

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

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

आयकरअपील सं./ITA No. 422/JP/2023
निर्धारणवर्ष/AssessmentYear :-2023-24

Noble Kingdom Public School Shiksha Samiti, 58, Arya Nagar, Murlipura, Jaipur	बनाम VS.	The CIT (Exemption) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAATN 5128 L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : None
राजस्व की ओरसे/ Revenue by: Shri Ajay Malik, CIT-DR

सुनवाई की तारीख/Date of Hearing : 27/09/2023
उदघोषणा की तारीख/Date of Pronouncement: 04/10/2023

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The assessee has filed an appeal against the order of the Ld.CIT (Exemption), Jaipur dated 20-05-2023 passed under section 12AB and of the Income Tax Act, 1961 raising therein following grounds of appeal.-

“1. That on law and facts the Ld. CIT (Exemption) grossly erred in holding that in the absence of registration of assessee under the Rajasthan Public Trust Act, 1959 the assessee is not eligible for registration u/s. 12AB. The assessee is registered under the Rajasthan Societies Registration Act, 1958. On the basis of facts and circumstances of the case and in law the registration u/s. 12AB of the Act, ought to be allowed since the appellant is a charitable institution.

2. That on law and facts the Ld. CIT (Exemption) grossly erred in holding that activities of the assessee are not genuine. The activities of assessee are to run the educational activities and duly approved and affiliated with the

NOBLE KINGDOM PUBLIC SCHOOL SHIKSHA SAMITI VS CIT (EXEMPTION), JAIPUR
Education Department Rajasthan and CBSEAs such the Ld. CIT (Exemption)
grossly erred in holding that activities of assessee are not genuine.

3. That on law and facts the Ld. CIT (Exemption) has grossly erred in holding that application u/s. 12A(1)(ac)(iii) in Form No. 10AB was not filed in time. The application in form No. 10AB was filed in time, hence Ld. CIT (Exemption) grossly erred in holding that application has not been filed in time hence not maintainable.

4. That on law and facts the Ld. CIT(Exemption) has grossly erred in holding that activities of assessee are profitable. The activities of assessee are not run to earn profit, hence the Ld. CIT (Exemption) has grossly erred in holding that assessee activities are run for profit.

5. That the order of the Ld. CIT(Exemption) is bad in law and against the facts on record, hence order deserves to be quashed. That the appellant reserves the right to add, amend, withdraw or alter any ground of appeal before the finalization of said appeal.

2.1 None attended on behalf of the applicant samiti in spite of the notice sent at the last known address of the applicant/ samiti. The Bench further noted that the applicant samiti has not filed any written submission / contrary material controverting the order of the ld. CIT(E) (supra).

2.2 On the contrary, the ld. DR supported the order of the ld. CIT(E).

2.3 The Bench heard the ld. DR and perused the materials available on record from which it transpires that the applicant samiti had filed an application in Form No. 10AB seeking registration u/s 12AB of the Income through online on 16-11-2022. Thereafter a letter /Notice No. ITBA/EXM/F/EXM43/2022-23/1051278624(1) dated 25-03-2023 was issued at the e-mail/address provided in the application requiring the

applicant to submit certain documents/ explanation by 10-04-2023. In response to the same, the applicant furnished its reply which was duly examined and few discrepancies were found. Thereafter a show cause letter was issued vide letter / notice No. ITBA/EXM/F/EXM43/2022-23/1052812257(1) dated 13-05-2023 requesting the applicant to submit the response by 18-05-2023, however, the applicant did not furnish the reply. The ld. CIT(E), being a limitation matter case, decided the case of the applicant on the basis of material placed on record and thus rejected the application of the applicant in Form 10AB for registration u/s 12A of the Act. It is pertinent to mention that ld. CIT(E) observed at the top of page 8 in his order ‘*However, assessee has failed to prove that the assessee is registered under RPT Act, 1959 as discussed above. In light of the above discussion and in the absence of registration under Rajasthan Public Trust Act, 1959, the assessee is not eligible*’. From the record, it is also noted that applicant was also given opportunity vide show cause dated 13-05-2023 to submit clarifications pertaining to show cause notice but the applicant did not furnish any response. Hence, the ld. CIT(E) conclusively rejected u/s 12AB application of the applicant by observing as under:-

‘5.3 In the light of above facts, the activities conducted by the applicant are highly profitable in nature to the extent of 15% and are outside the purview of charitability and therefore, cannot be considerable as charitable at all. Hence,

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the application of the applicant for registration u/s 12AB is liable to be rejected on the ground of profitability.

06. In view of above discussion at length, applicant's claim of registration under section 12AB is being rejected on following grounds:-

- Non-registration with RPT Act, 1959.
- Genuineness of activities
- Commencement of activities
- Profitability.

The Bench does not want to go into merit of the case but it is imperative that the applicant samiti must be provided adequate opportunity of being heard by the Id. CIT(E). In this view of the matter, the Bench feels that the applicant samiti should be given one more chance to contest the case before the Id. CIT(E) and the applicant samiti is directed to produce all the relevant papers concerning application so filed before the Id. CIT(E) to settle the dispute raised hereinabove.

2.4 Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. 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 the Id. CIT(E) independently in accordance with law.

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

Order pronounced in the open court on 04 /10/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 04/ 10/2023

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Noble Kingdom Public School Shisksha Samiti.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 422/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar