

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

ITA No: 356/Ahd/2023

Jay Jinshasan Seva Trust 18/B, Harinagar Society, Near Simandar Swami Derasar, Modhera Char Rasta, Highway, Mahesana, Gujarat PAN: AAETJ1167H (Appellant)	Vs	The CIT, (Exemption), Ahmedabad (Respondent)
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**Assessee Represented: Shri Mehal Doshi, A.R.
Revenue Represented: Shri Kamlesh Makwana, CIT-DR**

Date of hearing : 15-01-2024
Date of pronouncement : 17-01-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against order dated 24.03.2023 passed by the Commissioner of Income Tax (Exemption) denying of Registration under section 12AB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The brief facts of the case is that the assessee is a Trust created on 04.02.2022 and registered under Bombay Public Trust Act for the object of religious purposes to do activities of Jain religion, Saints, providing medical facilities, etc. The assessee Trust filed an application u/s. 12AB of the Act in Form 10AB on 24.09.2022. The Ld. CIT(E) issued a notice dated 10.12.2022 asking the assessee to furnish detailed note on the activities actually carried out by the Trust with relevant details and documents on or before 20.12.2022. In the compliance the assessee filed the required details. Another notice was issued by Ld. CIT(E) on 02-01-2023, wherein it was stated that the assessee Trust submitted part details/documents, therefore requested to furnish the remaining documents on or before 09.01.2023. Since this notice does not specify the deficit documents as required by Ld. CIT(E), the assessee filed the earlier acknowledgment with details filed before Ld. CIT(E).

3. The Ld. CIT(E) rejected the application of registration u/s. 12AB observing as follows:

“.....8. The details filed by the applicant are peripheral and the response is cryptic in nature. As discussed above, the applicant/assessee has not submitted, apart from others the crucial information/documents with respect to its accounts. The Rule 17A(2) of Income Tax Rules requires the applicant/assessee to attach with the Form No. 10AB filed, self certified copies of its annual accounts of three years for which such accounts have been made up, preceding the year in which the said application is made or from its inception, whichever period is less. As per details available on records, it is observed that the date of incorporation/creation/registration of applicant/assessee trust is 04.02.2022. However, on perusal of the details, it is found that the applicant/assessee has only submitted a copy of Income & Expenditure account for FY 2021-22 that too without any schedules/annexures thereof and has not furnished Balance sheet for year ending on 31.03.2022. It is clear that the

applicant/assessee has not filed its complete annual accounts for FY 2021-22. It's not the case that the applicant/assessee has been incorporated/created/ registered in the current financial year and for which no accounts have been made up till date."

3.1. Thus Ld. CIT(E) held that he is unable to arrive at the satisfaction of the genuineness of the activities of the assessee Trust, thereby registration u/s. 12AB was rejected.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in rejecting application for registration u/s 12AB of the Act.

2. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has not provided reasonable opportunity of being heard as provided under Second Proviso to Section 12AB (1)(b)(ii)(B) of the Act.

3. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has hurriedly rejected the claim of assessee without pointing out deficiency of non-availability of audit report on record and even not given opportunity for submitting audit report for FY-2021-22 which was available with the appellant trust..

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.

5. Ld. Counsel Shri Mehul Doshi appearing for the assessee submitted before us a Paper Book running to 49 pages which contains the Form 10AB with attachments filed before Ld. CIT(E) and first notice issued by Ld. CIT(E), reply filed by the assessee Trust, copy of the final show cause notice dated 02-01-2023 without mentioning specific details required by Ld. CIT(E). Ld. Counsel thus submitted that the Ld. CIT(E) vide his second notice

did not raise any issue about the non-furnishing of balance sheet for the year ending 31.03.2022. In the absence of the same, the assessee Trust was of the bona fide believe that details already submitted is sufficient compliance and thereby Ld. CIT(E) has not given proper opportunity to the assessee. Thus Ld. Counsel pleaded that one more opportunity be given to the assessee, so that the assessee undertake to file all the requisite details, documents and evidences in support of the case, for grant of registration under section 12AB of the Act.

6. Per contra, the Ld. CIT-DR Shri Kamlesh Makwana appearing for the Revenue submitted that Ld. CIT(E) as per section 12AB of the Act, has to conduct an enquiry about the activities of the Trust and to verify the objects as per the Trust Deed and genuineness of the activities of the Trust and after satisfying the activities carried out by the assessee, the Ld. CIT(E) can grant Registration u/s. 12AB of the Act. Though the Ld. CIT(E) provided opportunities to the assessee as per the statutory provision, the assessee failed to submit the complete details namely annual accounts without balance sheet. Therefore the rejection of Registration by Ld. CIT(E) is justifiable. Therefore the order passed by Ld. CIT(E) does not require any interference and the appeal filed by the assessee is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. As against the first hearing notice on 10.12.2022, the assessee filed its reply with necessary attachments annexing nine documents. Fifth document namely annual reports

wherein only profit and loss account only uploaded and the balance sheet was not uploaded in the ITBA portal. Further the assessee Trust was formed only on 04.02.2022, however the Ld. CIT(E) in his second notice dated 02.01.2023 simply stated part details only furnished by the assessee. The assessee was not put to notice the exact deficiency in the documents submitted by the assessee and nature of clarification, explanation required from the assessee. However Ld. CIT(E) rejected the registration application without confronting the deficit document and affording proper opportunity of hearing to the assessee Trust, but wrongly held that the assessee Trust is not created in the current financial year and for which no accounts have been made up till date.

8. Therefore considering the facts and circumstances of the case, in order to prevent miscarriage of justice, we find it fit and proper to provide one more opportunity of being heard to the assessee in support of its case for registration of the Trust u/s. 12AB of the Act. Therefore we dispose of this appeal by restoring this issue to the file of the Ld. CIT(E) with a direction upon him to provide further opportunity of being heard to the assessee and consider the documents, evidences which the assessee would file as per the notice issued by the Ld. CIT(E). Upon considering the entire set of documents and upon affording an opportunity of being heard to the assessee, the Ld. CIT(E) to dispose of the application for grant of registration of the Trust under Section 12AB of the Act with a speaking order. Needless to say if the assessee fails to co-operate with the Ld. CIT(E) as directed hereinabove, the Ld. CIT(E) would be at liberty to pass orders strictly in accordance with law.

9. In the result, the appeal filed by the Assessee is hereby allowed for statistical purpose.

Order pronounced in the open court on 17-01-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 17/01/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद