other than those prescribed but rejection was held unjustified. Therefore, when the ld. CIT(E) has not doubted the aims and objects of the society in an objective manner, he couldn't have rejected the application merely on this pretext.

7.2 Ld. CIT(E) allegation over non-submission of documents / information: The ld. CIT(E) has alleged that the assessee – trust was not submitted requisite documents, and thus, held that the activities of the assessee – trust are not genuine. This fact is completely incorrect in as much as all these details were already provided to the ld. CIT(E) in the 1st round itself, vide the initial replies dated 25.05.2019 and others (PB 36-43).

8. Religious objects violation of 80G(5)(ii): The Ld. CIT(E) [on Pg. No 4 of 80G rejection order] has alleged that the assessee-trust is majorly into religious activities such as Hawan, yagya, Katha, Updesh, dharamprachar etc.

The Ld. CIT(E) has failed to examine the activities and the deed of the Assessee-trust properly. In the entire documents, nowhere the Assessee Trust has mentioned about performing any activities for any particular religion. The activities performed are for the up-liftment of the general public at large and there seems no leaning in favour of any one particular religion/community in the trust deed of the assessee-trust.

8.1 That the Ld. CIT in its order has mentioned incorrectly by holding that no reply has been furnished by the assessee in response to the details requested by the Ld. CIT(E) regarding its activities, salaries paid, financial statements etc. In contrary to the same, the assessee vide its replies has submitted all the documents to prove the nature of the activities of the Assessee-Trust. The contentions made by the Ld. CIT(E) are baseless and bad in taste and a blatant reason for not to grant registration u/s 80G(5).

9. Meant expenses for the benefit of a particular community: The Ld. CIT(E) in its order has mentioned that the Assessee is indulged in activities which are solely religious in nature and therefore the benefit of u/s 80G(5) can not be extended to the Assessee Trust. It is to be noted that the assessee time and again has provided details and responses to the Ld. CIT(E) wherein it has clearly mentioned the expenses incurred by the trust to conduct the activities. The assessee in its response has mentioned about the expenses, their purpose and the amount so spent on meeting these objectives. Above all nowhere in the statement of activities, the assessee mentioned about promoting one particular religion/community. All the expenses so done are for the interest of general public at large, which is also the motto of the Arya Samaj.

But on the part of the assessee, nowhere in the MOA/deed, the assessee has not mentioned that the activities conducted by the Assessee-Trust are leaning in favour of a particular community or religion.

10. Religious expenses are more than 5% thus violation of section 80G(5B): The Ld. CIT(E) in its order has mentioned that the Assessee Trust is engaged in religious activities and that the expenses done towards religious activities are more than 5%. The facts so mentioned by the Ld. CIT(E) are baseless and without any supporting documents as the assessee is a religious-cum-charitable trust. The Assessee Trust's motto itself is the non-prayer of any deity, god, roots and are against "Murti Poojan". The same is mentioned in its Trust Deed (PB 5-32). Along with that, the assessee has provided certified copies of financial statements along with its expenses and statement of activities. The total expenses done by the trust on all the activities, which are claimed to be religious by the Ld. CIT(E), are very less than 5% of the total expenditure. Therefore, the claims made by the Ld. CIT(E) that the Assessee trust is benefiting a particular religious Community are baseless and bad in taste and without any concrete backing. On the facts and in the circumstances of the case and in law, the Ld. CIT(E), has erred in not

verifying documentary evidences and casually concluding based only on an inadvertent classification error that all actual activities of trust are religious in nature.

11. The denial to approval u/s 80G by the CIT (E) is consequential to his denial to registration u/s 12 AA. Our submissions therein are relied upon.

Thus, there remaining no valid ground behind denying the registration, the Ld. CIT (E) be directed to grant registration u/s 12 AA as also u/s 80 G of the Act.”

6. The ld. AR of the assessee also filed detailed paper books in support of the contention so raised in the written submission and the index of the document submitted on 13.02.2025 and 18.02.2025 are as under:-

PAPER BOOK

S. No.	Particulars	Page No.
1.	Copy of acknowledgement of receipt of Form 10A along with application for registration of charitable or religious trust	1-4
2.	Certified copy of amended trust deed etc filed along with application	5-32
3.	Copy of letter dated 01.04.19 issued by the CIT(E)	33-35
4.	Copy of reply dated 25.05.19 submitted to CIT(E)	36-43
5.	Copy of reply dated 10.06.19 submitted to CIT(E)	44
6.	Copy of reply dated 15.07.19 submitted to CIT(E)	45-46
7.	Copy of the order dated 03.09.20 passed by the Hon'ble ITAT	47-62
8.	Copy of letter dated 23.09.2020 to CIT (E) to give effect to ITAT order dt. 03.09.2020	63-64
9.	Copy of letter sent to Ld. PCIT dated 07.09.2021	65-67
10.	Copy of SCN dated 16.03.2022	68-71
11.	Copy of reply dated 21.03.2022 in response to SCN dated 16.03.2022	72-74
12.	Copy of the SCN dated 03.06.2024 issued by the ld. CIT (E)	75-78
13.	Copy of the reply date 10.06.2024 submitted to the ld. CIT (E)	79-82

PAPER BOOK-II

S. No.	Particulars	Page No.
1.	Copy of CIT (E) Order u/s 12AA(1)(b) dated 31.07.2019	83-84
2.	Copy of CIE (E) Order u/s 80G(5)(vi) dated 31.07.2019	85

7. The ld. AR of the assessee also filed a detailed paper book in support of the contention so raised in the written submission and the decision compilation index submitted on 18.02.2025 are as under:-

S. No.	Particulars	Pg. No.
1.	CIT v/s Vijay Vargiya Vani Charitable Trust reported in (2014) 90 CCH 0209 (Raj HC)	1-3
2.	Modern Defence Shishkan Sansthan Vs. CIT (2007) 108 TTJ (Jd) 732	4-5
3.	CIT v/s Shyam Mandir Committee (2018) 400 ITR 466 (Raj)	6-26
4.	CIT v. D.N Memorial Trust [2023] 152 taxmann.com 33 (J&K)	27-29
5.	Edunxt Global SDN - BHD v. DCIT [2024] 169 taxmann.com 113 (Bangalore - Trib.)	30-36
6.	Murlidhar Bhagwandas v. CIT [2000] 111 Taxman 619 (Bombay)	37-42
7.	Pulipati Subbarao v. ACIT [1959] 35 ITR 673 (Andhra Pradesh)	43-44
8.	CIT, Kanpur v. Society for Promn. of Edn., Allahabad [2016] 67 taxmann.com 264 (SC)	45-46
9.	CIT(E) v. Gettwell Health and Education Samiti, Sikar [2020] 115 taxmann.com 66 (Rajasthan)	47-50
10.	CIT v. Sahitya Sadawart Samiti Jaipur [2017] 88 taxmann.com 703 (Rajasthan)	51-53
11.	APJ Abdul Kalam Education and Welfare Trust vs. CITn (E) ITA No. 567/JPR/2024	54-67

8. The ld. AR of the assessee in addition to the written submission so filed vehemently argued that the reasons advanced for rejection are curable in nature and the assessee was not given sufficient opportunity of being heard before the ld. CIT(E) and considering the facts placed on record he requested that the assessee be given one chance so as to plead the merits of their case for both the issues and therefore, he prayed to remand the matter to the file of ld. CIT(E).

9. On the other hand, the ld. D/R supported the order of the ld. CIT

(Exemption)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. Based on that observation she supported the order of the ld. CIT(E).

10. We have heard the rival contentions and perused material available on record. The Bench noted that the application of the assessee pertaining to registration application u/s 12AA of the Act has been rejected by the ld. CIT(E) on the ground that assessee is not registered under Rajasthan Public Trust Act, 1959 [for short “RPT”] and the genuineness of the activities is not established. So far as the contention of the ld. CIT(E) that assessee is not registered under RPT Act, the assessee submitted that the registration under RPT Act is at finalization stage. The other observations being curable in nature, we are of the considered view that there is a force in the argument advanced by the ld. AR of the assessee and therefore, we are of the considered view that the assessee may be given one more chance to clarify all the issues raised by ld. CIT(E). In the light of the overall facts argued, the bench noted that the reasons advanced by the ld. CIT(E) while rejecting the application of the assessee are curable in nature and considering the peculiar facts of the case and that the assessee is now ready to submit the registration under

Rajasthan Public Trust Act, a liberal view of the matter is required to be taken in this case so that assessee may be in a position to clear the defects as pointed out by the Id. CIT(E). Considering this aspect of the case, the Bench does not want to go into merits 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 applications so filed before the Id. CIT(E) to settle the dispute raised hereinabove. The matter for approval under section 80G was rejected by Id. CIT (E) on the ground that the assessee was not granted the registration u/s. 12AA of the Act, since we have restored the matter of registration u/s 12AA to the CIT (E), we direct the CIT (E) to consider the application of the appellant for approval u/s 80G also simultaneously and hence the same is also restored to the file of Id. CIT (E) for taking a decision afresh after allowing reasonable opportunity to the appellant for furnishing all documents and explanation required in the matter.

11. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. 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 ld. CIT(E) independently in accordance with law.

12. In the result, the appeals of the assessee in ITA No. 1015& 1021/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open court on 22/04/2025.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 22/04/2025.

***Santosh**

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

1. अपीलार्थी / The Appellant- Arya Samaj Mandir, Bhilwara.
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. 1015 & 1021/JPR/2024 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar