

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 417/JP/2022
निर्धारणवर्ष/Assessment Year :2022-23

M/s. Hirat Foundation Kailash Height Lal Kothi, Tonk Roads, Jaipur	बनाम Vs.	The CIT (Exemption Jaipur)
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AACTH 3508 A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Dheeraj Borad , CA
राजस्व की ओर से/ Revenue by: Shri Ajey Malik, CIT-DR

सुनवाई की तारीख/Date of Hearing : 28/02/2023
उदघोषणा की तारीख/Date of Pronouncement: 28 /03/2023

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(Exemption) dated 29-10-2022, for the assessment year 2022-23 wherein the assessee has raised the following grounds of appeal.

- “1. That the ld. CIT(E) grossly erred and was wrong to reject the application u/s 12AB filed by the appellant trust.
2. That the ld. CIT(E) was wrong in coming to the conclusion that the genuineness of the activities of the appellant trust could not be ascertained without appreciating the submission made by appellant trust.

3. That the ld. CIT(E) was wrong in contending that the appellant trust did not submit the documents regarding establishment of the trust such as donation list, ownership proof of the premises from which the trust is running its activities and bank statements of the institution as well as evidences in support of its claim.

4. That the ld. CIT(E) was wrong in coming to the conclusion that the appellant trust did not carry out any charitable activities ignoring the fact that the appellant trust has already submitted Audit Report, Notes on activity conducted and bank statement.

2.1 Apropos ground NO. 1 to 4 of the assessee, the facts as emerges from the order of the ld.CIT(E) are as under:-

“3. On verification of the application in Form 10AB filed by the applicant, it was found that the application was not complete and the documents required to be accompanied with Form 10AB such as note on activities of the applicant were not furnished. In the light of the above section of the Act and rules, the Commissioner of Income-tax has been empowered to call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf. Under such power vested in CIT(E), the applicant was asked to file details required to be furnished alongwith Form 10AB as well as other details sought thereafter vide letters issued on different dates as mentioned above. However, the applicant has failed to comply with the letters.

4. As discussed above, the applicant did not submit documents regarding establishment of the trust/institution such as donation list, ownership proof of the premises from which the trust/institution is running its activities and bank statement of the institution as well as evidences in support of his claim.

5. To decide the matter of seeking registration u/s 12AB, the genuineness of the activities being undertaken by the applicant are also to be examined. The applicant has not submitted any such details and other information. Therefore, genuineness of activities of the trust or institution could not be ascertained. Thus, the charitable nature and genuineness of the activities of the applicant could not be established.

6. Sufficient opportunity has been provided to the applicant to produce details and documents in support of his claim for registration u/s 12AB of the Income Tax Act, 1961 but applicant have failed to do so. In the light of the above facts, the application seeking registration u/s 12AB is hereby rejected and filed.’’

2.2 During the course of hearing, the ld. AR of the prayed that he had filed an application before the ld.CIT(E) for seeking adjournment vide application dated 19-10-2022 and in this regard the ld. AR has drawn our attention to copy of acknowledgement which at PB 12-16. Hence, the ld. CIT(E) has not taken into consideration the adjournment application and thus dismissed the application of the assessee on the ground that sufficient opportunity was provided to the assessee to produce details and documents in support of his claim for registration u/s 12AB but the assessee failed to do so. However, this factual position was strongly refuted by the ld. AR of the assessee by placing on record paper book containing pages 1 to 61 which shows that all the documents and written submissions were filed by the assessee vide e-Proceedings Response Acknowledgement Number 735043191 dated 19-10-2022 before the ld.CIT(E).

2.3 On the other hand, the ld. DR supported the order of the ld. CIT(E).

2.4 We have heard both the parties and perused the materials available on record. The crux of the issue by the ld. AR of the assessee is that ld. CIT(E) has passed the ex-parte order without considering the details filed/ adjournment application dated 19-10-2022 made by the assessee. He further submitted that the assessee furnished all the requisitioned papers, documents and information on the given date i.e. 19-10-2022 (the limitation period was expiring on 31-10-2022) and the impugned order rejecting the assessee's application for registration was passed on 29-10-2022 and the ld. CIT(E) did not take into consideration the letter of reply accompanied with supporting papers and documents filed on 19-10-2022 while passing the impugned order. It is also noted from the submission of the ld. AR of the assessee that no reasonable or sufficient opportunity of being heard was provided to the assessee which is against the principles of natural justice. In this context, we may point out that seeking adjournment for a particular period is not the substantive right of the party rather it is the discretion of the authority based on the papers put forth for seeking adjournment. At the same time, we also noticed that the ld. CIT(E) had nowhere communicated the rejection of adjournment request of the assessee in his order which in our view was the obligation on the part of the Revenue Authority to intimate the assessee regarding rejection of his adjournment request. In view of the above deliberation, the Bench feels that it will

be in the interest of equity and justice to restore the matter to the file of the ld. CIT(E) to decide the appeal of the assessee afresh by providing adequate opportunity of being heard to the assessee.

2.4 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 ld. CIT(E) independently in accordance with law.

3.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28 /03/2023.

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28 /03/2023

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Hirat Foundatin, Jaipur
2. प्रत्यर्थी / The Respondent- The CIT(E) Jaipur
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 417/JP/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar