

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI**

**BEFORE RAJESH KUMAR, ACCOUNTANT MEMBER &  
SHRI RAMLAL NEGI, JUDICIAL MEMBER**

**ITA No. 1095/Mum/2018  
(Assessment Years: 2016-17)**

Environmental Medical Association, Flat No. 4, Cabin No. 3, Prakruti Polyclinic, Jain Chambers, SV Road Bandra (W) – 400050	बनाम/ Vs.	DIT (E) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATE2772M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Rajiv Khandelwal, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Manjunatha Swamy, DR

सुनवाई की तारीख / Date of Hearing	17/06/2020
घोषणा की तारीख /Date of Pronouncement	28/08/2020

आदेश / O R D E R

**PER RAJESH KUMAR- AM:**

The sole issue raised by the assessee in the various grounds of appeal is against the order of CIT(E) rejecting the application of registration filed by the assessee under section 12A of the Act in form No. 10A dated 29.12.2015 on the ground of non

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attendance and non furnishing of information/details.

The assessee raised the following grounds of appeal

1. *On the facts and in the circumstances of the case and in law, the CIT/DI (E) Mumbai erred in law in rejecting registration u/s 12AA rws 12A of the Income Tax Act, 1961.*
2. *On the facts and in the circumstances of the case and in law, the Id. CIT/DI (E), has erred in rejecting an application for Registration u/s 12AA of the Act, on the ground of non attendance and non-supply of documentary details called for and not on ground of objects of the objects of the Appellant trust being non charitable or Its activities being non genuine being pre-requisite for the rejection of the registration u/s. 12AA of the Act.*
3. *The Id. DIT(E) has erred in law that under the provisions of sec. 12AA(2) of the Income Tax Act scope of the enquiry is limited to the extent of verification of objects of the trust vis-a-vis genuineness of charitable activities. In this context apprehension expressed by DIT(E) is based on surmises, conjectures and doubts.*
4. *The appellant craves that order u/s 12AA r.w.s 12A passed by the DIT(E) be quashed and DIT(E) may be directed to grant registration as conditions laid down are fully complied with by the appellant.*
5. *The appellant craves leave to add,*

2. The facts in brief are that the trust was incorporated by an ardent nationalist and dedicated environmentalist, Late Dr. K. C. Mohanty. He was the key person and head of the Trust and was handling

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the day-to-day affairs of the Trust, since its inception. The affairs of the Trust, including accounting and taxation, were handled by him, while other trustees were actively engaged in field activities like raising donations and organizing seminars etc to achieve the objects of the Trust. That because of his old age and suffering from the heart ailments he used to be hospitalized very often and hence, could not look after the affairs of the Trust the way it were required to be. Dr KC Mohanty ultimately passed away after a prolonged illness, due to cardiac arrest on 1<sup>st</sup> June, 2017, with the result the affairs of the Trust were not attended properly for quite sometime. After his untimely demise, the affairs of the Trust went chaotic *vis-à-vis* the taxation matters since other trustees were not at all aware of the taxation issues of the Trust. New committee of trustees was formed on 20<sup>th</sup> August, 2017, for managing the affairs of the Trust. Thereafter, the new team great difficulty connected and perused the matter regarding affairs of the Trust with Chartered Accountant Mr Sanjiv Jhaveri, and it took considerable time in understanding the present affairs of the Trust. That the Committee after being

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appraised regarding the affairs of the Trust, from the month of December, 2017 made several compliances like filing of Report of Changes with the Registrar of Public Trust, filing of appeal for income-tax assessment year 2015-16 against the order of the Assessing Officer, etc. Further, the order dated 18.05.2016 of CIT (Exemptions) rejecting application for registration of the Trust under section 12AA was sent to the Chartered Accountants for their opinion and necessary action. The process with the Chartered Accountant took some time as he required facts to understand the case and finally he advised the assessee to file an appeal to the Tribunal, even though belatedly. The present president and trustee of the Trust then took necessary steps to file the appeal to the Tribunal, which has since been filed on 23<sup>rd</sup> February, 2018, with a delay of 574 days.

3. At the outset the counsel of the assessee pointed out that there is a delay of 574 days in filing the appeal and the reasons responsible for the delay are beyond the control of the assessee as have been elaborated and detailed above. The 1d AR drew our

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attention to the affidavit of Dr. Salil Subhash Bendre the present President of Environmental Medical Association. The ld. AR submitted that the Trust was incorporated by an ardent nationalist and dedicated environmentalist, Late Dr. K. C. Mohanty. He was the key person and spearhead of the Trust and was handling the day-to-day affairs of the Trust, since its inception. After his prolonged illness leading to death, the affairs of the trust remained unattended and it took quite some time for other trustees to take over and ascertain the status of compliances and filing. The ld. AR submitted that it is only due these uncontrollable circumstances the filing of the appeal was delayed and therefore prayed for condoning the same. The ld DR on the other hand strongly opposed the condonation of the delay by stating that each and every day of delay has to be explained. The ld. DR argued that just the excuse that managing trustee was ill and eventually passed away, is not sufficient to explain the delay in filing the appeal. Therefore the appeal of the assessee may kindly be dismissed as time barred.

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4. After hearing both the parties and perusing the records as placed before us , we find that the delay in filing appeal has happened primarily because of the fact that the trustee Dr . K. C. Mohanty's demise after prolonged illness which left the affairs of the trust not being attended for long period of time. We note that the trust/association was constituted by the doctors for general welfare and Dr Mohanty was made the managing trustee to look after the affairs. We have also perused the application for condonation of delay and affidavit filed by DR. Salil Subhash Bendrethe in which various reasons for delay were explained in details. After considering the facts and circumstances and affidavit filed by DR. Bendrethe, we earnestly feel that the delay cannot be attributed to the willful negligence and is in fact beyond the control of the assessee. We are there of the considered view that the delay is attributable to the reasons beyond the control of the assessee and deserved to be condoned. Accordingly the delay is condoned.

5. So far as the issue rejecting the registration to the trust is concerned, we have heard the rival

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contentions and perused the material before us carefully and note that the applicant trust filed an application for registration u/s.12A of the I.T. Act, 1961 in the prescribed Form No.10A on 29.12.2015. Thereafter a notice dated 29.12.2015 was sent to the applicant requiring it to furnish certain details/documents like PAN cards of trustees and settler, copy of bank account(s), NOC in respect of its office premises, certificate of registration issued by the Charity Commissioner, copies of audited accounts and note on activities undertaken by it duly substantiated with documentary evidence on 15.01.2016 which was duly served on the applicant trust. However, on the said date none attended nor filed any details/documents. Thereafter, another letter dated 12.04.2016 giving final opportunity was issued to the applicant trust fixing the hearing on 26.04.2016 which was duly served on the applicant trust. However, on the said date none attended nor filed any details/documents. Ultimately, in view of non-compliance on the part of the applicant trust and in absence of requisite details / documents / explanation, the ld. CIT(E) has rejected the

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application. However keeping in view the facts of the case and bonafide reasons for non compliance, we are of the view that the assessee needs to be given one more opportunity to file the details and information so that the principle of natural justice are complied with and merits of the case are duly taken care of while deciding the issue of registration of the trust. The case of the assessee is supported by the Hon'ble Supreme Court decision in the case of State of Nagaland vs. Lipok AO & Ors. MANU/SC/0250/(2005) 3 SC Cases 752 wherein the Hon'ble Supreme Court has held that where substantial justice and technical approach are pitted against each other, then the former has to be preferred. The Hon'ble Himachal Pradesh High Court Hon'ble Himachal Pradesh High Court in the case of Dharam Dutt and Hari Saran and Ors. CMPMO No.4156 of 2013 in ITA No.4156/13 dated 20.10.2016 has held that it is a settled law that technicalities of law may not prevent the court from doing substantial justice. The court held that judiciary is not represented on account of its power to legalize injustice on technical ground but because it is capable of removing injustice and is expected to do

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so by making justice oriented approach from this perspective. Accordingly, we restore the issue back to the file of ld. CIT(E) with the direction to decide the same on merits after affording a reasonable opportunity of hearing to the assessee. The assessee is also directed to cooperate and file all the necessary details as may be called for by the ld. CIT(E) in connection with the registration under section 12A of the Act.

6. In the result the appeal of the assessee is allowed.

**Order pronounced on 28.08.2020 under Rule 34(4) of the ITAT Rules, 1963.**

**Sd/-**  
**(RAMLAL NEGI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**( RAJESH KUMAR )**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 28.08.2020  
KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

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3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai