

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

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

आयकर अपील सं./ITA No. 787/JPR/2024
निर्धारण वर्ष/Assessment Year : 2023-24

M/s. Mentor Foundation Mentor House, Govind Marg, Sethi Colony, Jaipur 302 004	बनाम Vs.	The CIT (Exemption), Jaipur Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAOCM 9521 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri K.L. Moolchandani, AR
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 16/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 09/12/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

The assessee has filed an appeal against the order of the Id.CIT(E), Jaipur dated 27-03-2024 passed u/s 12AB of the Income Tax Act, 1961 raising therein following grounds of appeal.

1. On the facts and in the circumstances of the case, the Id. CIT(Exemption) have factually and legally erred in not appreciating the contents of MOA in right perspective without verifying and examining the actual nature of activities and objects of the Trust. In fact all the objects and activities vide objectNo.G-2,(10) and 47 as pointed out by the Id. CIT (Exemption) are of charitable nature; not attracting the provisions of section 2(15) as alleged by the Id. CIT (Exemption). Thus such findings are factually and legally incorrect and the same deserve to quash summarily.

2. On the facts and in the circumstances of the case, the Id. CIT (Exemption) have factually and legally erred in interpreting the object No. (B)-14. In fact, the Trust had never undertaken any activities in Abroad, nor it intends to undertake any such activities in future also. During the course of hearing opportunity was allowed to give such undertaking. Thus such findings of the Id. CIT(Exemption) are factually and legally incorrect the same deserves to be quashed summarily.

3. On the facts and in the circumstances of the case, the Id. CIT (Exemption) have factually and legally erred in taking an adverse view for want of certain details and documents which could not be submitted on account of short notice. All these details are very well available and would be submitted in due course.

4. Again, on the facts and in the circumstances of the case, the Id. AO (Exemption) have factually and legally erred in appreciating the contents of MOA in right perspective. In fact, due to cut-paste process, the contents of MOA have been printed through an over-sight. However the Trust had never undertaken the process of Buy-Back of the Shares and the disposal of the assets of the Trust at the time of Winding up of the Trust etc. in any manner and at any stage. In fact, these clauses were stereotyped without consideration and without application of mind which were never acted upon in reality. This is an evident fact from the Books of the Trust. However, no opportunity was allowed by the LD. CIT(Exemption) to explain this point at the time of Registration. It is however, undertaken that the Trust would not indulge in such activity of Buy Back of the Share and allocation of the assets on its winding up

5. Again, on the facts and in the circumstances of the case, the Id CIT (Exemption) have factually and legally erred in taking an adverse view for the alleged non-compliance of certain requirements. In fact, at the given point of time, the founder Member, Sh. Sahil Goyal was out of station in connection with his own marriage. In the circumstances, the required clarification, corrections and compliance could not be made in time due to honest and bona-fide reasons.’’

2.1 At the outset of hearing, the Bench noted that there is delay of one day in filing the appeal by the assessee for which the assessee vide application dated 21-08-2023 filed a condonation application with the prayer to condone the delay of one day in filing the appeal. To this effect,

the assessee has filed an affidavit with the prayer that appeal was filed on 27-05-2024 but this delay may kindly be condoned as it is not intentional and it is a bona fide mistake in calculating the time limit of 60 days in filing the appeal..

2.2 On the other hand, the ld. DR objected to such delay of one day in filing the appeal by the assessee but submitted that the Court may decide the issue as deem fit and proper in such matter.

2.3 After hearing both the parties and perusing the material available on record, the Bench noted the submissions of the assessee and found that this is not an inordinate delay and the assessee has reasonable cause to consider his application for condonation of delay of one day and there is merit in his submission. Hence, the delay of one day in filing the appeal by the assessee is condoned.

3.1 Apropos Ground No. 1 to 5 of the assessee, ld. CIT(E) rejected the assessee's claim of registration u/s 12AB of the Act by observing as under:-

“A.3.2. However, the applicant didn't furnish any response to the above. Thus, it is clear that the applicant intends to carry out the activities outside country and is not eligible for registration u/s. 12AB of the IT Act, 1961.

A.4. In view of above discussion assessee's claim of registration section 12AB is liable to be rejected and thus being rejected on following grounds: -

- Genuineness of Activities and non-compliance.

- Discrepancies in AOA of the Applicant.
- Activities of International nature.

B. Above grounds of rejection still stands in present application as applicant failed to justify against the query raised vide show cause letter dated 16.03.2024. Also in present application applicants activities also held non genuine on the following issues:

B.1 No valid provisional registration thus present application is infructuous as non-maintainable:-

B.2.1. It is seen that applicant filed provisional registration in form 10AC dated 20.10.2021. But the same was lapsed along with rejection order dated 25.07.2023 in view of section 12AB (1)(b)(ii)(B) which state that if CIT is not satisfied has to pass order rejecting such application and also cancelling its earlier registration.

Thus it is clear that provisional registration dated 20.10.2021 was lapsed and on the same form 10AC, applicant filed present application. As per the Income Tax Act, 1961, it is necessary to have provisional certificate under clause (vi) of clause (ac) of sub-section (1) of section 12A of the Income Tax Act, 1961 for the institution applying for regular registration.

Here in the present case applicant do not have its valid provisional certificate and without having same applied for regular registration in form 10AB dated 22.09.2023, Thus the application filed by applicant dated 22.09.2023 is infructuous as non-maintainable. Applicant was given show cause in this regard vide this office letter dated 16.03.2024 which is as under:

"with that application provisional also lapsed, thus how this application maintainable."

In response, no reply filed by the applicant. Thus, applicant has nothing to say in this regard. On the basis of above, present application for registration u/s 12AB without having valid provisional registration is infructuous and non-maintainable.

C. Non submission of further reply and non-genuineness of activities:-

Notwithstanding anything written in earlier paras, assessee again asked following details vide show cause letter dated 16.03.2024:

"Please furnish ledger & bill voucher of major expenses in the nature of construction /repairing of Hospital building and providing of medical equipment to the hospitals.

On 31.03.2022 you have paid Rs. 1,54,725/- to mentor home loan pvt ltd, and justify each payment to it, that how same is for object of trust and why should not be considered, shiphon off fund.

Details of construction/repair of hospital building

- 1. Details of such hospital*
- 2. Details of owner of such hospital*
- 3. Details of work done.*
- 4. Furnish the copy of Ledger account and bill voucher*
- 5. Certificate from owner/manager of hospital in regard of work done*
- 6. Photo of work done.*

Details of covid relief expense."

However in response, no submission furnished by the applicant. Thus expenses shown hospital building, medical equipment are not verified. Applicant given Rs. 1,54,725/- to its related concern M/s Mentor Home Loan Pvt Ltd, no details furnished for which object such payment made, thus held as siphoning off the funds of assessee institution. Apart from the above, no details of hospital as asked furnished, no details of covid relief expenses furnished. Thus, the activities are again held non genuine and application is liable to be reject

D. In view of above discussion assessee's claim of registration section 12AB is liable to be rejected and thus being rejected on following grounds: -

Infructuous/non-maintainable application.

Genuineness of Activities and non-compliance.
Discrepancies in AOA of the Applicant.
Activities of International nature.

E. However, provisional registration dated 20.10.2021 is already lapsed with earlier rejection order dated 25.07.2023. Again it is clarified that in view of section 12AB (1)(b)(ii)(B) of the Income Tax Act, 1961 also state that if CIT is not satisfied has to pass order rejecting such application and also cancelling its earlier registration. Thus, it is clarified that applicant's provisional registration under clause (vi) of clause (ac) of sub-section (1) of section 12A of the Income Tax Act, 1961 dated 20.10.2021 is also being cancelled. Further assessee has failed to give proper justification for regularization of provisional registration, thus with this order provisional registration is also lapsed and cancelled.’’

3.2 During the course of hearing, the ld. AR of the assessee trust submitted that the assessee is a charitable trust. For the purpose of registration u/s 12AB of the Act, the assessee trust had filed an application in Form 10AB on 22-09-2023 before the ld. CIT(E) which was rejected by the ld.CIT(E) vide his order dated 27-03-2024. He further submitted that the ld. CIT(E) passed an ex-parte order for want of the required reply/ explanation from the assessee trust. However, the assessee was not provided adequate opportunity of being heard by the ld. CIT(E) and the assessee should be given one more chance to contest the case before the ld. CIT(E). It may be noted that the ld. AR of the assessee has filed the following documents concerning the issue in question.

S.N.	Details of documents	Page No.
1.	Copy of notification issued by Govt. of India	1

	New Delhi	
2.	Copy of License	2
3.	Copy of Memorandum of Association	3 to 10

3.3 On the other hand, the ld. DR relied upon the order of the ld.CIT(E) but he has no objection in case the appeal of the assessee is restored to the file of the ld. CIT(E) for afresh adjudication.

3.4 We have heard both the parties and perused the materials available on record. It is not imperative to repeat the case of the assessee as the ld. CIT(E) has elaborately discussed the issue in his order by passing an ex-parte order without providing adequate opportunity of being heard to the assessee giving therein following narration.

“.....Since it is a limitation matter, therefore, the case is decided on the basis of material filed by the applicant alongwith its application in Form No. 10AB.”

The Bench taking into consideration the order of the ld. CIT(E) and the prayer made by the ld.AR of the assessee as to restore the ex-parte order to the file of the ld. CIT(E) for afresh adjudication by providing adequate opportunity of being heard to the assessee. To this effect, the ld. AR of the assessee is directed to submit all the concerning papers on the issue raised hereinabove before the ld.CIT(E) who will decide them afresh by providing one more opportunity to the assessee.

3.5 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 the merits of the dispute, which shall be adjudicated by the Id. CIT(E) independently in accordance with law.

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

Order pronounced in the open court on 09/12/2024.

Sd/-
(राठोड कमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 09 /12/2024

*Mishra

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- M/s. Mentor Foundation, Jaipur
2. प्रत्यर्थी / The Respondent- The Id. CIT(E), Jaipur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.787/JPR/2024)

आदेशानुसार / By order,