

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

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 520/JP/2023  
निर्धारणवर्ष/AssessmentYear :-2022-23

Bhartiya Jain Sanghatana H.No. 357B, Talwandi Kota	बनाम Vs.	The CIT (Exemption) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AADTB 6311J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Saurav Harsh, Advocate  
राजस्व की ओरसे / Revenue by: Shri Ajay Malik, CIT-DR

सुनवाई की तारीख / Date of Hearing : 26/09/2023  
उदघोषणा की तारीख / Date of Pronouncement: 06 /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 18-09-2023 passed under section 12AB and of the Income Tax Act, 1961 raising therein following grounds of appeal:

“1. On the facts and circumstances of the case the Id. CIT(E) grossly erred in passing the ex-parte order rejecting the application filed in Form 10AB for seeking registration u/s 12AB of the Act without providing sufficient opportunity of being heard.

2. That on the facts and circumstances of the case, the Id. CIT(E) grossly erred in not considering the documents submitted alongwith the application of

provisional registration dated 12-03-2021 filed in Form No. 10A, on the basis of which department can verify the genuineness of the activities carried out by the trust.”

2.1 At the outset of the hearing, the Bench noted that there is delay 267 days in filing the appeal by the assessee for which the Id. AR of the assessee filed a condonation application dated 09-08-2023 praying therein hereunder to condone the delay.

“1. An appellant is a Registered Trust namely BharatiyajainSanghatanakota, (BJS) created on 16/12/2018 as an ancillary body of Bharatiya Jain Sanghatana Pune.

2. After obtaining provisional registration u/s 12A dated 27/05/2021, appellant applied for final approval of registration u/s 12AB dated 25.03.2022 on the portal. A notice was issued by the department on e mail dated 16.08.2022 and second and final opportunity was also issued on email dated 05.09.2022, and same was rejected vide ex-parte order dated 18.09.2022.

3. That Id. lower authority had issued the notice on the e-mail vag\_co1985@yahoo.com provided in the form no 10AB, which is belongs to the trust and which is mention in secondary e-mail the member of the trust is not familiar with the email activities, hence did not came to notice about the rejection of the application.

4. That Id. lower authority had neither issued a mail on primary email id i.e ca.arpitjain1985@gmail.com given in the contact details available on the portal. That no physical notice issued and served to the assessee appellant and such a serious notice should at least once issued in a hard copy too.

5. It is only when we filed the return of income for the A Y 2023-24 and came to access the portal, we noticed the whole facts of the case and hence we request before your honor and pray to condone the delay in filing of an appeal.

6. The primarycontact email id given on the portal isca.arpitjain1985@gmail.com, but no email of notice and order was receivedon this email id.

With this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay was not intentional and due to unavoidable circumstances. That in these circumstances we request your honour's to kindly condone the delay and oblige. Affidavit in support of Application is also enclosed.''

2.1.1 It is also noteworthy to mention that as per direction of the Bench to the ld. AR of the assessee at the time of hearing of the appeal as to filing of an affidavit of the assessee for condonation of delay has been filed by the ld. AR of the assessee vide letter dated 3<sup>rd</sup> Oct. 2023 and the same is accepted.

2.1.2 Further, it is also noted that the ld. AR of the assessee has filed an affidavit vide his letter dated 3<sup>rd</sup> Oct. 2023 of the CA Shri Arpit Jain, who is looking after the case of the assessee wherein it is mentioned that he has not received any e-mail regarding rejected order dated 18-09-2022 on any e-mail id: [ca.arpitjain1985@gmail.com](mailto:ca.arpitjain1985@gmail.com) which is mentioned as primary e-mail id on the Income Tax Portal and that affidavit is also accepted.

2.2 On the other hand, the ld. DR objected to the condonation application of the assessee and submitted that the Court may decide the issue as deem fit and proper in the circumstances of the present case.

2.3 After hearing both the parties and perusing the materials available on record, the Bench find merit in the condonation application of the assessee

and thus allowed the same 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.

3.1 Apropos grounds of appeal of the assessee, the main grievance of the assessee is that the ld. CIT(E) erred in passing the ex-parte order rejecting the application filed in Form 10AB for seeking registration u/s 12AB of the Act without providing sufficient opportunity of being heard. The ld. AR of the assessee further submitted that ld. CIT(E) has erred in not considering the documents submitted alongwith the application of provisional registration dated 12-03-2021 filed in Form No. 10A, on the basis of which department can verify the genuineness of the activities carried out by the trust. Hence, the assessee remained deprived off in seeking registration u/s 12AB of the Act.

3.2 Per contra, the ld. DR as regards the merits of the case supported the order of the ld. CIT(E) and prayed to sustain the same.

3.3 The Bench heard both the parties and perused the materials available on record including the affidavit (supra) of the CA of the assessee from which it transpires that the applicant trust had filed an application in Form No. 10AB seeking registration u/s 12AB of the Income through online on 25-03-2022. Thereafter a letter /Notice No. ITBA/EXM/F/EXM43/2022-

23/1044660916(1) dated 16-08-2022 was issued at the e-mail/address provided in the application requiring the applicant to submit certain documents/ explanation by 31-08-2022. However, no reply was filed online nor anyone attended in person. In view of principles of natural justice, one more opportunity was provided vide letter No ITBA/EXM/F/EXM43/2022-23/1045176989(1) dated 5-09-2022 as final opportunity through which date of hearing was fixed as 7-09-2022 but this time also none was present on the given date nor any reply was filed by the assessee. Since it is a limitation matter, therefore, the case was decided by the Id. CIT(E) on the basis of material available on record. It is pertinent to mention that the Id. CIT(E) conclusively rejected the application of the assessee seeking registration u/s 12AB of the Act by holding as under:-

“3. 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 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 vide letter issued on different dates as mentioned above.

4. As discussed above the applicant-did not submit documents regarding establishment of the trust/society as well as evidence in support of his claim.

5. To decide the matter of seeking registration u/s 12AB, the genuineness of the activities being under taken by the applicant are also to be examined. The applicant has not submitted any such details and other information. Therefore, it is not known that the applicant is actually carrying out the activities as per its objects. 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.”

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

3.4 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 the ld. CIT(E) independently in accordance with law.

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

Order pronounced in the open court on 06 /10/2023.

Sd/-

Sd/-

(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalashmi)  
न्यायिकसदस्य / Judicial Member

( राठोडकमलेशजयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 06/ 10/2023

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Bhartiya Jain Sangathana, Kota 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. 520/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar