

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 684/Chd/2023
निर्धारण वर्ष / Assessment Year : 2023-24

The Ambala Board of Education C/o Shri Tejmohan Singh, Advocate # 527, Sector 10D, Chandigarh	बनाम	The CIT(Exemptions), Chandigarh
स्थायी लेखा सं./PAN NO: AABAT0668H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tejmohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख/Date of Hearing : 20/06/2024
उद्घोषणा की तारीख/Date of Pronouncement : 27/06/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee under section 253 of the Income Tax Act, 1961 who is aggrieved by order of CIT(Exemptions) Chandigarh bearing No. ITBA/EXM/EXM45/2023-2024/1054593452(1) DT. 26/07/2023 which is hereinafter referred to as "**impugned order**" for the sake of brevity.

Factual Matrix

- An application for registration under section 12A(1)(ac)(iii) of the Income Tax Act, 1961 was filed by the assessee on 14/02/2023.
- That the assessee had furnished following documents alongwith Form 10AB which is a statutory form required to be filled in:
 - Trust Deed
 - Certificate of registration of societies
- That upon scrutiny of above, it was found by CIT(E) that the documents provided by assessee are not sufficient for assessing the genuineness of the activities of the trust. That it could not be verified from the available

documents whether the applicant is complying the objects mentioned in the trust deed or not.

5. Therefore, in order to examine and verify the objects of the trust or the institution, the genuineness of its activities and compliance with such requirements of any other law for the time being in force as are material for the purpose of achieving its objects, a questionnaire was issued electronically on 24.04.2023 requesting the applicant to furnish the following documents/details online through e-proceedings on e-filing portal along with the supporting documents/evidence, point wise in the sequence by 09.05.2023:-

1. Whether the trust/society/company has been granted provisional registration u/s 12AB? If yes, please furnish the self-certified copy of the Form 10AC issued by CPC, Bangalore.

2. Please specify the date of commencement of activities and furnish documentary evidence(s) to prove beyond doubt that the activities as mentioned in the MoA/trust deed/registration certificate under Societies Registration Act had actually commenced on the above mentioned date along-with the bank(s) statements to substantiate your claim.

3. Provide documentary evidences e.g. Photos, vouchers, bills of the expenses etc. of charitable or religious activities carried out in the last one year, towards fulfillment of aims and objects mentioned in the MoA/Trust deed. Also furnish the legible copy of bank statements of last one year and corroborate the above said expenses highlighting the same in the bank statements.

4. Whether the application in Form 10AB has filed within six months from the commencement of activities or within the extended time limit provided vide CBDT instruction/circular/notification, if any?

5. Please furnish the self-certified copy of MoA/Trust Deed i.e. document creating or establishing the applicant. Also furnish the proofs of the identities of the main / managing trustees/ directors/ president/ secretary of the institution.

6. Please furnish a self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts is enclosed?

7. Whether the applicant is Registered under the Foreign Contribution (Regulation) Act, 2010(42 of 2010).

8. If yes, furnish a self-certified copy of Registration under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)?

9. Please furnish an affidavit / undertaking to the effect that the institution is complying with all the requirements of law as are material for the purpose of its objects as enumerated in the trust deed/MoA.

10. Please furnish an undertaking that there will be no infringement to the 1st proviso to Section 2(15) of the Income Tax Act, 1961.

11. Please furnish a comprehensive note on activities being conducted by the society/trust.

12. Whether any part of income of the institution enures, directly or indirectly, for the benefit of a person specified u/s 13(3) of the Income Tax Act, 1961.

13. Please specify whether the Society/Trust/Company established solely for charitable purpose or solely for religious purpose. Please note that a trust can be both religious and charitable only if established before 01.04.1962.

14. Please state, whether, you have been and are interested in carrying out religious activities or not, if yes, then please consider that any activity which is religious in nature cannot be considered as a charitable activity u/s 2(15) of the Act.

15. Further, if you are not carrying out any religious activity then please provide an affidavit containing the following points:-

1. That the Society/Trust/Company has not been or will not be working for the benefit of any particular religion community/caste/race etc.

2. That no religious activity has been or will be carried out.

3. If the Society/Trust/Company exists solely for charitable purpose then any object depicts religious activity shall be omitted from the trust deed/MoA and measures/steps taken immediately to accomplish the same.

6. On the stipulated date i.e. **09.05.2023** neither any submission was made nor was any request for adjournment or other communication received from the applicant through any channel. Another letter granting necessary opportunity was issued to the applicant on **30.06.2023** and the matter was fixed for reply by **06.07.2023**. On the stipulated date i.e. **06.07.2023** neither any submission was made nor was any request for adjournment or other communication received from the applicant through any channel. Therefore, in the interests of natural justice, final opportunity was then accorded to the applicant on **12.07.2023** and the matter was fixed for **20.07.2023**. However, once again, no reply has been furnished in the case nor any communication received from the applicant through any channel even till the date of passing of this order. Given the non-compliances on the aforesaid occasions

afforded to the applicant, it becomes evident that the applicant is not interested in pursuing the matter. In the absence of submissions regarding the activities, it is difficult to ascertain that the activities carried out by the applicant are in accordance with its objects & hence, the genuineness of activities cannot be established. It can safely be concluded that the queries raised could not be answered satisfactorily by the applicant.

7. It is also could not be verified from the available documents whether the applicant is complying the objects mentioned in the trust deed or not. In this regard, questionnaires dated **24.04.2023** was sent to the applicant asking further details. But on the stipulated dates i.e. **09.05.2023, 06.07.2023 & 20.07.2023** and till date of passing of order, neither any submission was made nor was any request for adjournment or other communication received from the applicant through any channel. However, the applicant has failed to comply with the letters issued by this office, despite being given multiple opportunities, details of which are given above. In the absence of such documents, it could not be determined whether the applicant is genuinely carrying out charitable activities as per its objects. Therefore, applicant's claim of registration u/s 12AB is also liable to be rejected on ground of not proving genuineness of its activities.

8. Due to non cooperative attitude of the assessee the Ld. CIT(E) has held as follows in the impugned order:

5. In view of the above discussions, the present application of the assessee filed in Form 10AB u/s 12A(1)(ac)(iii) of the Act is disposed of as being deficient in factual evidences in the absence of the requisite submissions of the assessee at the scheduled hearings. It is pertinent to mention here that it is mandated by the provisions of Section 12A(1)(ac)(iii) of the Act that where the trust or institution has been provisionally registered u/s 12AB it has to make an application for registration u/s 12AB within six months of commencement of activities. In the absence of required submission from the applicant it is not possible to ascertain that the activities carried out by the applicant are in accordance with its objects and genuine in nature. Accordingly the application filed by the applicant for registration u/s 12AB of the Act is hereby rejected, which rejection and consequent lack of registration will apply from the F.Y. 2022-23 onwards and also supersede any registration granted u/s 12AB or 12AA of the Act by any authority at any earlier time.

9. That the Ld. CIT(E) impugned order in brief was an ex parte order as the assessee did not cooperate with the Department. Hence impugned order came to be passed. In Form 36 following grounds of appeal are raised:

1. That the Ld. Commissioner of Income Tax (Exemptions) has erred in law in passing an ex- parte order rejecting the registration sought under section 12AB which is against the Principals of Natural Justice and as such the order passed is arbitrary and unjustified.

2. That the Ld. Commissioner of Income Tax (Exemptions) has erred in rejecting the registration ex-parte only on the basis of alleged non-compliance on part of the assessee when in fact no email/notice was received by the assessee to check the portal and as such the order passed is arbitrary and unjustified.

3. Without prejudice to the above, the Ld. Commissioner of Income Tax (Exemptions) has erred in law as well as on facts in rejecting registration under section 12AB of the Act which is arbitrary & unjustified.

4. That the registration has been refused only on the basis of suspicion, conjectures and surmises stating that the applicant is not interested in pursuing the matter which is factually incorrect and as such the order refusing registration is illegal, arbitrary and unjustified.

5. That the order of the Ld. Commissioner of Income Tax is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

Record of Hearing

10. The hearing in the matter took place before us on 20.06.2024 when both the parties appeared before us. The Ld. AR contended that no email/notice was received by the assessee and therefore impugned order is arbitrary and is against the principles of natural justice. It is unjustified order. It was further contended that registration has been refused on basis of suspicion, conjectures and surmises and that it is wrongly stated in the impugned order that the assessee is not interested in pursuing the matter which is factually incorrect and that order refusing registration is illegal, arbitrary and unjustified. **The Ld. AR in response to the query by Bench as to why no compliance was made by assessee despite several notices for hearing, explanations and requisitions he stated that no notice was received by the assessee. Upon further query it was revealed to us that for the communication purposes email address was given and that too of assessee's Counsel and that counsel never informed the assessee the Ambala Board of Education. The Ld. AR was then requested to produce chain of email**

correspondences between he assessee and his Counsel which was not readily available with him. However he showed to the Bench a copy of email dt. 21/11/2023 exchanged between the assessee one Atul Gupta, Advocate (presumably) from which it appears that he was managing all the income Tax related matters till 2022 of the assessee, the Ambala Board of Education. It was stated that for ease of working and complying with the Income Tax requirements email id and mobile number of said Atul was given **as primary contact** for all communication and that the same was only changed in October 2023. In said email it is also recorded that a telephonic conversation took place between assessee's official and Counsels, wherein Counsels have assured to assessee's official that they have not received any communication / notice from the Income Tax Department on their email nor any SMS on their cell number **till October 2023** on issue of registration of Ambala Board of Education with Income Tax Department. **A confirmation in this regard was sought as assessee was to file an appeal with ITAT Chandigarh against cancellation of provisional registration under section 12A of the Income Tax Act, 1961. A formal letter was demanded from Counsels too.** In view of this email dt. Nov 21st 2023 it was contended by the Ld. AR that assessee **was kept in dark by their own Counsels** and for mistake of Counsels they should not suffer. We have perused the affidavit of one Harbans Singh dt. 18/01/2024 duly notarised on 24/01/2024 where notary is one Ashwani Verma of Government of India and another affidavit of Jyoti Joshi dated 02/02/2024 notarised on 03/02/2024 where notary is one P.S. Walia. These two affidavits too speaks of assessee getting knowledge about notice dt. 24/04/2023 , 30/06/2023 and 12/07/2023 from IT Portal. They have aired grievance about non receipt of notice on the secondary mail id or SMS on secondary contact number of society. In affidavit of Harbans Singh it is also averred that society had written several emails dt. 21/11/2023, 24/11/2023, 25/11/2023, 09/12/2023, 09/01/2024 and 12/01/2024 to Counsels for confirmation of receipt of hearing notices dt. 24/04/2023, 30/06/2023 and 12/07/2023 but unfortunately there is no response from their counsels. Be it noted that both the affidavits are filed in support of condonation of delay

application as there was delay of 44 days in filing the present appeal. **The Ld. DR** has supported the impugned order and pressed hard that no mercy be shown both in condonation of delay as well as in appeal as conduct of assessee and his Counsels are not good and proper. The entire system get's clogged due to such type of assessee and reputation of Department get's tarnished. In brief the Ld. DR sought tough action against assessee and prayed that both application for condonation of delay and if delay is condoned thereafter appeal should be dismissed.

11.

Findings and Conclusions

11.1 We now examined the legality, validity and propriety of the impugned order as well as condonation of delay.

11.2 We condone delay in view of affidavits filed in support of condonation of delay application.

11.3 **Based on the submissions now made before us** and by going through the affidavits of officials of the assessee. We are of the considered view that it was indeed a mistake of Counsels to have not informed the assessee either in affirmative or otherwise in writing which approach of Counsels, we do not appreciate at all; we deprecate such an approach. Needless to state Client-Counsel relationship is professional in nature and are guided by professional ethics and standards. Professional etiquettes too requires besides conduct to inform the assessee clients. Duties of Counsels towards clients are well laid down. There is a breach of professional ethics though we have not heard old Counsels as how the new Counsels are on record. Be that as it may we set aside the impugned order and remand the matter back to the file of CIT(E) with a direction to decide the case afresh on denovo basis as soon as possible preferably within 8 weeks from date of receipt of this order.

11.4 We also simultaneously direct assessee to cooperate with the office of CIT(E) and furnish to them all information in transparent manner. The CIT(E) is further directed to pass a fresh order on merits after hearing the assessee.

11.5 In so far as Ld. DR contention is concerned that approach of assessee has been one of non cooperation we hold that sufficient explanations have been given by the assessee and further no other order is required to be made.

11.6 Before parting we caution members of professional community Advocates, Chartered Accountants that their conduct should be above board. The present Ld. AR is directed to admonish the old Counsel after further due verification of fact as to why they did not inform the assessee about notices of Department in this case. We have noticed from chain of email correspondences that there is a blame culture between assessee and Counsels which should be avoided.

ORDER

12. In foregoing we set aside the impugned order as and by way of Remand.

13. Appeal of assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27/06/2024

Sd/-

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar