

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.684/Lkw/2018
Assessment Year:N.A.

Early Hearing Application No.02/Lkw/19
(in ITA No.684/Lkw/2018)
Assessment Year:N.A.

Dr. A.P.J. Abdul Kalam Foundation Trust, B-601, Rohtash Residential Tower, Gomti Nagar, Lucknow. PAN:AACTD 6859 L (Appellant)	Vs.	CIT (Exemptions), Lucknow. (Respondent)
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Appellant by	Shri B. P. Yadav, Cost Accountant
Respondent by	Shri Sushil Kumar Madhuk, CIT (DR)
Date of hearing	30/01/2019
Date of pronouncement	31/01/2019

ORDER

PER T. S. KAPOOR, A.M.

This application for early hearing has been filed by the assessee with a prayer to hear the appeal in I.T.A. No.684/Lkw/2018. Learned A. R., at the outset, submitted that assessee is a charitable organization for which it had filed application for registration u/s 12A of the Act in Form 10A on 30/03/2018 and the Form 10A was filed in physical form which was rejected by the Ld. CIT(E) on the ground that the same was not made electronically. Learned counsel for the assessee further submitted that the assessee society is providing vocational education to the masses and in

absence of registration u/s 12A of the Act, its surplus fund will be subjected to tax and in that case it would be difficult to carry out the educational programmes as envisaged in the byelaws. Therefore, it was prayed that that the appeal of the assessee may be fixed for hearing on priority basis.

2. Learned D. R., had no objection to the proposal of Learned A. R.

3. During the course of hearing, Learned A. R. invited our attention to petition for condonation of delay and submitted that there is delay in filing the appeal of 25 days. Explaining the reasons for delay in filing the appeals, Learned A. R. invited our attention to the copy of affidavit duly sworn in and signed by the assessee including the reasons for delay. Learned A. R. invited our attention to a detailed request for condonation of delay and submitted that order of learned CIT (Exemptions) was received by the assessee on 12/09/2018 and the due date for filing the appeal before Hon'ble Tribunal was 11/11/2018. Learned counsel for the assessee further submitted that Shri Milind Raj, President of the assessee trust was responsible for getting all the papers prepared for filing the appeal but because of oversight on account of his medical problem he could not inform the concerned person in the management nor the papers were handed over to the concerned counsel for preparation of the appeal. He submitted that delay has occurred because of oversight on the part of Mr. Milind Raj which should be condoned.

4. We first deal with the issue of condonation of delay. We find that assessee was prevented for filing the appeal within prescribed period of time because of the medical problems of the President of the assessee trust which has been supported by the assessee duly sworn in affidavit and being convinced with the reasons given in the application and the affidavit, we condone the delay of 25 days in filing the appeal.

2. We have heard the rival parties and have gone through the material placed on record. We noted that in this case the assessee is aggrieved with the action of learned CIT (Exemption) in rejecting the application of the assessee, filed u/s 12 of the Act, on the ground that Form 10A was not filed electronically without providing any opportunity to the assessee to remove the defect by filing the Form 10A electronically. The default committed by the assessee is only a technical default. We find that assessee had filed its application in Form 10A on 30/03/2018 in physical form. The CIT (Exemptions) should have provided opportunity to the assessee to file Form 10 electronically. Therefore, in the interest of justice, we deem it appropriate to allow the application of the assessee for early hearing and since the CIT (Exemption) has rejected the application of the assessee on technical ground, we deem it appropriate that Id CIT (Exemption) should provide proper and sufficient opportunity to the assessee to file Form 10 electronically as per law. Therefore, the order of learned CIT (Exemption) is set aside to his office with a direction to pass a fresh order after giving an opportunity to the assessee of being heard.

5. In view of the above the application for early hearing is allowed and the appeal of the assessee in I.T.A. No.684/Lkw/2018 is allowed for statistical purposes.

(Order pronounced in the open court on 31/01/2019)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:31/01/2019
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow