

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ ITA. No. 95/JPR/2024
निर्धारण वर्ष / Assessment Year : 2024-25

Anushree Foundation 51 Moji Colony Malviya Nagar, Jaipur.	बनाम Vs.	CIT (Exemption) Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAGTA0269H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri S.L. Jain (Adv.) &
Shri Ashok Kumar Gupta (Adv.)
राजस्व की ओरसे / Revenue by: Shri Anil Dhaka (CIT)

सुनवाई की तारीख / Date of Hearing : 29/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 29/05/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

Appellant claims itself to be a charitable trust. Before Learned CIT(Exemption), it happened to file an application u/s 12AB of the Income Tax Act (hereinafter referred to as the "Act").

On 19.05.2023, Learned CIT(E) dismissed the application on two grounds. The first that Form 10AB was incomplete. The second that the applicant failed to avail of repeated opportunities granted to produce requisite documents/details, and as a result, it could not be determined that

the applicant was genuinely carrying out charitable activities as per its objects.

2. Applicant/appellant challenged said order passed by the Learned CIT(E) by filing appeal on 30.01.2024, before this Appellate Tribunal. The appeal came to be presented after a delay of 196 days. Therefore, with the appeal, applicant also submitted an application seeking condonation of delay in filing the appeal.

3. During the pendency of this matter, applicant was provided an opportunity to file documents by way of evidence, on the point of condonation of delay.

Thereupon, applicant has presented affidavit of Shri Vikas Jain (CA) along with copies of certain documents.

4. Arguments heard. File perused.

5. Condonation of delay is sought on the ground that the impugned order dated 19.05.2023, even though received from department on the same date, on the email ID of its trustee, could not be noticed on that very day, and rather, the trustee noticed the same much later.

6. While elaborating the abovesaid grounds, Learned AR for the applicant has submitted that the impugned order was sent by the department on the e-mail ID of Smt. Anushree Dasot, one of the trustees of

the applicant, but Shri Aditya, one of the employee of the trust, who was handling the work related to e-mails, left the services of the trust, and as such, the impugned order could not be noticed soon after its receipt on the email ID.

Learned AR has further submitted that during the days of preparations in relation to audit and return, the trustee of the applicant enquired from the concerned CA, who had filed application U/s 12A of the Act, to know about its status, and that it was on his advice that the trustee checked email account and came to know of the impugned order available on her e-mail ID.

As further submitted, it was thereafter that steps were taken to prefer an appeal.

The contention is that there is no negligence on the part of the trust, and as such delay in filing the appeal be condoned, and the appeal be disposed of on merits.

7. Learned DR for the department has opposed the application and countered the submissions put forth by Ld. AR for the applicant.

Submission of Learned DR is that the applicant has miserably failed to prove that there was a sufficient cause in non filing of the appeal within prescribed period of limitation, and as such, not only this application

deserves to be dismissed, even the appeal deserves to be dismissed being barred by limitation.

8. As noticed above, it is not in dispute that e-mail ID of the trustee, Smt. Anushree Dasot was provided to the department and the impugned order was sent on the said e-mail ID on 19.05.2023 i.e. the day, it was passed.

In order to prove the averment that during relevant period, Shri Aditya Medatwal employee of the trustee was handling or dealing with e-mail work of the trust, applicant has subsequently filed copies only of Aadhar Card and PAN card of Shri Aditya Medatwal, resident of Jaipur.

It is significant to note that only during arguments, Ld. AR for the applicant submitted that the said employee was appointed at monthly salary of Rs. 5,000/- on 01.11.2022, on part time basis, and that he left the organization on 31.12.2022.

9. The impugned order is dated 19.05.2023. It was for the applicant to prove as to who was handling e-mail pertaining to the trust-applicant . Shri Aditya Medatwal is stated to have worked with the said organization only upto 30.12.2022. Applicant was or were required to place on record documents as to who used to deal with/handle e-mails relating to the

trustee, during the relevant period i.e. on or after 19.05.2023. However, no document has been placed on record in this regard.

In the course of arguments, Learned AR for the applicant has submitted that due to non checking of her email account by the trustee, the applicant is ready to deposit reasonable costs, and that the delay be condoned.

10. Nowhere, in the application, it was specified as to on which date Smt. Anushree, the trustee checked her email account. Ultimately, the version put forth by the applicant is that Smt. Anushree Dasot checked her e-mail account on 03.01.2024 and, that is how, she came to know about passing of the impugned order. Before that she is stated to have contacted Shri Vikash Jain (C.A.) who was engaged for the purposes of registration of the trust u/s 12AA of the Act. Said Trustee contacted him in connection with preparations pertaining to audit and return.

In support of this averment, affidavit of Shri Vikash Jain (C.A.) has been filed. As per this affidavit, the trustee enquired from him about the status of application u/s 12AA of the Act, and that is how, he advised her to check her e-mail account. In this way, Shri Vikash Jain (C.A.) has supported the claim of the trustee as put forth in the application as well as her own affidavit submitted in support thereof.

11. From what has been discussed above, we find that Smt. Anushree Dasot as trustee of the applicant, came to know about the impugned order only on 03.01.2024.

In the given facts and circumstances of the case when the applicant claims itself to be a trust, and in view of the impugned order, its application u/s 12AA of the Act, stands dismissed, due to non participation and negligence of the representative of trustee of applicant, the reason being that she was unaware of the receipt of the said order having failed to check her e-mail account , we deem it a fit case to condone the delay in filing of the appeal, but subject to costs.

Accordingly, the application seeking condonation of delay is allowed and delay in filing of the appeal is condoned. The applicant is directed to deposit Rs. 2,000/- in Prime Minister's Relief Funds as costs.

On merits

12. The only submission put forth on behalf of the appellant is that Shri Aditya Medatwal concerned employee of the trustee having left the organization on 31.12.2022, the applicant could not participate in the proceedings before the Learned CIT(E) on the dates for which notices are said to have been issued for filing of reply, but not noticed by the trustee.

13. As finds mentioned in the impugned order, notices were issued by the Learned CIT(E) by e-mail ID on 25.03.2023, 18.04.2023, 27.04.2023. Last date of hearing before Learned CIT(E) was 04.05.2023, but no one appeared for the applicant, and ultimately, after going through the record the impugned order came to be passed.

Had Smt. Anushree Dasot, trustee of the applicant been diligent enough, she would have checked her e-mail account and participated in the proceedings before Learned CIT(E).

As noticed above, she checked her e-mail only on 03.01.2024, when informed by Shri Vikash Jain (C.A.) that as regards her application u/s 12AA of the Act, she might have received notices or orders on her e-mail account and that she should check her e-mail ID.

From her affidavit, supported by that of Shi Vikash Jain (C.A.), it transpires that Smt. Anushree Dasot was not aware of the notices received from the department in connection with application u/s 12AB of the Act.

14. In the given facts and circumstances of the case, we deem it a fit case to restore the matter to the files of the Learned CIT(E) for decision of the application under section 12 AB of the Act afresh, after providing reasonable opportunity for hearing the applicant.

Result

15. Consequently, the appeal is disposed off for statistical purposes and the matter is restored to the files of Learned CIT(E), who shall decide the application u/s 12AB of the Act afresh, in accordance with law, after providing to the applicant reasonable opportunity of being heard. The applicant also to produce before Learned CIT(E), receipt in proof of deposit of cost of Rs. 2,000/- imposed today, and thereupon, Learned CIT(E) to commence proceedings.

Order pronounced in the open court on 29/05/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 29/05/2024
*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Anushree Foundation, Jaipur.
2. प्रत्यर्धी / 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. 95/JPR/2024)

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar