

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 489/Ind/2023
A.Y.: 2023-24

Adivasi Sahayta Samiti Jobat, Infront of Sunrice Hostel College, Jobat, Distt. Jhabua	<u>बनाम/</u> Vs.	CIT (Exemption), Bhopal
(Appellant/Assessee)		(Respondent/Revenue)
PAN: AABAA4313L		
Assessee by	Shri S.S. Solanki, C.A. & AR	
Revenue by	Ms. Ila Parmar, CIT DR	
Date of Hearing	24.04.2024	
Date of Pronouncement	30.04.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order dated 10.11.2023 passed by learned Commissioner of Income-Tax (Exemption), Bhopal ["CIT(E)"] by which the assessee's application for grant of final registration u/s 12AA/12AB of Income-tax Act, 1961 has been rejected and the provisional registration granted u/s 12AB/12AA has also been cancelled, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. Ld. AR for assessee carried us to the impugned order wherein the CIT(E) has assigned following precise reasoning for rejecting assessee's application:




"..... Subsequently, specific notice was again issued on 27.10.2023 to submit the following information/documents :-

- i. Please clarify whether you were registered u/s 12A/12AA before 01.04.2021. If yes, please provide copy of registration certificate.*
- ii. On perusal of Form FC-4 and audit reports for last 3 FY, it is noticed that the donations has been received from "Alberto Anwander, Rue Hermann Geiger 19, Sion-1950, Switzerland, however, society has not submitted any related documents i.e. Request letter of donee, Sanction letter of donor and Utilization Certificate/Project details. Please submit the same.*

In response to notice dated 27.10.2023, the assessee has submitted few documents but the related documents of Foreign Contribution as mentioned above, have not been provided and only details of payments received through Banking Channel has been submitted by the assessee. The assessee in his reply also, only stated that the amount has been received through banking channel but no comments have been made regarding the required documents by which purpose of fund received and nature of expenditure is required to be determined. In absence of any document like Copy agreement, Request letter of donee, Sanction letter of donor and Utilization Certificate or Project details etc. purpose of funds received and its application for charitable purposes cannot be ascertained and the assessee fails to submit the required details after getting so many opportunities."

3. Reading the above paras of CIT(E)'s order, Ld. AR submitted that the CIT(E) required the assessee to make submissions on two points, namely (i) to clarify whether the assessee was already registered u/s 12A/12AA before 01.04.2021, and (ii) to file documents of foreign donations like request-letter of donee, sanction letter of donor, utilization certificate/project details. In

response to same, the assessee filed a detailed reply with necessary supporting documents as under:

<p>SANDEEP SURENDRA JAIN & CO. CHARTERED ACCOUNTANTS F.R.N - 010172C PAN - ABRFS4409B E-mail:- sandipjain_ca@rediffmail.com</p>		<p style="text-align: right;">HO: 11, JAWAHAR MARG THANDLA DIST. JHABUA (M.P.)</p> <hr/> <p style="text-align: right;">BO: 104,1ST FLOOR,SHAM TOWER RNT MARG, INDORE (M.P.)</p> <hr/> <p style="text-align: right;">0731-2526207,9425057040</p>	6
DIN: ITBA/EXM/F/EXM43/2023-24/1057453173(1)		Date:7-Nov-23	
To The Commissioner of Income Tax (Exemption) Bhopal (M.P)			
Sub: Regarding Proceeding u/s 12A(1)(ac)(iii) , CIT EXEMPTION BHOPAL/2023-24/12AA/10576 Dated:27/10/2023			
Ref:ADIVASI SAHAYTA SAMITI JOBAT 0 SUNRISE HOSTEL, OPP GOVT COLLEGE JOBAT 457990 ,Madhya Pradesh (PAN No AABAA4313L)			
Dear Sir, With reference to above, we on behalf of our above client submit before your honor point wise answer with necessary documents:			
1. Whether you were registered U/s 12A/12AA before 01.04.2021. If yes, please provide copy of registration certificate.			
REPLY Yes, we are registered under section 12A before 01.04.2021 and copy of registration certificate attached as Document No. 01.			
2. On perusal of Form FC-4 and audit reports for last 3 FY, it is noticed that the donations has been received from Alberto Anwander, Rue hermann Geiger 19, Sion-1950 Switzerland, however, society has not submitted any related documents i.e. Request letter of donee, Sanction letter of donor and Utilization Certificate/ Projected details. Please submit the same.			
<div style="display: flex; justify-content: space-between;"><div style="text-align: center;"> M. No. 409674</div><div style="text-align: center;"></div></div>			

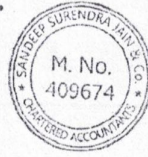
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REPLY

We have received fund from StiftungIndienhilfe Rue Hermann Geiger 19,Sion-1950 , Switzerland, for educational and social welfare purpose. The fund has been credited in bank account designated only for foreign contribution with State bank of India. We are submitting FEMA Declaration (Document No. 02) submitted with bank along with international payment proof (Document No. 03) which will clear your query. We are also submitting utilization certificate for FY 21-22 certified by Chartered Accountants (Document No. 04).

We therefore request you to consider the above and looking to the society object please issue 12A registration and oblige.

Thanking You,
Yours Faithfully,
For: Sandeep Surendra Jain & Co.
Chartered Accountants
Seema
(CA Seema Vijayvargiya)
Partner



Se

OFFICE OF THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAWAN, BHARATPURI, UJJAIN

Name & address of the Trust : Adivasi Sahayata Samiti,
Opp. of (Sunrise Hostel)
Govt. Degree College, Jobat,
Distt. Jhabau.
Date of Order : 25 / 11 / 2009

ORDER UNDER SECTION 12A/12AA/ 254 OF THE INCOME TAX ACT, 1961

Consequent upon the directions issued by the Hon'ble ITAT, Indore vide its
appellate order in appeal No. 323 / Ind / 2009 dated 17/ 09 / 2009, registration under
section 12A/12AA of the I.T. Act, 1961 is hereby granted to the assessee with effect
from 01/04/2008.

The Trust is registered at Sl.No. 22 / 24 (2009-10) of this office register.

— sd —
(DR.S.C. AGARWAL)
Commissioner of Income tax,
Ujjain.

F.No. CIT/UJN/Tech./ 12A / 10 / 68 / 09-10

Ujjain , Dated 25/11/2009

Copy:

- 1 The Addl. Commissioner of Income tax ,Ratlam.
- 2 The Asstt. Commissioner of Income tax, Ratlam.
- 3 The Assessee.



(O.P. Billore)
Income Tax Officer(Tech.)
For Commissioner of Income tax,
Ujjain.

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FEMA Declaration –cum- Undertaking
(Under Section 10(5) of the Foreign Exchange Management Act- 1999)

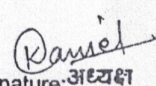
I / We hereby declare that the transaction/s, the details of which are specifically mentioned in the schedule hereunder does not involve and is not designed for the purpose of any contravention or evasion of the provisions of the aforesaid Act or any rule, regulation, notification, direction or order made there under.

I/ We also hereby agree and undertake to give such information / documents before the Bank undertake the transaction/s and as may be required from time to time that will reasonably satisfy Bank about the transaction/s in terms of the above declaration.

I/We also understand that if/ we refuse to comply with any such requirement or make unsatisfactory compliance herewith, the Bank shall refuse in writing to undertake the transactions and shall if it has reason to believe that any contravention / evasion is contemplated by me / us, report the matter to Reserve Bank of India.

I/We further declare that the undersigned has / have the authority to give this declaration and undertaking on behalf of the firm/ company/ organization.

Place: Jobal
Date: 05/09/2023


Signature: अध्यक्ष
Name: आदिवासी सहायता समिति
Rubber Seal: बेट. जि. आलीराजपुर

SCHEDULE

Nature / Purpose of Foreign Exchange Transactions: Economic & Educational

Amount of Foreign Exchange : CHF 23,904,00.

Name of beneficiary entity: Adivasi Sahayata Samiti Jobal

For Office use

Details of documentary evidence verified

- 1.
- 2.

Date:

Bank Official Sign & Name
Designation:





UBS e-banking Hotline +41-(0)848 848 064



International payment

Beneficiary

IBAN (Account no.):
40212109986

Beneficiary:
ADIVASI SAHAYATA SAMITI JOBAT
KILA JOBAT ROAD
DISTR. ALIRAJPUR
457990 JOBAT M.P.
IN

Currency Amount:
CHF 23'904.00

Beneficiary's bank

BIC (Swift):
SBININBB104

Beneficiary's bank:
STATE BANK OF INDIA
NEW DELHI

Message for payee:
P1303
FCRA REGISTR. 063320022

Payment

Account holder:
Stiftung Indienhilfe Gritli Schmied

Debit account:
CH54 0022 0220 2217 4601 A

Account designation:
UBS Kontokorrent Private

Execution date:
04.09.2023

Exchange rate:

Advices:
Single booking without advice

Salary order:
No

Personal note:
Educationhelp 2023

Order information

Order number:
9920246T17474027

End-to-end ID:

Costs:
Breakdown of costs

Status:
Fully approved

Entered by / Contract no.:
ALBERTO E. ANWANDER / *****353
Entered on:03.09.2023

First approval by / Contract no.:
ALBERTO E. ANWANDER / *****353
Approved on:03.09.2023

Second approval by / Contract no.:
ALBERTO E. ANWANDER / *****353
Approved on:03.09.2023

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Certificate to be given by Chartered Accountant

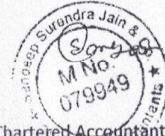
I/We have audited the account of Adivasi Sahayta Samiti ^{Jobad (mp) 45799} (name of Association and its full address including State, District and Pin Code, if registered society, its registration number and State of registration) for the financial year ending the 31st March 2022 and examined all relevant books and vouchers and certify that according to the audited account:

- (i) the brought forward foreign contribution at the beginning of the financial year was Rs. 6938;
- (ii) foreign contribution of / worth Rs. 1216713 was received by the Association during the financial year 2021-22;
- (iii) interest accrued on foreign contribution and other income derived from foreign contribution or interest thereon of/worth Rs. 18894 was received by the Association during the financial year 2021-22;
- (iv) the balance of unutilised foreign contribution with the Association at the end of the financial year 2021-22 was Rs. 3831772=00;
- (v) Certified that the Association has maintained the accounts of foreign contribution and records relating thereto in the manner specified in section 19 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) read with rule 17 of the Foreign Contribution (Regulation) Rules, 2011.
- (vi) The information in this certificate and in the enclosed Balance Sheet and statement of Receipt and Payment is correct as checked by me/us.
- (vii) The association has utilized the foreign contribution received for the purpose(s) it is registered/ granted prior permission under Foreign Contribution (Regulation) Act, 2010

Place: Indore

Date: 03/08/2022

UDIM: 22079949APKPKXK8027



Signature of Chartered Accountant (Seal, Address And Registration number)

4. Thus, Ld. AR submitted, the assessee filed copy of registration-certificate of assessee showing registration u/s 12A/12AA before 01.04.2021. Further, the assessee filed copy of FEMA declaration-cum-undertaking submitted to Bank, Proof of international payment and Utilisation-Certificate of foreign donations issued by a Chartered Accountant. Ld. AR submitted in Point No. (i) to (iv) of the Certificate, the Chartered Accountant has given complete details of foreign contributions received, utilized, etc.; thereafter in Point No. (v) to (vi) has certified that the assessee has maintained accounts of foreign contributions and lastly in Point No. (vii) has also certified that the assessee has utilized the foreign contributions received for the purpose(s). Thus, the assessee has given complete details to satisfy the CIT(E). Therefore, the CIT(E) ought to have granted registration as applied for. Ld. AR prayed to direct the CIT(E) to grant registration to assessee.

5. Per contra, Ld. DR for revenue supported the order of CIT(E). She referred the very same part of the order of CIT(E), as re-produced above, and submitted that the CIT(E) has clearly noted that the assessee filed few documents but not filed complete documents. Therefore, the CIT(E) has rightly rejected assessee's application.

6. We have considered rival contentions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. After a careful consideration, we find that the CIT(E) raised two queries in letter dated 27.10.2023. So far as first query as

to whether or not the assessee was having registration u/s 12A/12AA before 01.04.2021, the assessee filed a copy of registration-certificate showing that it was having such registration. The CIT(E) has not raised any objection qua this query in concluding para of his order, therefore the CIT(E) has already accepted assessee's submission. Coming to second query raised by CIT(E), the CIT(E) asked the assessee to file details of foreign contributions for last 3 years but perusal of documents submitted by assessee shows that the FEMA Declaration-cum-undertaking and Proof of international payment are in connection with a donation received on 03.09.2023/05.09.2023 which is a very recent receipt and not for last 3 years. Further, the Certificate of Chartered Accountant is for the year 2021-22 only and not for all 3 years as required by CIT(E). Although it may be so that the assessee did not receive any contribution in other years but that fact is also mentioned in assessee's reply. Therefore, the documents filed by assessee are apparently not sufficient as required by CIT(E). That apart, from the query raised by CIT(E), it is manifest that he required the assessee to submit some more details/documents like sanction-letter of donor, projectwise details, etc. but neither the assessee has filed those details/documents nor made any submission in reply that those details/documents could not have been filed or required. Therefore, the CIT(E) is justified in observing that the documents filed by assessee are not complete. In the situation, we feel it more appropriate to grant one more opportunity to assessee to make a proper and sufficient representation to the queries raised by CIT(E) to enable

the CIT(E) to consider the same and pass order afresh. Needless to mention that the CIT(E) shall open the window to enable the assessee to make submission, fix the hearings as required and pass a proper order after consideration of assessee's submission without being influenced by his previous order.

7. Resultantly, this appeal of assessee is allowed for statistical purpose.

Order pronounced in open court on 30.04.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30.04.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore