

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'B', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA Nos. 1207 and 1208/Hyd/2019 and  
SA Nos. 193 & 194/Hyd/2019  
Assessment Years: 2014-15 & 2015-16

Sri Poorna Prajna Trust, vs. Income-tax Officer  
Hyderabad. (Exemptions), Ward – 1(4),  
Hyderabad.

PAN – AAKTS1143 E

Appellant

Respondent

Assessee by: Shri P. Murali Mohana Rao  
Revenue by: Shri Solgy Jose T Kottaram

Date of hearing: 29/08/2019  
Date of pronouncement: 27/11/2019

**ORDER**

**PER P. MADHAVI DEVI, J.M.:**

Both are assessee's appeals for the AY 2014-15 and 2015-16 against the common order of CIT(A)-9, Hyderabad, dated 28<sup>th</sup> June, 2019.

2. Brief facts of the case are that the assessee is a trust registered under the Trust Act. It has filed its returns of income for both the years under consideration admitting taxable income of Rs. 6,68,700/- and Rs. 6,27,460/- respectively and paid taxes accordingly. The returns were processed by CPC, Bangalore on 25/09/2015 and 27/03/2017 wherein the total income of the assessee was determined at Rs. 41,02,997/- for AY 2014-15 and Rs. 56,45,620/- for AY 2015-16 respectively raising demands of Rs. 18,00,380/- and Rs. 22,13,730/- respectively. The increase in the incomes

were on account of disallowance of claim of expenditures of Rs. 34,34,294/- and Rs. 5,18,156/- towards charitable/religious purposes in India for the relevant AYs. Though the assessee has received the orders u/s 143(1) of the Act, it did not file appeals immediately before the CIT(A), but, filed belatedly on 16/04/2019 with a delay of 907 days for AY 2014-15 and 750 days delay for AY 2015-16.

3. The CIT(A) dismissed the appeals by observing that appeals have been filed with a long delay and that the affidavit has been signed by the treasurer of the Trust a third party and that the blame has been put on the accountant. He also held that when the assessee does not have registration u/s 12A/12AA of the Act, it is not eligible to the claim of deduction of expenditure. He also observed that CPC has sent the communication to the email id of the trust itself and not to the counsel for the assessee or accountant of the trust and, therefore, he refused to condone the delay and dismissed the appeals of the assessee.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before us raising the following grounds of appeal, which are common in both the appeals, except the quantum of disallowances:

*"1. The Order of CIT (A) - 9, Hyderabad is erroneous both in law and in facts.*

*2. The Ld. CIT (A) erred in dismissing the appeal.*

*3. The Ld. CIT (A) erred in not condoning the delay in filing the appeal.*

*4. The Ld. CIT (A) ought to have appreciated that the appellant society has a reasonable cause for filing the appeal with a delay which can be condoned.*

5. *The Ld. CIT (A) ought to have appreciated that the appellant society, unlike a business organization, works for promoting its various aims and objects.*

6. *The Ld. CIT (A) ought to have appreciated that the ignorance of the Society that having got registration with the Joint Sub-Registrar, Hayathnagar, way back in March, 1994, it failed to know about the application for registration u/s 12AA of the Act till the assessment year under consideration.*

7. *The Ld. CIT (A) ought to have condoned the delay and decided the appeal on merits.*

8. *Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that even in the absence of registration u/s 12AA of the Act, the Rs.10,61,200/- appellant is eligible for claiming the amount of Rs.34,34,294/- incurred by it towards expenditure.*

9. *Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that making the addition of Rs.34,34,294/- is not warranted in the intimation processed u/s 143(1) of the Income Tax Act, 1961*

10. *Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that the Assessing Officer erred in determining the total income and the net amount payable at Rs.41,02,997/- and Rs.18,00,380/- respectively in the intimation u/s 143(1) of the Act dated 21.10.2016.*

11. *The appellant may, add or alter or amend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.*

4.1 The assessee filed a petition for admission of the following additional grounds:

“12. *As per the ratio laid down by the Hon'ble Supreme Court in the case of NTPC Vs. CIT, [1998] 229 ITR 383 (SC), the Hon'ble ITAT has jurisdiction to examine the question of law which has been taken before the ITAT for the first time though not taken before the first appellate authority.*

13. *The Ld. CIT(A) ought to have appreciated that disallowance cannot be made by intimation u/s 143(1)(a).*

*14. The Id. CIT(A) ought to have appreciated that the appellant was not given an opportunity to establish its claim before disallowing.”*

4.2 As the said additional grounds are legal grounds and all the facts are on record and do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited Vs. CIT 229 ITR 383 (SC), we admit the said additional grounds of assessee.

5. Ld. Counsel for the assessee submitted that the assessee trust has filed its returns of income for both the AYs., which were processed by the CPC and the demands were raised and since the assessee trust is not a business entity, the demand notices raised by the CPC were not immediately noticed nor did the accountant of the assessee trust bring it to the notice of the trust. It is submitted that subsequently, when the demand notices were brought to the notice of the assessee in 2019, the assessee was advised to file appeal and the appeals were immediately filed by Shri Ravi, who is the trustee of the assessee trust. He submitted that even the Form 35 has been signed by such trustee and the affidavit for condonation of delay also has been signed by him. Therefore, according to the Id. Counsel for the assessee, the finding of the CIT(A) that the affidavit is signed by treasurer or third person is not correct.

5.1 In support of his contention that the delay should be condoned and the assessee should be given fair opportunity to present its case on merit, Id. Counsel for the assessee relied on the following case law:

1. Collector land acquisition Vs. Mst. Katji & Ors., 1988 SC 897
2. CIT Vs. KSP Shanmugavel, 30 Taxmann 133 (Mad.)
3. Midas Polymers Compounds Vs. ACIT, 288/Coch/2017.

4. Balakrishnan Vs. Krishna Murthy, judgement dated 03/09/1998 (SC)
5. Divya Jyothi Steels Ltd. Vs. ACIT, 1176 & 29/H/2016
6. M/s Rajiv Gandhi Proudयोगiki Vs. DCIT, 324 & 325/ind/2018
7. Bajaj Auto Finance Ltd. Vs. CIT, 25-2000-ITR (Pune HC)
8. M/s Bharat Oman Refineries Ltd. Vs. OTO, 16/Bhopal/2011 (ITAT, Bhopal)
9. 1901 to 1903/Hyd/2017 and others in the case of Concord Drugs Ltd., order dated 27/03/2019.

He, therefore, prayed for condonation of delay and remand the appeals to the file of CIT(A) for adjudication on merits.

6. The Id. DR, on the other hand, supported the orders of authorities below and submitted that the assessee failed to explain the delay with cogent reasons. He, therefore, prayed for dismissal of assessee's appeals.

7. Having regard to the rival contentions and material on record, we find that, though, the CIT(A) mentioned that none appeared for the assessee in spite of service of notices, neither the dates of notices nor the dates of hearing have been mentioned by him in his order. Further, it is also on record that none appeared for the assessee, but, application for condonation has been filed and, therefore, the CIT(A) ought to have given an opportunity of hearing to the assessee before dismissing the appeals. Since no dates for hearing have been given and appeals have been filed on 16/04/2019 and the order of CIT(A) is dated 28/06/2019, we are inclined to accept that proper opportunity was not given by the CIT(A) to the assessee to represent its case. Since the intimation u/s 143(1)(a) is without any notice to the assessee, we are of the opinion that the assessee should be given an opportunity to explain the application of funds and whether the same is allowable as expenditure to assessee. Since no notice was

issued or served on the assessee, we are inclined to set aside the order of the CIT(A) and remand the appeals to the file of CIT(A) with a direction to give a fair opportunity of hearing to the assessee to explain the delay in filing the appeals and if such delay is condoned, then decide the appeals on merits. In view of the above observations, the grounds raised in both the appeals are treated as allowed for statistical purposes.

8. As corresponding appeals have been adjudicated, the SAs filed by the assessee for both the years under consideration become infructuous and therefore, the same are dismissed as infructuous.

9. In the result, both the appeals of the assessee are treated as allowed for statistical purposes and the SAs are dismissed.

Pronounced in the open court on 27<sup>th</sup> November, 2019.

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Hyderabad, dated 27<sup>th</sup> November, 2019.

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Copy forwarded to:

1. Sri Poorna Prajna Trust, C/o P. Murali & co., CAs.,  
6-3-655/2/3, Somajiguda, Hyderabad – 500 082.
2. ITO (E), Ward – 1(4), Hyderabad
3. CIT(A) – 9, Hyderabad
4. CIT(E), Hyderabad.
5. The DR, ITAT, Hyderabad
6. Guard File