

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 1425/Mum/2015
(Assessment Year: 2012-13)

The Learning Curve Educational Trust G1/833, Maklai Palace B-Wing CHS, Bazar Road Bandra (W) Mumbai 400050	Vs.	DIT (Exemption) 6th Floor, Piramal Chamber Lalbaug, Parel, Mumbai 400012
PAN – AABTT9873D		

Appellant

Respondent

Appellant by: Shri Shreyas N. Shah
Respondent by: Shri R.P. Meena

Date of Hearing: 10.09.2018
Date of Pronouncement: 26.09.2018

ORDER

Per Sandeep Gosain, JM

This appeal filed by the assessee is directed against the order of the Director of Income Tax (Exemption), Mumbai dated 25.09.2012 and it relates to A.Y. 2012-13.

2. The brief facts of the case are that the assessee filed an application for registration under Section 12A of the Act but the same was rejected by the Director of Income Tax (Exemption) against which the assessee has preferred the present appeal before us on the following grounds: -

- “1. That the Ld. DIT (E) erred in law as well as on the fact of the case in rejecting the application of the trust for registration u/s 12A of the Income Tax Act, 1961.
2. That the Ld. DIT (E) failed to appreciate that the provision of financial aid/sponsorship to needy students, without any biasness, for education purpose would be charitable in nature.
3. That the rejection order of the Ld. DIT(E) was passed without giving any opportunity of being heard to the appellant.

4. *Your appellants crave leave to add, alter, amend, vary omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised.*

Pleads Reasonable Opportunity to be heard

5. *That the Ld. Director of Income Tax (Exemption) (DIT(E)) erred in passing the ex-parte order without giving reasonable opportunity to the appellant. The Appellant pleads for a reasonable opportunity to be heard.*
6. *That the Ld. DIT (E) failed to appreciate that the notice of hearing, which was fixed on 13 June 2012 and 3 August 2012, was not received by the appellant.*
7. *That the Ld. DIT (E) failed to appreciate that he ought to have verified whether proper notice has been served or not, before passing the ex-parte order. Therefore, the order passed by the Ld. DIT (E) may be set-aside.*
8. *That there is a delay of 827 days in filing the present appeal (i.e. from 24 November 2012, assuming the assessment order dated 25 September 2012 was received on the same date). We regret the same. The appellant has filed an application for condonation of delay as well as affidavit of the appellant explaining the reasons for the delay in filing the present appeal. The same is annexed as Annexure A.*

3. At the very outset it was pointed out that the present appeal is barred by limitation and there was a delay of 827 days in filing the present appeal. For seeking condonation of delay, the assessee has filed an application dated 02.03.2015 alongwith supporting affidavit. It was submitted by the learned A.R. that for A.Y. 2013-14, a second application under Section 12AA was filed but the same was also rejected by the DIT (Exemption) against which the assessee preferred appeal before the ITAT and the Hon'ble Tribunal in ITA No. 6154/Mum/2013 vide order dated 8th September, 2015 restored back the matter to the file of DIT (Exemption) for considering it afresh and on fresh hearing the DIT (Exemption) confirmed the charitable objects of the assessee and granted registration under Section 12A of the Act for A.Y. 2013-14. It was further submitted that although in the present appeal there is no tax demand the purpose of filing the present appeal is merely academic. In support of condonation of delay it was submitted that the due date for filing appeal by the assessee before the Tribunal was 25th November, 2012 but the Settlor individual Mr. Baig

was outside India for more 2 months and he was not timely intimated because of which he could not take corrective action by way of appeal before the Tribunal within 60 days.

4. On the other hand, the learned D.R. contested the application for seeking condonation of delay and submitted that the assessee has failed to demonstrate any sufficient cause for not filing the appeal within time.

5. We have heard the rival contentions and perused the material placed on record and the order of the DIT (Exemption). From the assertion of the assessee it is clear the DIT (Exemption) has already granted registration under Section 12A of the to the assessee from A.Y. 2013-14 and even the reason put forth by the assessee before us are not convincing and they do not come within the ambit of "sufficient cause". Therefore, under these circumstances we dismiss the application filed by the assessee for seeking condonation of delay. We may also point out that in its written submission, the assessee has also shown its inclination to withdraw the appeal. Therefore in such circumstance the appeal filed by the assessee is dismissed as unadmitted.

Order pronounced in the open court on 26th September, 2018.

Sd/-
(Shamim Yahya)
Accountant Member

Sd/-
(Sandeep Gosain)
Judicial Member

Mumbai, Dated: 26 September, 2018

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -, Mumbai
4. The CIT - , Mumbai
5. The DR, "A" Bench, ITAT, Mumbai

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.