

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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI O. P. KANT, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.9348 & 9349/DEL/2019

**Delhi Agroha Vikas Trust
C-320, Vivek Vihar, Phase-1,
East Delhi, Delhi**

Vs.

**CIT (E)
Delhi**

Appellant by : Sh. V. K. Bindal, CA
Respondent by : Ms. Nidhi Srivastava, CIT(DR)

**Date of Hearing : 15.09.2020
Date of Pronouncement : 17.09.2020**

ORDER

PER O.P. KANT, AM:

These two appeals have been filed by the assessee against the common order dated 30/04/2019 passed by the Learned

Commissioner of Income-Tax (Exemption), New Delhi [in short the Ld. CIT(E)] under section 12AA and 80G of the Income Tax Act, 1961 (in short the Act). The grounds raised by the assessee in the appeals are reproduced below:

2. The grounds of appeal in ITA No.9348/Del/2019 are as under:-

“That on the facts and circumstances of the case and in Law, the Ld. CIT(Exemptions) have erred in rejecting the application of the Appellant Trust for registration u/s 12A of the Income Tax Act, 1961 on mere conjectures & surmises and not appreciating the fact that the activities of the Appellant Trust are completely genuine and are in conformity with the objects of its Trust Deed and as such the mandatory condition u/s 12AA(3) and/or 12AA(4) for the rejection/cancellation of the trust are not being fulfilled and as such there was no lawful basis whatsoever to reject the application u/s for registration u/s. 12A”

2.1 The grounds of appeal in ITA No.9349/Del/2019 are as under:-

“That on the facts and circumstances of the case and in Law, the Ld. CIT(Exemptions) have erred in rejecting the application of the Appellant Trust for exemption u/s 80G of the Income Tax Act, 1961 as it was rejected on the basis of rejection of application of registration u/s 12AA, which was rejected on mere conjectures & surmises and not appreciating the fact that the activities of the Appellant Trust are completely genuine and are in conformity with the objects of its Trust Deed and as such the mandatory condition u/s 12AA(3) and/or 12AA(4) for the rejection/cancellation of the registration of the trust are not being fulfilled and as such

there was no lawful basis whatsoever to reject the application u/s 80G.”

3. Briefly stated facts of the case are that the applications filed by the assessee trust for registration under section 12AA of the Act and exemption under section 80G of the Act, have been rejected by the Ld. CIT(E) on the ground that the assessee failed to justify genuineness of its activities. The Ld.CIT(E) asked the assessee to file certain documents, *inter alia* documents of the ownership of plot of land and its arrangement of transfer etc., but the assessee failed to submit said documents, which resulted in rejection of registration under section 12AA and consequent exemption under section 80G of the Act.

3.1 Aggrieved, the assessee filed appeals before the Income Tax Appellate Tribunal (in short the Tribunal), raising the grounds as reproduced above.

4. Before us, the parties appeared through videoconferencing facility and filed paper-book and another documents electronically.

5. At the outset, the Ld. Counsel submitted that these appeals have been filed with the delay of 158 days. The learned Counsel referred to the application for condonation of the delay and submitted that Sh. Naresh Kumar Gupta, the Settler/Managing trustee was admitted to the hospital on 04/06/2019 due to some serious illness and was discharged on 13/06/2019. In support of

the claim of admission to the hospital, the Learned Counsel referred to discharge summary of the Apollo Hospital filed along with the application for condonation of the delay. He submitted that after discharging from the hospital, Sh. Naresh Kumar Gupta was advised on bed rest and therefore the appeals could not be filed on time. The Ld. Counsel referred to pages 58 to 61 of the paper-book in support of his claim of advice for bed rest. The Ld. Counsel relied on various decisions of the Hon'ble courts. The relevant part of the application for condonation of the delay is reproduced as under:

"5. It is respectfully and humbly prayed that in view of provisions of section 253(5) of the Act, which reads as, "The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period, your Honour are requested to kindly condone the delay in filing of the appeal, by the Appellant Trust, in view of the presence of sufficient cause with the Appellant Trust i.e. the Settlor/ Signing Person of the Appellant Trust, Sh. Naresh Kumar Gupta had developed some serious illness leading to breathing problem and unconsciousness, was admitted to the hospital and it took him few months to get recovered from it.

6. In this regards, reliance is placed by us on the numerous binding judgements of the Hon'ble Supreme Court, as under:

- 1. Collector of Land Acquisition V Master kastiji -167ITR 471 (SC)*
- 2. G. Ramegowda v. Special Land Acquisition Officer, [1998] 2 SCC*
- 3. N.Balkrishnan V M.M.Krishna Murthy AIR 1998 se 3222*
- 4. Office of the Chief Post Master General Versus Living Media India Ltd. 2012 348 ITR 7*
- 5. N. Balakrishnan v. M. Krishnamurthy [1998] 7 SCC 123*

6. *State of MP Vs. Pradeep Kumar (2000) 7 SC 372, 376-77) cited on page no. 12747 In Book of Shri Chaturvedi and Pithisaria.*

7. *The principles of law which emerge out of the aforesaid judgements of the Hon'ble Apex Court are as under:*

(i) *Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

(ii) *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

(iii) *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

(iv) *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.*

(v) *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.*

(vi) *The Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties did not resort to dilatory tactics but seeking their remedy promptly. Condonation of delay is a matter of discretion of the Court. Length of delay is no matter, acceptability of explanation is the only criterion. In every case of delay there will be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. There is no presumption that the delay in approaching the Court is always deliberate. The words*

'sufficient cause' should receive a liberal construction so as to advance substantial justice."

5.1 On the contrary, the Learned DR objected for condonation of the delay. She also filed written submissions, the relevant part of which is reproduced as under:

"It is seen from Form no 36, that the CIT(E) order was communicated to the assessee on 30.04.2019. Therefore the appeal, which was to be filed before the Hon. ITAT within 60 days, should have been filed on or before 29.06.2019. However, it has been filed on 04.12.2019, i.e., a delay of 158 days.

3. It is pertinent to note the following facts-

- a) *Only the Affidavit and doctor's prescription were filed originally. There was no document to establish the assessee's claim that Mr Naresh Kumar Gupta had been advised bed rest for 5 months. These have been filed now only on the direction of the Hon Bench on the last date of hearing. The authenticity of documents that were not available earlier, and have subsequently been filed, cannot be relied upon.*
- b) *It is only the Settler of the Trust, Mr Naresh Kumar Gupta who was unwell. As **persection253 (6)**of the Act, "An appeal to the Appellate Tribunal shall be in prescribed form and shall be verified in the prescribed manner...." **A person who is competent to sign the return of income u/s140 of the Act can validly sign/verify the appeal memo.***

- c) **Section 140(e)** of the Act, with reference to the application of an association, states that **the Principal Officer or member of the association can sign there turn.**
- d) The definition of Principal Officer is given in **section 2(35)** of the Act, where it is stated in clause (a) to section 2(35) that Secretary, Treasurer, Manager and Agent of such association or Principal Officers for the purposes of the act.
4. It is therefore submitted that nowhere in the Act is it provided that only the Settler of the Trust can file an appeal before the Hon Tribunal. Even if the settler was unwell, that did not preclude the other Trustees/Principal Officer/Treasurer etc from filing the appeal within time. There is no "Reasonable Cause" in this case, which entitles the assessee to be condoned for the delay of more than 5 months in filing of this appeal.

5. The following case laws are relied upon in this regard-

- (I). **Ajmeer Sheriff and co. 375 ITR 15 (Madras High Court)**, wherein the Tribunal had declined to condone delay for reasons that
- i) allegation regarding ill-health of managing partner and multiple medical complications was bereft of details and **every day's delay** had not been explained, and
 - ii) **even if one of partners was not well, other partners could have taken steps to file appeal in time.**

The Hon Madras High Court held that when conduct on part of the assessee exhibited gross negligence/procrastinating attitude and

incorrect grounds, the Tribunal rightly dismissed petition to condone delay.

(II). **Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others(SC) (Civil Appeal Nos.8183-8184 of 2013)**, wherein the Hon Apex Court has culled out various principles in respect of condonation of delay by the High Court of Calcutta. Paras 15, 16 and 22 of the judgement, which is attached, are of particular relevance to the assessee's case.

(III). The Hon Allahabad High Court ,ruling in the case of **CIT Vs Rudra Bilas Sahkari 280 ITR 249**, has, in the context of competence of signatory to IT Ru/s 140(e) read with section 2(35), held that "It is a well settled principle that that any person can appoint an agent orally or in writing **or inferred by implication also.**"

(IV). The Delhi Bench of ITAT in the case of **Meerut Development Authority** (ITA 422/Del/2009, dated 24.07.2009) has held that treasurer u/s 2(35) is automatically a principal officer of the concerned association and so can sign the ITR/Appeal memo before the Hon'ble tribunal.

6. Therefore in view of the above written submission and cited case laws, the assessee's reason for delay, viz, the illness of the Settler, cannot be considered as reasonable cause so as to condone the delay in filing of appeal. It is prayed that the assessee's application for condonation of delay in filing of appeal in the Hon

ITAT, may be therefore be rejected and the appeal may be dismissed.”

5.2 We have heard rival submission of the parties on the issue of condonation of the delay in filing the appeals. The Ld. CIT(E) passed the impugned order on 30.04.2019 and thus the assessee was required to file appeal to the Tribunal within 60 days thereafter, but the appeals have been filed on 04.12.2019 and thus there is a delay of 158 days in filing the appeals. Shri Naresh Kumar Gupta was admitted to the Hospital on 04.06.2019 and discharged on 13.06.2019. He was advised bed rest and he consulted to cardiologist from time to time on various dates i.e. 19.10.2019 (PB-57); 19.09.2019 (PB-58); 20.08.2019 (PB-59); 17.10.2019 (PB-60); 20.06.2019 (PB-61). On perusal of the discharge summary and medical prescription by doctors, there is no doubt that the settler and managing trustee was suffering from serious illness and could not pay attention to the issue of filing appeals of the assessee trust on time. On the issue as why the other trustee(s) did not file those appeals, the Ld. Counsel submitted that the impugned order was served through email address of the son of Sh. Naresh Kumar Gupta, and thus other Trustees were not aware of the Income-Tax proceedings of the trust. In our opinion, the illness of settler and managing trustee and the impugned order being not in the reach of other trustees, is a reasonable cause for delay in filing the appeals. By making the delay, the assessee trust does not get benefit in any

manner. The delay is not deliberate and there is not any kind of malafide on the part of the assessee trust. In view of the facts and circumstances and in the interest of the substantial justice, we condoned the delay in filing these appeals and the parties were asked to argue on the merit of the appeals.

6. We have heard argument of the parties on the merit of the issues in the appeals. We find that in the impugned orders, the Ld. CIT(E) has rejected registration under section 12AA and exemption under section 80G mainly on the ground that the assessee failed to produce certain documents asked for by the Ld CIT(E). Before us, the Ld. Counsel of the assessee has produced all the documents, which were requested by the Ld CIT(E). These documents are available on page 1 to 10 of the paper-book. The Ld. Counsel accordingly requested for restoring the matter back to the file of the Ld. CIT(E). The Ld. DR, on the other hand, submitted that the opportunity provided by the Ld. CIT (E) were not availed by the assessee and therefore if the assessee is allowed to go back to the Ld CIT(E), the assessee should be directed to file all the documents and co-operate before the Ld. CIT(E) in disposal of the proceedings .

7. In view of the documents produced before us as additional evidence, we feel it appropriate to set aside the order of the Ld. CIT (E) and restore the issue of registration under section 12AA and exemption under section 80G, back to the file of the Ld CIT(E) for deciding afresh with the direction to the assessee to produce all the

documents required for examination of conditions for granting of registration under section 12AA and exemption under section 80G of the Act. Accordingly, the grounds raised in both the appeals are allowed for statistical purposes.

8. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 17th September, 2020

Sd/-

(H. S. SIDHU)
JUDICIAL MEMBER

Sd/-

(O.P KANT)
ACCOUNTANT MEMBER

Dated: 17.09.2020

Neha(D.T.D.S)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi