

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 455/Del/2016

Ghaziabad Development Authority C/o M/s RRA TAX INDIA, D-28, South Extension, Part-1, New Delhi. AAALG0072C	vs	Commissioner of Income Tax, Ghaziabad.
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Assessee by	Dr. Rakesh Gupta, Adv. Sh. Somil Agarwal, Adv.
Revenue by	Sh. Sunil Chander Sharma, CIT DR

Date of Hearing	28.07.2016
Date of Pronouncement	20.09.2016

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

This appeal has been preferred by the assessee against the order dated 29/09/2012 passed by the Ld. Commissioner of Income Tax-Ghaziabad granting registration u/s 12AA of the Income Tax Act, 1961 (hereinafter called 'the Act').

2. The assessee is an authority constituted under the U.P. Urban Planning and Development Act, 1973. The assessee was initially denied registration u/s 12AA of the Act by the Ld. CIT vide order dated 08/08/2006 and the assessee preferred an appeal before the ITAT. ITAT vide its order dated 31/01/2007 in ITA No. 2903/Del/2006 directed the Ld. CIT to grant registration. The Ld. CIT, however, while giving effect to the order of the ITAT, granted the registration w.e.f. 31/03/2003 and not from 01/04/2002 i.e. the first day of the previous year. Subsequently, the assessee moved an application u/s 154 of the Act seeking rectification in the date from which the registration u/s 12AA was to be effective. An order rejecting assessee's application u/s 154 was passed by the Ld. CIT on 29/05/2015. The assessee again approached the ITAT contesting the rejection of its rectification application. However, the ITAT dismissed the assessee's appeal vide order dated 16/12/2015 in ITA No. 4009/Del/2015 by holding that the assessee's appeal was not maintainable by making the following observations:

“7. In view of above discussion, we are of the view that the appeal filed by the assessee against the order passed u/s 154 of the Act to the order u/s 12AA is not maintainable.

However, the assessee may file an appeal against the order passed u/s 12AA of the Act by the Commissioner of Income Tax in compliance to the direction of the Tribunal with the request of condonation of delay.”

2.1 Now the assessee has approached the Tribunal once again and has challenged the order u/s 12AA of the Act dated 29/09/2010 passed by the Ld. Commissioner of Income Tax – Ghaziabad and has raised the following grounds of appeal:

1. *“That having regard to the facts and circumstances of the case, the Ld. CIT has erred in law and on facts in allowing the registration u/s 12AA from 31.03.2003 instead of 01.04.2002 which is mandate as per first proviso to section 12A(1) of the Income Tax Act, 1961.*
2. *That in any view of the matter and in any case, action of Ld. CIT in not allowing the registration u/s 12AA from 01.04.2002 is bad in law and against the facts and circumstances of the case and Ld. CIT has erred in disregarding the order of Hon’ble Tribunal.*
3. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. At the outset, the Ld. AR submitted that there was a delay of 1875 days in filing the appeal. The Ld. AR submitted that when the assessee had received order dated 29/09/2010 passed by the Ld. CIT, Ghaziabad in pursuance to the order of the ITAT, an application u/s 154 of the Act was filed before the Ld. CIT well within time. Thereafter, an order rejecting assessee's application u/s 154 was passed on 29/05/2015. Against the said rejection, the assessee had again filed an appeal before the ITAT within time. Thereafter, after the dismissal of the assessee's appeal by the ITAT on 16/12/2015, the assessee has immediately filed this appeal on 29/01/2016. Thus, the assessee had acted in a *bona fide* manner and had proceeded to seek redressal of its grievances in a *bona fide* manner and, therefore, the delay of 1875 days ought to be condoned. On merits, the Ld. AR drew our attention to proviso to Section 12A (1) of the Act and submitted that in view of the mandate, the registration ought to have been granted w.e.f. 01/04/2002 instead of 31/03/2003 and submitted that suitable directions may be issued to the Ld. CIT in this regard.

4. The Ld. AR opposed the assessee's plea for condonation of delay and emphasized that ignorance of law cannot be an excuse and on merits, placed reliance on the order of the Ld. CIT and submitted that the date from which the registration has been made effective is correct.

5. We have heard the rival submissions and have perused the material on record. As far as the issue of condonation of delay is concerned, it is a settled law that the courts and the quasi-judicial bodies are empowered to condone the delay if the litigant satisfies the Court that there were sufficient reasons for availing the remedy after expiry of the limitation. Such reasoning should be to the satisfaction of the Court. The expression "*sufficient cause or reason*" as provided in sub-section (5) of section 253, subsection (3) of section 249 of the Income Tax Act, 1961 is used in identical terms in the Limitation Act and the CPC. Such expression has also been used in other sections of the Income Tax Act such as sections 274, 273, etc. The expression "*sufficient cause*" within the meaning of section 5 of the Limitation Act as well as similar other provisions and the ambit of exercise of powers there under have been the

subject-matter of consideration before the Hon'ble Apex Court on various occasions. In the case of *State of West Bengal vs. Administrator, Howrah Municipality* AIR 1972 SC 749, the Hon'ble Supreme Court, while considering the scope of expression "*sufficient cause*" for condonation of delay, has held that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bona fide* is imputable to party.

5.1 In the case of *N. Balakrishnan vs. M. Krishnamurthy* AIR 1998 SC 3222, there was a delay of 883 days in filing an application for setting aside the *ex parte* decree for which application for condonation of delay was filed. The trial Court having found that sufficient cause was made out for condonation of delay condoned the delay. However, the Hon'ble High Court reversed the order of the trial Court. The Hon'ble Supreme Court while restoring the order of the trial Court has observed in Paras 8, 9 and 10 as under:

"8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said

that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life, an omission to adopt such extra vigilance need not be used as ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and in its own finding even untrammelled by the conclusion of the lower Court.

10. **

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The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situation is not because on the expiry of such time a bad cause would transform into a good cause.”

5.2 The Hon’ble Supreme Court further observed that rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek the remedy promptly. The Hon’ble Apex Court further observed that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that the delay in approaching the Court is always deliberate. The Hon’ble Supreme Court in SLP[Civil No. 12980 of 1986, decided on 19th Feb., 1987, in the case of Collector, Land Acquisition vs. Mst. Katiji (1987) reported in (2) SSC page 107, has laid down the following guidelines:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and*

cause of justice being defeated. As against this when delay is condoned the highest then can happen is that a cause would be decided on merits after hearing the parties.

- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made, why not every hour's delay, every second's delay. The doctrine must be applied on a rational commonsense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
- 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to so.*

5.3 In the light of the above cited judgments, if we examine the facts of the present case, it is apparent that assessee has been

vigilant in its approach and has not neglected the Income Tax proceedings. The Hon'ble Apex Court in the case of N. Balakrishnan (supra) has observed that the length of delay is immaterial. The acceptability of the explanation is the only criteria for condoning the delay. In a given case, delay of the shortest period of time may be un-condonable due to unacceptable explanation, whereas in certain other cases, delay of a long period can be condoned if the explanation is satisfactory. In every case of delay, there might be some omissions or negligence on the part of the assessee but to our mind such omission/negligence has to be weighed in light of facts and circumstances of each case. If the negligence or omission is a by-product of a deliberate attempt with *mala fide* intention for delaying the process of litigation which could give some benefit to the litigant, then probably the delay would not deserve to be condoned. However, if no *mala fide* can be attributed to the delay, the delay will be condonable. Therefore, on the facts of the present case, we are of the considered opinion that the assessee has been able to demonstrate sufficient reasons, in the shape of approaching wrong remedy, for filing an appeal before the Tribunal. Therefore,

we deem it fit to condone the delay of 1875 days and admit the appeal.

5.4 As far as the merits of the appeal are concerned, it is seen that according to the newly introduced provisions of section 12AA of the Act the person in receipt of the income should make an application in Form No. 10A for registration of the trust or institution to the Commissioner before the expiry of a period of one year from the date of the creation of the trust or the establishment of institution, whichever is later. However, where an application for registration is made after the expiry of the aforesaid period, the provisions of sections 11 and 12 will apply from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, is satisfied that the person in receipt of the income was prevented from making the application within the aforesaid period for sufficient reasons. If the Commissioner is not so satisfied, the provisions of section 11 and 12 will apply from 1st day of the financial year in which the application is made. In the instant appeal, it is undisputed that the assessee has been granted registration. However, the registration has been

granted w.e.f. from the last day of the financial year 2002-03 whereas the scheme of the Act envisages that the registration should be granted from the first day of the financial year. We find the approach of the Ld. CIT contrary to the provisions of the Income Tax Act and therefore we direct the Ld. CIT to make suitable amendment in the registration certificate granted to the assessee u/s 12AA so as to make the registration effective from 1st April, 2002.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20.09.2016

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

Dated: 20.09.2016
**Kavita Arora*

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI