

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 103/Ind/2016

Shree Santshiromani Shree
Narayandasji Sewa Chikitsa Sansthan
Sendhwa

PAN – AANTS – 0463Q :: अपीलार्थी /Appellant

Vs

Commissioner of Income Tax-II

Indore :: प्रत्यर्थी /Respondent

निर्धारिती की ओर से/Assessee by	Shri Pranay Goyal
राजस्व की ओर से/Revenue by	Shri Lalchand
सुनवाई की तारीख Date of hearing	14.3.2017
उद्घोषणा की तारीख Date of pronouncement	15.3.2017

आदेश / O R D E R

PER SHRI C.M. GARG, JM

This appeal has been filed by the assessee against the order of the learned CIT-II, Indore, dated 7.8.2014 passed u/s 12AA(1)(b)(i) of the Income Tax Act, 1961.

APPLICATION OF THE ASSESSEE FOR CONDONATION OF
DELAY IN FILING THE APPEAL

2. We have heard both the sides and also perused the relevant material on record. The learned assessee's representative (AR) submitted that the delay occurred in filing the appeal is bonafide and is totally because of non-receipt of the order dated 7.8.2014 denying registration u/s 12A of the Income Tax Act, 1961 (in short 'the Act'). The learned counsel for the assessee further submitted that the impugned order was not served upon the assessee despite the fact that the appellant continuously filed letters in this regard till 18.12.2015 and on the said date the appellant came to know about the fact that the order has already been passed. The learned AR further submitted that immediate getting known of such fact, the appellant filed an application for obtaining certified copy of the impugned order which was received on 30.12.2015 and the assessee filed the appeal within the due time from the date of the actual receipt of the order on 10.2.2016 within the stipulated prescribed time period. The learned AR further drew our attention towards copies of the submissions dated 16.10.2014 and

18.12.2015 and submitted that the assessee filed copy of registration dated 4.10.2014 under the M.P. Trust Registration Act, 1951 and the appellant has been continuously requesting the learned CIT to pass appropriate order in respect of the application of the assessee for registration u/s 12A of the Act which shows bonafides of the assessee that he was not informed about the fact by way of service of copy of order or any other mode that the order has already been passed denying registration on 7.8.2014. The learned AR further submitted that in view of the facts and circumstances stated in the affidavit dated 1.2.2016, which is unrebutted, the delay may kindly be condoned and the appeal of the assessee may kindly be admitted for hearing on merits.

3. Replying to the above, the learned CIT DR submitted that as per the information received from the Assessing Officer, the copy of the order was served on the assessee on 10.10.2014 in proper manner. However, the learned CIT DR fairly accepted that there is no receipt or proof or service of notice on the assessee from which the actual date of service of order may be gathered or ascertained. The learned CIT DR submitted that when the delay is not due to bonafide reasons beyond the control of the assessee then the delay

cannot be condoned. Thus, the application as well as the appeal of the assessee may kindly be dismissed.

4. On careful consideration of the above submissions, we observe that the copy of the written submissions of the assessee dated 16.10.2014 submitted to the learned CIT-II makes it clear that the assessee filed copy of registration order dated 4.10.2014 showing that the assessee has got registration under the M.P. Trust Registration Act, 1951 and in the last line of these submissions, the assessee requested that if any more information is required, it shall be furnished in the same manner from the written submissions dated 18.12.2015 submitted to the CIT-II, Indore. It is also discernable that the assessee again reminded the learned CIT-II, Indore, to do the needful at the earliest with the prayer that if any important information or document is required, it shall be furnished. These two letters clearly establish bonafides of the assessee that it was under the belief that the order has not been passed and on 18.12.2015 when the assessee came to know about passing of the order, it applied for certified copy of the impugned order on 18.12.2015 and filed the present appeal on 10.2.2016. These facts have also been stated in the affidavit of Shri

Gulabchand Goyal, trustee of the appellant trust, sworn in on 1.2.2016 and there is no rebuttal by the revenue to this affidavit. Therefore, the facts stated therein cannot be discarded or dismissed without any contrary material on record. In view of the above, we are satisfied that the delay in filing the appeal was due to bonafide reason which was beyond the control of the assessee. Therefore, the delay in filing the appeal deserves to be condoned and we condone the same. Consequently, the appeal of the assessee is admitted for hearing on merits and the application for condonation of delay is allowed.

ON MERITS

5. We have heard the arguments of both the sides and carefully perused the relevant material placed on record. The learned counsel for the assessee submitted that the CIT-II, Indore, dismissed the application of the assessee for registration u/s 12A of the Act without affording due opportunity of hearing on the basis of sole ground that the trust has not been registered under M.P. Registration Act, 1951. The learned AR further submitted that the assessee filed the copy of registration dated 4.10.2014 under the M.P. Trust Registration Act, 1951 which was not considered by the

learned CIT-II, Indore, and he passed the order in hasty manner without pointing out any defect or allegation against the charitable purposes and activities of the appellant.

6. The learned CIT DR strongly supported the order of the learned CIT-II, Indore. However, he fairly submitted that there was a communication gap between the appellant and the authority adjudicating upon the grant of registration u/s 12A of the Act. The learned CIT DR also submitted that the Department has no serious objection if the case is restored to the file of the learned CIT-II, Indore, for fresh adjudication.

7. On careful consideration of the above submissions, we are of the considered view that the appellant was not provided due opportunity of hearing to place its case which resulted into dismissal of application. We are satisfied that the appellant was not provided due opportunity of hearing during the proceedings. Therefore, the order has been passed violating the principles of natural justice and thus the same is not sustainable in law. In view of our above-noted factual position, we find it appropriate to set aside the impugned order and restore the issue to the file of the learned CIT-II, Indore, for fresh adjudication, after providing due

opportunity of hearing to the assessee and without being prejudiced from the earlier order passed by him. We order accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purposes with the direction to the learned CIT-II, Indore, as indicated above.

Order pronounced in open Court on 15th March, 2017.

Sd/-

लेखा सदस्य
(O.P.Meena)
Accountant Member

sd/-

न्यायिक सदस्य
(C.M. Garg)
Judicial Member

March 15th, 2017.

Dn/

.