

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 37/JP/2024
निर्धारण वर्ष / Assessment Years : 2023-24

Shriteja Mandir Trust, Commerce College Road Talwandi, Kota	बनाम Vs.	CIT Exemption, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAETS 1067 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vedant Agarwal (Adv.)
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 15/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 01/05/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the Commissioner of Income Tax, Exemption, Jaipur dated 27/09/2022 [here in after Id. CIT(E)] being the order for rejection of the registration of the assessee trust u/s. 12AB of the Income Tax Act.

2. At the outset of the hearing the bench noted that in the present appeal filed by the assessee is filed with a delay of 416 days in filing of the

appeal. The Id. AR of the assessee invited our attention to the prayer application for condonation of delay and the content of the petition reads as:

“Sub: Request for condonation of delay in filing the appeal in the case of Shriteja Mandir Trust, Kota. Appeal no 37/JPR/2024.

Yourhonour’s,

In this case the due date to file the appeal was 26/11/2022 but filed on dated 16-01-2024.

Yourhonour's the delay was because of long illness of Shri Babulal Chaudhary. Chairman of appellant trust. He was suffering Coronary Artery disease and was advised complete bed rest from September 2022 to December 2023, copy of medical certificate & affidavit are attached herewith for kind perusal and verification.

Prayer

It is therefore most respectfully pray that the delay of 416 days in filing the appeal may kindly be condoned in the interest of justice and the appeal may kindly be admitted.”

In support of these contention an affidavit duly sworn was also filed by chairmen of the trust.

2.1 The Id. AR of the assessee in support of the condonation petition humbly submitted that there were 3 occasions on which notices were issued and on the 3rd occasions. The assessee could not submit the required details as the trustee who was handling the affairs was under medical treatment and was advised bed rest. In support of the contention, he relied upon the affidavit filed. After 3rd notices, the assessee could not

submit the details and therefore, he in support of the delay relied upon the fact that since managing trustee who is our about the fact of the case was undertaking medical treatment and was advised bed rest. On resuming the duty, he immediately filed the appeal against the order of registration of the assessee trust. Therefore, in the interest of justice, he prayed to condonation the delay.

2.2 On the other hand, the Id. DR objected to the prayer of the assessee and submitted that the activities of the trust were also running in the absence of Chairman of the trust. Therefore, why the other office bearers could not file the appeal. However, the Id. DR left the decision of condonation of delay in filing the appeal in the light of the facts narrated in the petition of the assessee trust and prayed that the bench may decide the issue as deem fit in the interest of justice.

2.3 Heard the parties, perused the materials available on record. The bench noted that the assessee has complied the earlier two notices and submitted the details on the 3rd occasions the Chairman of the trust became ill and could not furnish the details in the desire way / format or the extent required. Therefore, the order has been passed. So far as the filling of the appeal in time also the reason is

that the chairmen of the trust who is authorized person become sick and was advised bed rest and therefore, the appeal could not be filed. In support of these contention the Id. AR of the assessee filed the affidavit and relevant medical records. Considering all these aspects of the matter we find that there is a reasonable cause to the assessee in filling this appeal belatedly of 416 days. Thus, based on that evidence and records we condoned the delay and respectfully following 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. In this appeal, the assessee has raised following grounds: -

"1. On the facts and circumstances of the case and in law also Ld. CIT (Exemption), Jaipur grossly erred in rejecting the application for registration u/s 12AB of the Income Tax Act, 1961.

2. On the facts and circumstances of the case and in law also Ld. CIT (Exemption), Jaipur grossly erred in holding that the activities letting out of properties on rent, which is the primary source of income, are not charitable in nature and therefore also erred in rejecting the application for registration.

3. On the facts and circumstances of the case Ld. CIT (Exemption) Jaipur grossly erred in not considering the fact that the activities of society are genuine and the society has fulfilled all the necessary conditions for registration as stipulated in the law.

4. On the facts and circumstances of the case and in law also Ld. CIT (Exemption) grossly erred in not considering the replies filed in this respect and also in not providing a reasonable opportunity of being heard before rejecting the application for registration."

4. Succinctly, the fact as culled out from the records is that the assessee filed application online dated 27.03.2022 in Form No. 10AB for seeking registration u/s 12AB of the Income Tax Act. 1961. The assessee was issued a letter/notice No. ITBA/EXM/F/EXM43/2022-23/1044662712 (1) dated 16.08.2022 requesting therein to submit certain documents/ explanations by 05.09.2022. The assessee submitted its reply on 04-09-2022 along with relevant documents / clarification. The reply was perused and few discrepancies were found. Accordingly, the applicant was asked to submit clarification / information / details on the said discrepancies vide letter dated 13.09.2022 requesting to submit the relevant documents. In response to the above notice the assessee furnished reply on 14.09.2022. The reply furnished by the assessee was perused and few discrepancies were found. Thereafter, another notice was sent to the assessee requesting to furnish details / information / clarification by 21.09.2022 vide letter dated 19.09.2022. On given date the assessee didn't furnish any reply nor anyone attended in response to the show cause. Even after giving sufficient opportunity, the assessee failed to furnish complete details as sought for in the letters sent to the assessee. Therefore, the Id. CIT(E) noted that the assessee failed to furnish satisfactory response of the letters seeking details of the students staying in the Hostels run by the assessee

due to which corroboration between activities of the assessee and expenditure so made could not be established. Thus, the genuineness of the activities of the assessee could not be determined. Thus, it is clear that the activities of the assessee are not charitable in nature as it is predominantly carrying out activities of letting out property on rent which is the primary source of income for the assessee. Hence, the assessee cannot be held as charitable within the meaning of Sec. 2(15) of the Income-tax Act, 1961. Based on these observation the assessee trust is not considered fit for registration and, therefore, registration u/s 12AB was rejected the relevant finding of the Id. CIT(E), is reiterated here in below:

“On examination of Income and Expenditure accounts & Form No. 26AS & details furnished by the applicant, it is quite clear that

1. The applicant has let out many properties on rent for which rental income has been received.
2. Against such activity, TDS has also been deducted on such impugned receipts under section 1941(b) of the Act.
3. As such, the applicant is receiving rental receipts. Hence, impugned receipts/considerations shown in the I&E Account for FY 2019-20 are nothing, but Income received from letting out of property which is of the nature of Business/commercial Receipts.
4. The same scenario is visible in the final accounts and 26AS statements for the F.Y. 2020-21 and F.Y. 2018-19 as well.

04. It is pertinent to state that the income from such commercial activities is forming more than 20% of the total receipts for F.Y. 2019-20 i.e. in contravention to the provisions laid down in 1st proviso to Sec. 2(15). Hence, the applicant fails condition (b) of the proviso. Further, such commercial activities are not the incidental but are pre-dominant activity of the applicant. Hence, the applicant also fails condition (a) of the proviso. Therefore, as per the proviso, such activity in the nature of advancement of an object of General Public Utility shall not qualify as charitable activity.

05. It is further noticed that the SFT details of the applicant depict that there has been cash deposit of Rs. 31,30,000/- over the F.Y. 2019-20. In account of the above, the applicant was asked to furnish explanation regarding the same. The reply of the applicant has not been found satisfactory. Hence, in the absence of such consistency, it seems that the trust/institution is in receipt of anonymous donation.

Moreover, the applicant failed to furnish satisfactory response of the letters of this office seeking details of the students staying in the Hostels run by the applicant due to which corroboration between activities of the applicant and expenditure so made could not be established. Thus, the genuineness of the activities of the applicant could not be determined.

06. Based on above discussion, it is clear that the activities of the applicant are not charitable in nature as it is predominantly carrying out activities of letting out property on rent which is the primary source of income for the applicant. Hence, the applicant cannot be held as charitable within the meaning of Sec. 2(15) of the Income-tax Act, 1961. Based on above, I am satisfied that the applicant trust is not fit for registration and, therefore, registration u/s 12AB is rejected and filed.”

5. Aggrieved from the above order of the Id. CIT(E), the assessee preferred the present appeal. In support of the grounds so raised, the Id. AR of the assessee submitted that the assessee has submitted all the details in response to the notice earlier but on the 3rd notices, the assessee could not submit the required details on account of ill health of the Chairman and trust. At the same the Id. AR of the assessee submitted that if given a chance / opportunity to represent the case before the Id. CIT(E) the assessee has submit all the details that is required by the Id. CIT(E) and the assessee was deprive of the justice based on the facts presented in the affidavit filed by the chairmen of the assessee trust.

6. Per contra, the Id. DR representing, the revenue submitted that there were three notices issued to the trust establishing that the trustees engaged in the nature of business activity and that aspect has not been established and therefore, the registration has rightly been denied. However, the Id. DR has not objected to the prayer of the assessee to give one more chance to represent the fact on account of due to ill health of Chairman of the Trust.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that in this case there were three notices were issued the assessee has complied and filed the details in response to the two notice but when the third notice issued the chairmen of the trust become sick and was advised bed rest. In support of this the affidavit and medical report was filed. Thus, the bench feels that the assessee has justified as to the reason as to why the complete details were not provided by the assessee. Considering that aspect of the matter and in the interest of the principles of nature justice we deem it fit to restore the matter to the file of Id. CIT(E) to decide on the merit of the case afresh after giving the opportunity of being heard to the assessee. Based on these observations we set aside the challenged order to the file of Id. CIT(E) to decide the issue of registration of the assessee trust on merits. The assessee is also directed to co-operate with the Id. CIT(E) in deciding the issue of

registration and the assessee is directed to comply with the notices asking for the details and should not seek time without sufficient reason. 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 merits of the dispute, which shall be adjudicated by the learned Commissioner of Income Tax, (Exemption) independently in accordance with the law.

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

Order pronounced in the open court on 01/05/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/05/2024

*Ganesh Kumar, PS

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

1. The Appellant- Shriteja Mandir Trust, Kota
2. प्रत्यर्थी / The Respondent- CIT Exemption, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 37/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

