

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" 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. 238/JPR/2023

Shri Mahaveer Digamber Jain Mandir Samiti, Jain Mandir Sector-A, Talwandi, Kota.	बनाम Vs.	CIT(E), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AASTS 4885 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओरसे / Revenue by: Shri James Kurian (CIT)

सुनवाई की तारीख / Date of Hearing : 31/05/2023
उदघोषणा की तारीख / Date of Pronouncement: 12/07/2023

आदेश / ORDER

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

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income (Exemption), Jaipur [herein after referred to as "Id.CIT(E)"] dated 19.03.2023.

2. The assessee has raised the following grounds of appeal:-

"1. The Id. CIT(E) has erred on facts and in law in rejecting the application filed by the assessee u/s 12A(1)(ac)(iii) in Form 10AB seeking registration 12AB of Income Tax Act, 1961 without providing adequate opportunity of hearing.

2. The ld. CIT(E) has erred on facts and in law in rejecting the above application even when the assessee has withdrawn the said application vide letter dt. 17.03.2023.

3. The ld. CIT(E) has erred on facts and in law in rejecting the application on ground of (i) non registration with RPT Act, 1959 (ii) genuineness of activities & its non compliance (iii) absence of dissolution clause by making irrelevant & incorrect observation.

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

5. Necessary cost be awarded to the assessee.”

3. Brief facts of the case are that the assessee trust was constituted on 03.04.1979 with the object of general public utility and religious activities. It applied for provisional registration u/s 12A(1)(ac)(vi) and was granted provisional registration vide order dated 04.04.2022 for AY 2022-23 to 2024-25. Thereafter assessee filed an application u/s 12A(1)(ac)(iii) of the Act in Form 10AB on 06.09.2022 seeking permanent registration. The Ld. CIT(E) issued notice dated 21.12.2022 which was replied vide letter dated 05.01.2023. Considering the reply the Ld. CIT(E) issued notice dated 06.03.2023 fixing the date of hearing on 13.03.2023. The assessee sought adjournment till 20.03.2023. However, before that date assessee vide letter dated 17.03.2023 requested to permit the withdrawal of application since provisional registration was granted upto AY 2024-25. The Ld. CIT(E) rejected the application on the ground that assessee has not complied with the notice dated 06.03.2023, has not got itself registered under Rajasthan

Public Trust Act, 1959, it is running hostel & dharamshala which do not appear in the object of the trust & therefore genuineness of the activity is not proved and there is no dissolution clause in the constitution of the trust.

4. A propose to the grounds so raised by the assessee the relevant findings of the ld. CIT(E) is reproduced here in below:-

“04. Absence of dissolution clause

4.1 On perusal of the trust deed/MOA furnished by the applicant, it is seen that the deed doesn't contain the clause specifying that in the event of dissolution of the trust. the funds/assets of the trust will be transferred only to some other trust having similar objectives. In the absence of the same, it is not clear that on dissolution how the property of the trust/society will be protected and used for the charitable purposes. There has to be a check that the balance funds on dissolution do not go to the office bearers of the trust/society. Assessee vide letter dated 06.03.2023 was given show cause to submit documents/explanation, the latter of which is reproduced as under:-

"On perusal of the trust deed/MOA furnished by you, it is noticed that no dissolution/irrevocability clause is provided Furnish clarification on the same and explain why the application filed by you should not be rejected."

However, the applicant has failed to produce any explanation for the same. Therefore, the applicant is not eligible for grant of registration u/s 12A of the Act

05. Further, vide letter dated 17-03-2023, the applicant has requested to withdraw its application in Form 10AB. Therefore, in view of above discussion at length and applicant's request to withdraw the application dated 06/09/2022, applicant's claim of registration under section 12AB is being rejected on following grounds:-

- Non-registration with RPT ACT, 1959.
- Genuineness of activities and non-compliance.
- Absence of dissolution clause.”

5. Feeling dissatisfied from the order of the ld. CIT(E), the ld. AR for the assessee has filed these appeal as per grounds so raised. The ld. AR of the assessee

in support of the grounds so raised as also filed a detailed submissions the same is reproduced hereinbelow:-

“1. The assessee trust was constituted on 03.04.1979 (PB 7) with the object of general public utility and religious activities (PB 11-12). It applied for provisional registration u/s 12A(1)(ac)(vi) and was granted provisional registration vide order dt. 04.04.2022 for AY 2022-23 to 2024-25 (PB 26-28).

2. Thereafter assessee filed an application u/s 12A(1)(ac)(iii) of the Act in Form 10AB on 06.09.2022 seeking permanent registration. The Ld. CIT(E) issued notice dt. 21.12.2022 which was replied vide letter dt. 05.01.2023 (PB 1-6). Considering the reply the L.d. CIT(E) issued notice dt. 06.03.2023 (PB 22-23) fixing the date of hearing on 13.03.2023. The assessee sought adjournment till 20.03.2023 (PB 24). However, before that date assessee vide letter dt. 17.03.2023 (PB 25) requested to permit the withdrawal of application since provisional registration was granted upto AY 2024-25. The Ld. CIT(E) rejected the application on the ground that assessee has not complied with the notice dt. 06.03.2023, has not got itself registered under Rajasthan Public Trust Act, 1959, it is running hostel & dharamshala which do not appear in the object of the trust & therefore genuineness of the activity is not proved and there is no dissolution clause in the constitution of the trust.

Submission:-

1. At the outset it is submitted that vide notice dt. 06.03.2023 (PB 22-23) the Ld. CIT(E) raised the issue as to non registration under RPT Act, running of hostel & dharamshala which is alleged not as per the object of trust, absence of dissolution clause and thus proposed to decide the application on the basis of material available on record. The assessee sought adjournment till 20.03.2023 (PB 24) and in the meanwhile moved an application for registration under RPT Act (PB 37). Thereafter vide letter dt. 17.03.2023 (PB 25) request was made to permit the withdrawal of application since provisional registration is already available upto AY 2024-25. However, the Ld. CIT(E) on the basis of discussion in the order and request of the assessee to withdraw the application, rejected the application of assessee for grant of registration. Thus the order passed rejecting the application when assessee has sought permission for withdrawal of application is illegal & bad in law in as much as because of rejection of the application, the assessee will be considered as not even provisionally registered. Hence, the order rejecting the registration u/s 12AB be vacated.

2. It is further submitted that the reasons given for rejecting the application are also not valid. This is because assessee has moved the application for registration under RPT Act in Form No.6 and thereafter Devasthan Vibhag issued notice dt. 15.03.2023 seeking no objection from public, if any (PB 37). It takes time to obtain registration certificate under RPT Act and therefore on this

ground application for registration should not have been rejected more particularly when the application is pending before the Devasthan Vibhag.

3. It is submitted that object clause (e) permits the assessee to construct the building for common welfare of society. Running of hostel & dharamshala in the building owned by the assessee as evident from the Balance Sheet (PB 35) is for the common welfare of society in as much as the hostel facility is provided to the girls student at a very concessional rate of Rs.6,500/- p.m. including the mess facility. Similarly the dharamshala facility is provided charging rent of Rs.300/- per room per day. Thus it is incorrect on part of CIT(E) to state that providing hostel & dharamshala facility is not as per the object of trust.

4. There is no requirement under the Act that the constitution of society should contain a dissolution clause. In case of CIT(E) Vs. Shri Narsinghji Ka Mandir (2020) 185 DTR 30, Hon'ble Rajasthan High Court held that refusal to grant registration on the sole ground that in the contingency of the dissolution of the trust, the devolution and the division of the property have not been provided for is not sustainable. Otherwise also, clause 20 of the bye laws of society (PB 19) provides that all the provisions of bye laws would be governed by Rajasthan Societies Registration Act, 1958 and anything not specified in the bye laws would be governed by the provisions of Rajasthan Societies Registration Act, 1958. Section 13, 14 & 14A of Rajasthan Societies Registration Act, 1958 provides that on dissolution, property of the society shall not be paid or distributed to any member of the society but shall be given to any other society or to the Government. Therefore, on this ground also the application for registration cannot be rejected. In view of above, Ld. CIT(E) be directed to grant permanent registration u/s 12AB(b) to the assessee.”

6. Per contra, the ld. DR relied on the orders of the ld. CIT(E).

7. We have heard the rival contentions and perused material available on record. We observed from the submissions of the ld. AR for the assessee and the order of the ld. CIT(E). The ld. CIT(E) has rejected the assessee's claim for registration u/s 12AB of the Act on the following grounds:-

- Non-registration with RPT Act, 1959.
- Genuineness of activities and non-compliance.
- Absence of dissolution clause.

Further, the Id. CIT(E) observed that the assessee has produced the trust deed/MOA, it is noticed that no dissolution/irrevocability clause is provided and rejected that the assessee has failed to produce any explanation for the same. Before us, the Id. AR for the assessee submitted that absence of dissolution clause is not a ground for rejection. The Id. CIT(E) has failed to note that the assessee has submitted all evidences and explanation. From the Id. CIT(E), we observed that the application has been requested by the assessee to withdraw the application in Form 10AB. Taking into present facts and circumstances of the case, the Id. AR for the assessee has supported his argument making reliance on judgment Hon'ble jurisdictional High court in case of CIT(E) vs. Shri Narsingh ji Ka Mandir 274 Taxman 446 (Raj). The following observations are reproduced as under:-

“Charitable trust- Registration under s. 12A – Distribution of property on dissolution of t rust-refusal to grant registration on the sole ground that in the contingency of the dissolution (of the trust), the devolution and the division of the property have not been provided for is not sustainable-Absence of dissolution clause or condition is an uncertain future event-Furthermore, given that the property is vested in a public charitable trust, it is always open to the concerned party, including the Revenue, to

approach the Civil Court for a remedy under ss. 91 and 92 of the CPC- In these circumstances, the Tribunal was justified in accepting the assessee's claim for registration-Furthermore, the situation contemplated by the CIT(Exemption), has now taken care of in any way under s. 115TD(c) brought into force w.e.f. 1st June, 2016."

8. Having considered the facts and circumstances of the case, we believe that the assessee deserves one more opportunity to submit necessary details and documents in support of his claim for seeking registration U/s 12AB of the Act. Therefore, in the interest of justice and fair play, the matter is hereby set aside to the file of the Id. CIT(E) to decide the same afresh after providing reasonable opportunity to the assessee.

9. The assessee is also hereby directed to attend to the proceedings before the Id. CIT(E) and ensure in timely completion thereof as so directed by the Id. CIT(E).

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

Order pronounced in the open court on 12/07/2023.

Sd/-
(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 12/07/2023

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

***Santosh**

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

1. The Appellant- Shri Mahaveer Digamber Jain Mandir Samiti, Kota.
2. प्रत्यर्धी / The Respondent- ICIT(E), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 238/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar