

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

डा० 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. 198/JP/2023

A.L. Memorial Charitable Trust Near Tempo Stand, Sanganer, Jaipur	बनाम Vs.	CIT (E) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAITA 6063 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (CA)
राजस्व की ओर से / Revenue by : Sh. Shailendra Sharma (CIT)

सुनवाई की तारीख / Date of Hearing : 23/05/2023
उदघोषणा की तारीख / Date of Pronouncement : 02/06/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of Commissioner of Income Tax (Exemption), Jaipur dated 25.02.2023 [here in after (ld. CIT(A)].

2. In this appeal, the assessee has raised following grounds: -

“1. The Ld. CIT(E) has erred on facts and in law in deciding the application seeking registration u/s 12AB of Income Tax Act, 1961 without serving the notices on the e-mail address of the assessee and thereby rejecting the application ex-parte.

2. The ld. CIT(E) has erred on facts and in law in rejecting the application even when Form 10AB is complete, assessee applied for registration under RPT Act and its activities are genuine.

3. The appellant craves to alter, amend and modify any ground of appeal.”

3. The fact as culled out from the records is that the application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 was filed by the applicant online on 30.09.2022. A letter/notice No. ITBA/EXM/F/EXM43/2022-23/1048391356(1) dated 02.01.2023 was issued at the e-mail/address provided in the application requiring the applicant to submit certain documents/explanations by 17.01.2023, but no compliance was made by the applicant. Thereafter, a reminder letter was issued vide this office DIN & Notice No. ITBA/EXM/F/EXM43/2022-23/1048968306(1) dated 20.01.2023 to submit certain documents/explanations by 27.01.2023. However, again no further compliance was made by the applicant. In view of principle of natural justice, one more opportunity was provided to the applicant as final opportunity through which date of submission was fixed as 02.02.2023. But this time also on given date no reply was filed by the applicant. Since it is a limitation matter, therefore, the case is decided based on material filed by the applicant along with its application in Form no. 10AB.

4. Based on the material placed on record, the claim of registration was rejected Id. CIT(E). The relevant finding of the Id. CIT(E) is reiterated here in below :

“4.1. It is important to mention here that while examining the claim of the assessee u/s 12AB of I.T. Act, 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 activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf. Under such powers vested in CIT (E), the applicant was asked to file details like:-

- List of donors.
- Copies the annual accounts of the applicant for last three years.
- Bills and vouchers of expenses.
- Photograph of activities.
- Details of Social handle.
- Digital footprint.
- Details of Bank account details of last three years.

However, the applicant has failed to comply with the letters, despite being given three opportunities details of which given in para-I. In the absence of such documents, it could not be determined whether the applicant is genuinely carrying out charitable activity as per its objects. Therefore, assessee claim of registration u/s 12AB ground of not proving its genuineness of activity.

05. In view of above discussion assessee's claim of registration section 12AB is liable to be rejected and thus being rejected on following grounds: -

- Incomplete form 10AB.
- Non registration with RPT ACT, 1959.
- Genuineness of Activities.”

5. Feeling dissatisfied the assessee has preferred this appeal on the grounds as reiterated here in above para 2. To support the various grounds so raised the Id. AR appearing on behalf of the

assessee has placed their written submission which is extracted in below;

1. The assessee trust was constituted on 05.07.2021 (PB 1-16) to carry on the objects of general public utility. It applied for provisional registration u/s 12A(1)(ac)(vi) and was granted provisional registration vide order dt. 15.10.2021 (PB 17-19).
2. Thereafter assessee filed application in Form 10AB on 30.09.2022 (PB 20-29) seeking permanent registration u/s 12A(1)(ac)(iii) of the Act. Along with the application assessee furnished mobile no. & e-mail address of the trustees, details of assets & liabilities, clarification for annual accounts and the trust deed. The Ld. CIT(E) held that assessee was required to submit certain documents/ explanation vide letter dt. 02.01.2023, 20.01.2023 & 02.02.2023 issued at e-mail/ address provided in the application but no reply was filed. Further Form No.10AB is not complete since self-certified copy of existing order granting registration u/s 12A, self-certified copy of annual accounts of last 3 years and note on activity of the applicant is not furnished. The assessee is not registered under Rajasthan Public Trust Act, 1959 and the genuineness of activities is not proved. Accordingly, he rejected the application filed by the assessee.
3. At the outset it is submitted that the Ld. CIT(E) has observed that letter/notice was issued at the e-mail/ address provided in the application. In the application e-mail address of all the six trustees are provided. It appears that the notice is issued at the e-mail address provided in the e-portal, i.e. accounts1@alpaperhouse.com. However, according to assessee it has not received the e-mail and thus the notices remained uncomplished with. At the same time the Ld. CIT(E) has not sent notices at the e-mail address of other trustees as mentioned in the application and therefore, rejecting the application without providing opportunity of hearing is bad in law.
4. The Ld. CIT(E) has also rejected the registration for the reason that Form 10AB is incomplete, it is not registered under RPT Act and the genuineness of activities is not proved. All the three allegations are incorrect. Form No.10AB filed by the assessee is complete in as much as assessee has not been granted any registration u/s

12A. It was granted provisional registration vide order dt. 15.10.2021 which is on the record of CIT(E). Further when the trust came to existence only on 05.07.2021, the question of providing self-certified annual accounts of last 3 years do not arise for consideration. In fact as on 31.03.2022 it only received corpus donation of Rs.51,000/- as evident from the trust deed and the same was lying in the bank as depicted in Form No.10AB. Further since the assessee was in the initial stage of commencing its activities, it filed application for permanent registration. Hence the registration refused on the ground that Form No.10AB is incomplete is not correct. So far as registration under RPT Act, 1959 is concerned, the assessee has moved the application on 20.01.2023 in Form No.6 (copy enclosed) and it takes time to obtain registration certificate under RPT Act. Hence, on this ground also registration should not have been refused. This apart assessee was in the initial stage of starting the charitable activity out of the donation received by it as evident from the bank statement and trial balance enclosed. Therefore, refusing registration on the ground that assessee has not proved genuineness of the activity is incorrect.

In view of above, Ld. CIT(E) be directed to grant registration u/s 12A to the assessee.”

6. Per contra, the Id. DR representing the revenue categorically submitted that the assessee was given sufficient time and miserably failed to support the requirement of registration and the Id. CIT(E) has rightly rejected the claim of the assessee for registration.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee in his

application provided email address of all the six trustees. It also appears that the notice is issued at the email address provided in the e-portal, i.e. accounts1@alpaperhouse.com. However, according to assessee it has not received the email and thus the notices remained uncompiled with. Thus, on careful consideration of the facts of the case available on record we are of the considered view that the assessee is deprived of the justice and has not been allowed proper opportunity of being heard and therefore, we are of the view that the assessee in the interest of justice be given an opportunity of being heard by the Id. CIT(E) based on the peculiar set of circumstances argument by the Id. AR of the assessee. Therefore, we see no harm in providing one more opportunity of being heard to the assessee. In case, however, if the assessee even in this remand proceeding does not fully cooperate in expeditious disposal of remanded proceedings, learned CIT(E) will be at liberty to take such action as deems fit and proper and judicious. The matter is thus restored to the file of the learned CIT(E) for adjudication de novo after affording yet another opportunity of hearing to the assessee, by way of a speaking order, and in accordance with the law. Ordered, accordingly. As the matter is remitted to the file of the learned CIT(E) for fresh

adjudication we do not feel to deal the other grounds of merits raised by the assessee as these aspects of the matter, as of now, are infructuous, and are dismissed as infructuous.

8. In the result the appeal is allowed for statistical purposes in the terms of observations as indicated above.

Order pronounced in the open court on 02/06/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 02/06/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- A. L. Memorial Charitable Trust, Jaipur
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. 198/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar