

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

डॉ. 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. 448/JPR/2022  
निर्धारण वर्ष/Assessment Years : 2022-23

Aspiring to Nurture the Smile of Humanity Ansh 73 Model Town, Jagatpura Road, Malviya Nagar, Jaipur.	बनाम Vs.	CIT, Exemption, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJAA2619 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri Dheeraj Borad (C.A.)  
राजस्व की ओर से/ Revenue by : Ms Runi Pal ( Addl. CIT)

सुनवाई की तारीख/ Date of Hearing 16/03/2023  
उदघोषणा की तारीख/Date of Pronouncement : 24/05/2023

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of the learned Commissioner of Income Tax (Exemption), Jaipur [hereinafter referred to as "CIT(E)"], dated 29.10.2022 for the assessment year 2022-23.

2. At the outset of hearing, the Bench observed that there is delay of 2 days in filing the appeal by the assessee for which the ld. AR submitted

that to arrange all the papers concerning the issue in question, the delay took place which was not intentional and thus the delay of small 2 days may kindly be condoned.

3. During the course of hearing, the ld. DR fairly not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit in the interest of justice.

4. We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee for condonation of delay of 02 days has merit and we concur with the submission of the assessee. Thus the delay of 02 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

5. The assessee has raised the following grounds:-

*"1. The ld. CIT(E) has erred in rejecting the application filed in form No. 10AB dated 01.04.2022 for seeking registration u/s 12AB of the Income Tax Act, 1961 vide order passed dated 29.10.2022, which is against the law and facts of the case such that:*

- *No response was submitted by the trust to notice dated 18.09.2022 by disregarding the adjournment seeked by the trust.*
- *Not considering the NOC submitted in response to notice dated 18.09.2022.*

- *Not taking notice of ID proof of members submitted in response to notice dated 18.09.2022.*
- *Arbitrarily overlooked the year wise donation details from the period since inception of the trust submitted in response to notice dated 18.09.2022.*
- *Left the bank statements unnoticed from the period since inception submitted in response to notice dated 18.09.2022.*
- *Not taking cognizance of the ownership proof of premises from where the institution is running its activities.*

2. *The ld. CIT(E) has erred in treating the object of the trust to be commercial in nature without any substance and without considering the undertaking submitted by the appellant trust.]*

3. *The ld. CIT(E) has erred in pointing out that the objects of the trust does not speak of genuinity.*

4. *The ld. CIT(E) has erred in rejecting the application of the appellant trust without issuing any show cause notice.*

5. *That, the appellant reserves the right to add, amend, alter, delete or modify or withdraw any or all of the above grounds of appeal before or at the time of hearing.”*

6. The brief facts of the case are that assessee filed application online on 01.04.2022 in Form No. 10AB for seeking registration u/s 12AB of the Income Tax Act, 1961. The assessee was issued a letter/notice No. ITBA/EXM/F/EXM43/2022-23/1045617934 (1) dated 18.09.2022 requesting therein to submit certain documents/ explanations by

26.09.2022. However, no response was filed by the assessee. Therefore, in view of principle of natural justice, one more opportunity was afforded to the assessee to furnish specific documents/details to justify its claim of registration u/s 12AB of the Act vide this office letter/notice No. ITBA/EXM/F/EXM43/2022-23/1046336499 (1) dated 17.10.2022 requesting therein to submit certain documents/ explanations by 19.10.2022. In response to this letter, the assessee submitted certain documents which were placed on record and examined. Thereafter the ld. CIT(E) has issued a show cause notice dated 18.09.2022. On perusal of the reply of the assessee, the ld. CIT(E) held that the assessee failed to furnish satisfactory reply so as to substantiate that the activities of the trust are charitable activities in the present market scenario. The ld. CIT(E) further noticed that the assessee has not furnished list of donation received and therefore registration U/s 12AB of the Act was denied to the assessee.

7. The relevant findings of the ld. CIT(E) is reproduced hereinbelow:-

“ In nutshell, the meaning of the proviso to section 2(15) of the Income Tax Act, 1961 is that while deciding the case where business activities are visible, the predominant object test is to be applied and also the business activities should be in the course of actual carrying out of such Advancement of any

other object of General Public Utility activities i.e. such business activities should only be incidental to the charitable object and hence should not be the pre-dominant or primary activity by itself. The emphasis of the section for "any other object of General Public Utility" is that it should be for the benefit of General Public. It is primarily the objects which decide the fate of application. If the object itself talks about or intends for business activity, then it cannot be considered as charitable one.

6. Even after giving sufficient opportunities, the applicant has failed to furnish a satisfactory reply on why these activities should be considered as charitable activities in the present market scenario. Therefore, it is uncertain how these activities classify as charitable activities in the light of section 2(15) of the Income Tax Act, 1961 and that the applicant is carrying out the activities as per its objects. Thus, the charitable nature and genuineness of the activities of the applicant could not be established.

7. Further, in the absence of list of donations received! Donation Ledger, the consonance between part 'Bank account statement' submitted by the applicant as well as the 'activities details' shown by the applicant could not be established. Hence, in the absence of such consistency, it is not known whether the applicant is actually receiving donations and carrying out the charitable activities. Thus, the genuineness of the activities of the applicant could not be established.

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

8. Being aggrieved by the Id. CIT(E) order, the assessee is in appeal before us. Before us the Id. AR for the assessee submitted a detailed written submissions which are as under:-

“ BRIEF FACTS OF THE CASE

The humble appellant craves leave to refer to and rely upon the brief facts of the case which form part of the paper book being simultaneously filed.

SUBMISSIONS IN REGARD TO ALL THE GROUNDS OF APPEAL

GROUND OF APPEAL NO. 1 to 3

All these three grounds of appeal are against rejection of assessee's application for registration u/s 12AB of the I.T. Act 1961. In this regard it is respectfully submitted as under:-

Both these grounds of appeal are against rejection of assessee's application on form 10AB seeking registration u/s 12AB without taking into consideration various details and documents filed in compliance to letters/notices issued earlier by the CIT EXEMPTION and also In this regards it is submitted as under:-

(1) That provisions of item (B) of sub-clause (ii) of clause (b) of sub-section (1) of section 12AB mentioned above in para no. 1 specifically provides that no order under item (B) of sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard. It is submitted that in present case no show cause notice proposing to reject assessee's application for exemption was issued to the appellant assessee.

(2) That further the impugned order is vitiated and bad and not maintainable in fact and in law and liable to be quashed because it has been passed without making any inquiries before passing the impugned order by the learned CIT Exemption. It is respectfully submitted that sub-clause (i) of clause (b) of sub-section 1 of section

12AB is very much clear in this regard which says that the commissioner may also make such enquiries as he may deem necessary in this behalf and as such it was incumbent upon the learned CIT Exemption to have made inquiries before passing impugned rejection order.

(3) That as mentioned above the impugned order has been passed without making any inquiries by the learned Commissioner. So much so even the report from the assessing officer or the concerned officer having territorial jurisdiction and looking after work of exemption was not obtained before passing the impugned order nor any such enquiry report was given to the assessee to file his objections/submissions in this regard. It was incumbent upon the CIT Exemption to have made inquiries before rejecting assessee's application for registration and in its absence the impugned order is void ab initio and liable to be set aside.

(4) That the observation of the learned CIT Exemption in last seven lines of para no. 3 at page 5 of the impugned order dated 29/10/2022, saying, "However, even after giving sufficient opportunity, the applicant institution failed to furnish complete details (Id proof of the members of the institution, NOC/ownership proof of the premises from where the institution is running its activities, year wise certified donation list/ledger, premises photograph of the institution, bank account statement for the last three years/since inception and clarification on charitable nature of the objects) as sought for in the letters sent to the applicant" is factually not correct. The correct factual position is that in compliance to letter/notice no. ITBA/EXM/F/EXM43/2022-23/1045617934(1) dated 18/09/2022 and subsequent letter/notice no. ITBA/EXM/F/EXM43/2022-23/1046336499(1) dated 17/10/2022 the assessee filed with CIT EXEMPTION on 19/10/2022 two separate detailed letters of reply (copy of both these letters of reply filed on 19/10/2022, first letter of reply containing as many as 30 paras and various annexures and the second letter of reply that too dated 19/10/2022 containing detailed submissions and various enclosures is filed for ready reference and forms part of the paper book) accompanied with various annexure under acknowledgements number 733441041191022, 733525841191022, 733648641191022 & 733981951191022 respectively various papers and documents

including Id proof of the main trustee of the institution, NOC from the owner of the premises from where the institution is operating along with proof of his ownership (electric bill), details of donations including corpus donation received since inception, bank account statement since the opening of bank account, a note specifying the main area of charitable activities etc. These letters of reply inter alia contained reply and explanation to the various issues and adverse observations including the following for which the learned CIT exemption has mentioned in the impugned order that the applicant did not furnish complete details (last seven line of para no. 3 of the impugned order)

I. That a 'No Objection Certificate' from the owner of the premises wherefrom the appellant institution is operating along with proof of his ownership (Electricity Bill) stands already filed with the CIT EXEMPTION and its copy form part of paper book being simultaneously filed.

II. A note specifying the main area of assessee's charitable/ religious activities and a projection/ plan for the main charitable/ religious activities to be undertaken in the next two years stands already filed and its copy form part of paper book being simultaneously filed.

III. Copy of registration certificate issued by co-operative department inter alia contain name, Aadhaar no, Father/husband name, Occupation etc. of the president, secretary, treasurer and members stands already filed and its copy form part of paper book being simultaneously filed.

IV. Year wise certified list of donation received and donation paid stands already filed and its copy form part of paper book being simultaneously filed.

V. Statement of bank account since the opening of bank accounts stands already filed and its copy form part of paper book being simultaneously filed.

VI. As mentioned above, with the letter of reply filed by the appellant on 19/10/2019 it had filed all the requisite details, information, papers and documents under above

mentioned four acknowledgements. Copy of the reply letters and annexure, acknowledgements etc from part of the paper book being simultaneously filed.

(5) That against the finding recorded by the learned CIT Exemption in the Annexure to the impugned order specially in para No. 7 at page-7 of the impugned order, saying, "Further, in the absence of list of donations received/donation ledger, the consonance between part "bank account statement" submitted by the applicant as well as the "activities details" shown by the applicant could not be established. Hence, in the absence of such consistency it is not known whether applicant is actually receiving donations and carrying out the charitable activities. Thus, the genuineness of the activities of the applicant could not be established" and in para 8 at page-7, saying, "sufficient opportunity has been provided to the applicant to produce details and furnish explanations in support of its claim for registration u/s. 12AB of the income tax act, 1961 but the applicant has failed to do so" it is respectfully submitted as under:-

i. That while recoding the above findings the learned CIT exemption ignored above mentioned two separate detailed letters of reply (copy of both these letters of reply filed on 19/10/2022, first letter of reply containing as many as 30 paras and various annexures and the second letter of reply that too dated- 19/10/2022 containing detailed submissions and various enclosures filed for ready reference and forming part of the paper book) accompanied with various annexure under acknowledgements number 733441041191022, 733525841191022, 733648641191022 & 733981951191022 respectively accompanied with various papers and documents.

ii. That while recording the above findings the learned CIT exemption didn't take into consideration various annexures, including the note specifying the main activities of charitable/religious nature completed by the applicant society since its inception, NOC from the honours, copy of annexure 5 contained copy of constitution and objectives of the society and various other papers and documents forming part of paper book.

iii. That in annexure 5 of letter filed 19/10/2022 which contains object of the society it is clearly mentioned in the very start that the objects for which the society fund is established are education, relief of the poor, medical relief and advancement of any other charitable object of general public utility not involving the caring on activity for profit.

iv. That the learned CIT exemption even did not take into consideration annexure 7 of the letter of reply filed on 19/10/2022 running into as many as 40 pages in respect of 15 projects accomplished/completed/executed in 34 months after the start of charitable activities in November 2019.

v. That the learned CIT exemption did not take into consideration the list of donation received/paid during the financial year 2019-20, 2020-21 and 2021-22.

(6) That though the appellant 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, yet the learned CIT Exemption did not take into consideration both the letter of reply accompanied with supporting papers and documents filed on 19/10/2022 while passing the impugned rejection order. In these circumstances it is submitted that no reasonable or sufficient opportunity of being heard was provided to the assessee and in all humbleness it is against the principles of natural justice and the impugned order is liable to be cancelled.

(7) The appellant craves leave to refer to and rely upon various judicial pronouncements as per list annexed herewith.

(8) That under the above mentioned facts and circumstances of the case and various supporting papers and documents filed by the assessee before the learned CIT exemption it is humbly prayed that registration u/s 12AB may kindly be granted to the appellant institution.

GROUND OF APPEAL NO. 4

This ground of appeal is against not issuing specific show cause notice of hearing before rejecting the assessee's application on form 10AB. In this regard it is humbly submitted that the natural justice requires that before rejecting any application for registration etc. the effecting party should be given a show cause notice and also opportunity of being heard. In this case it is lacking. Even the papers and documents submitted have not been taken into consideration.

#### GROUND OF APPEAL NO.5

It is of consequential nature and may please be decided accordingly.”

9. Per contra, the ld. DR relied on the order of the ld. CIT(E) and submitted that the finding of the ld. CIT(E) is correct on two counts, the assessee failed to substantiate the genuineness of the activities and has not complied with to the notices so issued and therefore supported the order of the ld. CIT(E).

10. We have heard both the parties, perused materials available on record. The Bench noted that the ld. CIT(E) has rejected the application filed in Form No. 10AB dated 01.04.2022 for seeking registration u/s 12AB of the Income Tax Act. The ld. CIT(E) has passed the order on 29.10.2022 in not considering the submissions filed by the assessee in reply of notice dated 18.09.2022. Further, we observed that the ld. CIT(E) has not passed the order on merit and natural justice, the order has been passed without hearing the assessee and without any evidences.

We note that the ld. CIT(E) observed that Id proof of the members of the institution, NOC/ownership proof of the premises from where the institution is running its activities, year wise certified donation list/ledger, premises photograph of the institution, bank account statement for the last three years/ since inception and clarification on charitable nature of the objects has not been produced. We noted that the assessee has filed before the ld. CIT(E) two replies on 18.09.2022 and subsequently on 19.10.2022 before us, the ld. AR for the assessee has submitted that paper books containing at 167 page of the relevant details which has been requested by the ld. CIT(E) where the same has been filed before the ld. CIT(E) by the assessee in his two reply which was not taken into consideration or seen by the ld. CIT(E) and passed the ex-parte order and without dealing with the submission made by the applicant in response to the show cause notice while passing the order of the ld. CIT(E) has nowhere dealt with the reply of the assessee. Therefore we feel that the ld. CIT(E) has not adjudicated the assessee's reply relating to seeking registration u/s 12AB of the Income Tax Act, 1961 which ought to have been dealt with on merit. The assessee further prays that in such a case the only recourse possible at this stage to remand this matter to the file of the ld. CIT(E) to enable him to

adjudicate the same. The ld. DR does not have any objection but prays to direct the assessee to represent his case before the ld. CIT(E) and do not seek unnecessary adjournment. In view of this we deem it fit an appropriate to remand this matter back to the file of the ld. CIT(E) for necessary action for deciding the matter of registration u/s 12AB of the Act after giving opportunity of hearing to the assessee. We order accordingly, the assessee is also directed to ensure participation in the hearing fixed by the ld. CIT(E) and do not seek unnecessary adjournment, thus the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 24/05/2023.

Sd/-

Sd/-

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

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

जयपुर / Jaipur  
दिनांक / Dated:- 24/05/2023.

**\*Santosh**

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

1. अपीलार्थी / The Aspiring to Nurture the Smile of Humanity Ansh, Jaipur.

2. प्रत्यर्थी / The Respondent- CIT, Exemption, Jaipur.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 448/JPR/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar