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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 77/JP/2020

Urban Improvement Trust UTI Building, Near CAD Circle, Kota- 324007.	बनाम Vs.	The CIT (Exemptions) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAALU 0110 D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by: Shri Prakul Khurana (Adv.)
राजस्व की ओर से/ Revenue by : Shri Amrish Vaidi (CIT)

सुनवाई की तारीख/ Date of Hearing : 02/03/2020
उदघोषणा की तारीख/Date of Pronouncement: 28/04/2020

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of the ld. CIT(E), Jaipur U/s 254 read with Section 12AA(1)(b) of the IT Act dated 28.08.2019 wherein the assessee trust has taken the following grounds of appeals:-

"1.Under the facts and the circumstances of the case and in law, the order dated 28.08.2019 passed by the Ld. CIT(E) is perverse, non-speaking arbitrary and bad in law.

2. Under the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in passing the order dated 28.08.2019 by going against the directions of the Hon'ble ITAT, Jaipur provided in order in order dated 13.09.2017 in appeal bearing no. 378/JP /2013.

3. Under the facts and the circumstances of the case and in law, the ld CIT(E) has erred in passing the order dated 28.08.2019 against the provision of Section 12A of the Act. In the impugned order, registration is granted by the Ld. CIT(E) with retrospective effect from 01.04.2007 only instead of granting registration since inception of the trust."

2. Briefly the facts of the case are that the assessee trust filed an application in Form 10A on 28.05.2007 for registration U/s 12AA of the IT Act before the ld. CIT, Kota. The registration was originally denied by the ld. CIT, Kota vide order dated 28.11.2007, thereafter the matter travelled to the Tribunal and then to the Hon'ble Rajasthan High Court wherein vide order dated 11.02.2016, the Hon'ble Rajasthan High Court remitted the matter back to the Tribunal to decide the same on merits. Thereafter, the Coordinate Bench vide its order dated 13.09.2017 in ITA No. 378/JP/2013 allowed the appeal of the assessee-trust with the following directions:-

"2. We, therefore, respectfully following the judgment of Hon'ble Rajasthan High Court hereby direct the ld. CIT(A) to allow the application of the assessee for registration U/s 12AA of the Act."

3. Thereafter, in pursuance of directions of the Tribunal, the ld CIT(E) vide impugned order dated 28.08.2019 has granted registration to the assessee-trust as general public utility trust and has held that the provisions of Section 11 & 12 of the Act shall apply with retrospective effect from 01.04.2007 i.e. from the first day of the financial year in which application for registration was filed by the assessee-trust.

4. During the course of hearing, the ld. AR submitted that though the ld. CIT(E) has granted the registration however, the assessee trust had sought registration from the date of its inception i.e. 09.07.1970 wherein the ld. CIT(E) has granted registration with effect from 01.04.2007. Therefore, the

limited grievance of the assessee trust in the present appeal is regarding non-grant of registration with retrospective effect from the date of its inception.

5. In this regard, our reference was drawn to the condonation application dated 28.05.2007 which was filed along with Form 10A before the ld. CIT, Kota for seeking registration U/s 12A(a) of the Act wherein the relevant contents read as under:-

> *"The Urban Improvement Trust, Kota was created by Government of Rajasthan under Notification No. 5(3) TP/70 dated 9th July, 1970 published in Rajasthan Gazette Extraordinary on Asada 19, Friday Shak Samvat 1892- July 10, 1970 by the order of the Governor, in exercise of the power conferred by section 8 read with section 9 and 13 of the Rajasthan Urban Improvement Act, 1959 to order for the establishment of a Board of Trustee for the propose of carrying out improvement of the Urban Area included in the Municipal Limit of Kota Town.*
>
> *The Trust is exempt U/s 10 (20) of the Income Tax Act, 1961 and according never been assessed under the Act till assessment year 2002-03.*
>
> *Now with the amendment of section 10(20) of the Income Tax Act, 1961 by the Finance Act, 2002 the officers in your goodself's charge have inferred that thenceforth revenues of the Urban Improvement Trust, Kota are liable for taxation and have assessed the Trust for assessment years 2003-04 and 2004-05.*
>
> *Without prejudice to the above, Urban Improvement Trust, Kota has applied for grant of registration U/s 12A(a) of the IT Act, 1961 on prescribed Form No.10A. The registration is sought from the date of its very inception i.e. 09.07.1970.*

The trust respectfully sought your good self kind attention that as we have been created directly by the Government in exercise of powers conferred by section 8 read with section 9 and 13 of Rajasthan Urban Improvement Act, 1959 for the purpose of improvement of Urban Area of Kota Town without any profit motive. The entire Revenues of the Trust feed the objective of advancement of General Public Charity under direct control of Government of Rajasthan.

We are still a local authority covered under the term "DISTRICT BOARD" as specified in section 10(20)(iii). However since your subordinates do not seem to accept, we have sought the registration U/s 12(A)(a) of the IT Act. Kindly appreciate that section 12(A)(a) covers "relief of the poor, education, medical relief and advancement of any other object of general public utility" and UIT, Kota also applying all its receipts for the similar purposes of general public utility only under the direct control of Ministry of Urban Development.

Therefore, kindly condone the delay in filling of form no. 10A."

6. It was submitted that the registration was accordingly sought from the date of the inception of the trust i.e. 09.07.1970 and given that the assessee trust was under the genuine belief and understanding that it was a local authority and covered under section 10(20)(iii), a position which was accepted by the Revenue till A.Y 2002-03 as well, it didn't apply for registration u/s 12A(a) and a condonation request was accordingly filed along with application seeking registration under 12A(a) of the Act.

7. It was submitted that the Revenue has not gone in further appeal against the order dated 13.09.2017 passed by the Tribunal, therefore, where the assessee has applied for registration from the date of creation of the trust and the same has been directed by the Tribunal vide its order dated 13.09.2017, the ld. CIT(E) has erred in not following the direction of the

Tribunal and has granted registration only with effect from 01.04.2007 as against the date of creation of the trust.

8. Without prejudice, it was submitted that the matter pertaining to A.Ys. 2003-04 to 2006-07 are pending for adjudication before the ld. CIT(A) and where the Bench so decide not to direct registration from the creation of the trust, at least for the assessment year 2003-04 onwards, the registration may be directed to be granted as the object and activities in pursuit of such objects remain the same for all these years. It was submitted that similar provisions by way of proviso to sub-section (2) to section 12A have been provided in the statute by the Finance Act, 2007 in respect of the application made on or after 1st day of June, 2007 and therefore, where the assessee has filed its application merely few days prior i.e, on 28.05.2007, the assessee cannot be penalized especially where it has also moved a prayer for condonation of delay and there is no finding that such request for condonation has been rejected and more so, where there is a clear direction by the Tribunal to allow the registration of the trust U/s 12AA of the Act. In support, reliance was placed on the following decisions:-

- CIT vs. Krishi Utpadan Mandi Samiti [2010] 186 Taxman 460 (All.).
- CIT vs. Krishi Utpadan Mandi Samiti [2011] 9 Taxman 117 (Raj.).
- CIT vs. Krishi Utpadan Mandi Samiti [2008] 170 Taxman 515 (M.P.).

9. Per contra, the ld.CIT/DR has drawn our reference to the letter dated 14.02.2019 issued by the ITO (Hqrs) on behalf of ld CIT(E) and contents thereof read as under:

> *"Kindly refer to the subject mentioned above and your office letter no. 11518 dated 12.02.2019.*

In this connection, I am directed to inform you that as per the provisions of Income tax Act, retrospective effect/application of the provisions of section 12AA of the said Act is not possible."

10. It was submitted by the ld CIT/DR that where the assessee was duly informed that as per the provisions of the Act, the retrospectively effect/ application of the provisions of Section 12AA of the Act is not possible, the ld. CIT(E) has duly complied with the directions of the Tribunal as well as the provisions of the Act and has granted registration w.e.f. 1st day of the financial year in which the assessee-trust has moved the application. He accordingly supported the findings and the order of the ld. CIT(E) and submitted that no interference is called for.

11. We have considered the rival contentions and perused the material available on record. The assessee trust has been granted registration u/s 12AA. The limited issue under consideration is whether such registration should be granted from the date of inception of the trust or from the first day of the financial year in which application seeking registration has been filed by the assessee trust. In this case, the assessee trust was constituted on 9.07.1970 in exercise of the powers conferred by section 9 and 13 of the Rajasthan Urban Improvement Act, 1959 and the application seeking registration was filed by the assessee trust on 28.05.2007 before the ld CIT, Kota along with a prayer seeking condonation for the delay in filing the application. In this regard, we refer to the relevant provisions of section 12A which read as under:

"12A. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(a) the person in receipt of the income has made an application for

registration of the trust or institution in the prescribed form and in the prescribed manner to the Principal Commissioner or Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA:

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

(i) from the date of the creation of the trust or the establishment of the institution if the Principal Commissioner or] Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the 1st day of the financial year in which the application is made, if the Principal Commissioner or Commissioner is not so satisfied:

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007"

12. The aforesaid provisions thus provide that where the application seeking registration is made after the expiry of one year from the date of creation of the trust and where the ld CIT is satisfied that the person in receipt of the income was prevented from making the said application before the expiry of the period aforesaid for sufficient reasons, he may record the reasons for arriving at such a satisfaction and condone the delay, thereafter,

the provisions of section 11 and 12 shall apply in relation to income of such trust from the date of creation of the trust. Alternatively, where he is not so satisfied, the provisions of section 11 and 12 shall apply in relation to income of such trust from the first day of the financial year in which the application is made by the trust. In both cases, the ld CIT therefore has to give reasons and record his reasoning in writing before he arrives at a conclusion that in a given matter, the delay can be condoned or not. Similar analogy will apply where the Tribunal takes up the matter and direct the registration of the Trust.

13. In the instant case, we find that the registration was originally denied by the ld. CIT, Kota vide order dated 28.11.2007, thereafter the matter travelled to the Tribunal and then to the Hon'ble Rajasthan High Court which has remitted the matter back to the Tribunal to decide the same on merits. Thereafter, the Coordinate Bench vide its order dated 13.09.2017 has directed the ld. CIT(E) to allow the application of the assessee for registration U/s 12AA of the Act and in pursuance of directions of the Tribunal, the ld CIT(E) vide impugned order dated 28.08.2019 has granted registration to the assessee-trust. We thus find that directions of the Coordinate Bench were limited to grant of registration of the assessee trust u/s 12AA of the Act. The directions of the Coordinate Bench are silent in terms of condonation of delay in filing the application seeking the registration. Further, on perusal of the order so passed by the Coordinate Bench, we find that there is nothing on record to suggest that any such pleadings were taken by the assessee trust before the Coordinate Bench requesting for condonation of delay and seeking registration from inception of the trust or the application seeking condonation of delay was brought to the notice of the Coordinate Bench. Therefore, where the Coordinate Bench has directed registration of the assessee trust and has not passed any specific directions regarding condonation of delay, the contention of the ld AR that since the condonation application was filed along

with application seeking registration before ld CIT(Kota), the directions so passed by the Coordinate Bench should be read as if the delay has been condoned cannot be accepted. More so, where the statue requires that condonation application has to be specifically disposed off stating clearing the reasons for either condoning the delay or rejecting the application. We therefore find that the matter relating to condonation of delay was not adjudicated upon by the Coordinate Bench.

14. Having said that, the question that arises for consideration is whether the ld CIT(E) while passing impugned order dated 28.08.2019 has taken cognizance of the condonation application so filed by the assessee and whether any satisfaction has been recorded in this regard disposing off the said application. On perusal of the impugned order, we find that ld CIT(E) has granted registration to the assessee trust as general public utility trust and has held that the provisions of Section 11 & 12 of the Act shall apply with retrospective effect from 01.04.2007 i.e. from the first day of the financial year in which application for registration was filed by the assessee-trust. However, there is nothing in the said order which remotely suggest that he has taken cognizance of the condonation application so filed by the assessee trust and has stated his reasons as to why the explanation of the assessee seeking condonation in filing the application has been rejected. The ld.CIT/DR has drawn our reference to the letter dated 14.02.2019 issued by the ITO (Hqrs) on behalf of ld CIT (E) wherein the ITO (Hqrs) has stated that "*I am directed to inform you that as per the provisions of Income tax Act, retrospective effect/application of the provisions of section 12AA of the said Act is not possible.*" We find that the said communication dated 14.02.2019 is not clear at all. It is not clear from the said communication as to whether the ld CIT(E) has examined the condonation application dated 28.05.2007 and explanation so furnished by the assessee trust for the delay in filing the application. It is also not clear whether the ld CIT(E) has considered the law

as applicable for application seeking registration filed before 1.06.2007 wherein the powers have been conferred on the ld CIT(E) for condonation of delay, or the amended law for application seeking registration filed on or after before 1.06.2007 wherein no such powers for condonation of delay have been conferred on the ld CIT(E). Even where it is assumed that the ld CIT(E) has taken cognizance of the assessee's application and has applied the applicable law, the aforesaid communication doesn't reflect the precise reasons as to why the explanation of the assessee seeking condonation of delay was not accepted. At most, such communication reflects the conclusion and not the reasoning and thus, doesn't satisfy the requirement of law which mandate the CIT(E) to specify the reasons in writing which helped him reach a conclusion that the explanation of the assessee seeking condonation is not acceptable. Therefore, in absence of findings of the ld CIT(E), we are constrained in deciding the matter and deem it appropriate that the matter is remanded back to the file of the ld CIT(E) to examine and expeditiously adjudicate the matter relating to delay in filing the application seeking registration u/s 12AA and pass a speaking order as per law after providing reasonable opportunity to the assessee trust.

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

Order pronounced on 28/04/2020.

Sd/-	Sd/-
(विजय पाल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 28/04/2020.
*Santosh.
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Urban Improvement Trust, Kota.
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. 77/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar