

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 625/JP/2023
निर्धारण वर्ष/Assessment Year : 2023-24.

Marwadi International Federation, Abhyam, C-121A Lal Kothi, Opp. Jyoti Nagar Thana, Jaipur.	बनाम Vs.	CIT (Exemption), Kailash Heights, LalKothi, Tonk Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AALCM 4701 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta, Advocate.

राजस्व की ओर से / Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 09/11/2023
उदघोषणा की तारीख / Date of Pronouncement: 28/11/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 29.09.2023 of Id. CIT (E), Jaipur passed under section 12AB(1)(b)(ii) of the IT Act, 1961 for the assessment year 2023-24. The assessee has raised the following grounds :-

1. The impugned order u/s 12AB of the Act dated 29.09.2023 is bad in law and on facts, without providing adequate & reasonable opportunity of being heard, being without jurisdiction and for various other reasons and hence the same may kindly be quashed.
2. The Id. CIT (E) erred in law as well as on the facts of the case in rejecting the application for grant Registration/approval u/s 12AB and in not granting Registration/approval. The rejection so made and refusal to grant Registration/approval u/s 12AB is contrary to the

provisions of law and facts of the case, hence the same kindly be quashed.

3. That the impugned order so passed was in the contravention of the law prevalent at the relevant point of time and also on fact and hence may kindly be quashed. The Id. CIT (E) be directed to grant Registration/approval from the date of application.
4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.

2. Apropos to the ground so raised by the assessee in ITA No. 625/JP/2023, the Id. CIT(E) rejected the assessee's claim of registration u/s 12AB of the Act by observing as under:-

"02. Objects of applicant company are not charitable :

2.1. Charitable trusts are legal entities created for charitable purposes, and they must be set up with specific charitable objectives in mind. In a charitable trust, the "objects" that must be charitable refer to the beneficiaries or the goals that the trust is designed to benefit. These objects should align with recognized charitable purposes, such as the relief of poverty, the advancement of education, the promotion of religion, the protection of the environment etc. For a trust to qualify as charitable and enjoy certain tax benefits, it must meet specific legal requirements, including having charitable objects. Here in the case of applicant, the objects seem non charitable, the relevant portion of objects mentioned in clause 1 & 2 are as under:

1. "Generate innovative solutions that enhance the professional, technical, vocational or higher education in every field of Marwari science, commerce, arts, management, engineering, law, banking, insurance, finance, medicine, hospitality, tourism, computers or any other type of education be impacted by conducting regular, part time classes.

2. To improve and enhance the values and importance of Marwari society, culture, food, handicraft, tourism and language in the Indian society and abroad by way of education, dance, competition, quiz, cultural and co-curricular activities.

educational activities, to form a network to transform the ideas at block level, district level, state level, national level and international level."

From the above excerpts of the objects, it is seen that these are related with multiple fields which are delivered by other non-charitable institutions by charging fees. Further, dance, competition, quiz, cultural and co-curricular activities does not contain any element of charity and are not considered charitable objects for a institution.

2.2. Charitable objects for a institution are generally defined by specific criteria and categories. These criteria often include purposes that provide public benefit or advance social causes. While education and certain cultural activities can be considered charitable when they serve a specific public benefit, the mere promotion of tourism or language-related activities, such as teaching languages or hosting cultural events, may not always meet the legal criteria for charitable status on their own, also the applicant has not furnished any substantial evidence on record proving above activities charitable.

03. Institution is formed only for benefit of Marwaris:

3.1 On perusal of MOA furnished by the applicant, it was noticed that the objects are only for benefit of Marwaris, relevant objects are reproduced as under-

To promote opportunities for everyone to experience Marwari Culture, participate in educational programmes and develop their creative abilities, promote quality and artistic renewal, to promote a dynamic cultural heritage that is preserved, used and developed, promote accessibility, promote international and intercultural exchange and cooperation in the cultural sphere, and pay particular attention to the rights of children and young people of Marwari culture, to promote diversity and equality. To Conduct research, education, and community outreach of Marwari culture E_{e} Generate innovative solutions that enhance the professional, technical, vocational or higher education in every field of Marwari science, commerce, arts, management, engineering, law, banking insurance, finance, medicine, hospitality, tourism, computers,, or any other type of education be impacted by conducting regular, part time classes.

To promote Marwari Culture through membership concept of different type of social programme investment meet at international and national level, to work with State and Central Government on International Marwari issues and cover all other social issues, award functions, to Celebrate Values Alignment through Actions, Create Traditions, Hold Virtual Meetings, To improve and enhance the values and importance of Marwari Society, culture, food, handicraft, tourism and language in the Indian society and abroad by way of education, dance, competition, quiz, cultural and co-curricular activities, educational activities, to form a network to transform the ideas at block level, district level, state level, national level and international level.

On perusal of above, it is clear that institution is only for promotion and benefit of Marwaris and the same is not meant for public charity but only for particular community.

Xxxxxx xxxxxxxx

3.5 As discussed in sub para 1, that assessee applicant company is making distinction on the basis of community and restricting several benefits only for Marwaris, it is clear that same is not eligible for registration under section 10/12/80G. Thus, assessee application for registration is liable to be rejected on this ground.

In view of above, the society is not eligible for approval u/s 12AB of the Income Tax Act, 1961.

04. Genuineness of Activities & non-compliance.

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 the

following details vide this office letter dated 24.07.2023 which is reproduced as under: -

- 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.

In response to, the applicant furnished reply on 22.09.2023, which has been examined thoroughly and some discrepancies found-

The applicant was asked to furnish explanation on the above discrepancies, which are as under :

Xxxxxx xxxxx xxxxxx

Vide letter dated 22.09.2023, the applicant has sought adjournment for 2 days. But till date no reply has been furnished. The applicant has failed to furnish requisite details. Further it is held that no transaction in bank account, no supporting bills/voucher are furnished to justify the expenses shown in books and activity claimed.

In absence of the such details/documents, it could not be determined whether the applicant is genuinely carrying out charitable activity as per its objects. Therefore, the applicant claim of registration u/s 12AB is also liable to be rejected on ground of not proving its genuineness of activity.

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

- Objects of Applicant company are not charitable
- Institution is formed only for benefit of Marwaris
- Genuineness of Activities. "

3. During the course of hearing, the Id. A/R of the assessee mainly submitted that the assessee was not provided adequate opportunity of being heard by the Id. CIT(E) and thus the order should be quashed being against the principles of natural justice.

4. Per contra, the Id. D/R relied on the order of the Id. CIT(E).

5. We have heard the rival contentions and perused material available on record. The Bench noted that Id. CIT(E) has rejected the application of the assessee u/s 12AB of the Act as narrated above in the order. It is also pertinent to mention that during the course of hearing the Id. A/R of the assessee prayed that he was deprived off availing of adequate opportunity of being heard by the Id. CIT(E) in the order (supra). The Bench does not want to go into merit of the case but it is imperative that the assessee must be provided adequate opportunity of being heard by the Id. CIT(E). In this view of the matter, the Bench feels that the assessee should be given one more chance to contest the case before the Id. CIT(E) and the Id. A/R of the assessee is directed to produce all the relevant papers concerning the application so filed before the Id. CIT(E) to settle the dispute raised hereinabove.

6. 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.

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

Order pronounced in the open court on 28/11/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/11/2023.

Das/

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

1. अपीलार्थी / The Appellant- Marwadi International Federation, Jaipur.
2. प्रत्यर्थी / The Respondent- The CIT (Exemption), 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.625/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

