

**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.453/Lkw/2019

Asstt Yrs:N.A

Vivekanand Ji Education Trust, Vill., Maheshpur Suddhipur Shivpur, Varanasi PAN: AABTV 6011D (Appellant)	Vs.	CIT(Exemption), Lucknow (Respondent)
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Appellant by	Shri Abhinav Mehrotra, Advocate
Respondent by	Smt. Abha Kala Chanda, CIT (DR)
Date of hearing	01/02/2021
Date of pronouncement	02/02/2021

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order dated 16/07/2018 passed by Id. CIT (Exemption) rejecting the registration u/s 12AA of the I.T. Act.

2. The assessee's appeal is delayed by two hundred seventy four days. An application for condonation of delay has been filed, accompanied by an affidavit of the Secretary of the assessee Trust. The contents of the application for condonation of delay are as under:

- "1. *That the impugned order of Ld. CIT (Exemption) Dt. 16.07.2018 was received by the assessee on 02.09.2018 and hence the original period of*

limitation to file the appeal before the Hon'ble ITAT was available till 02.11.2018.

2. *That the assessee is a trust and the persons effectively managing the affairs of the trust are Mr. Praksh Singh Badal, Secretary of the trust.*
3. *That, marriage of Mr. Praksh Singh Badal and Mrs. Seema Patel was solemnized in the year 2004 and as the most cherished and legitimate expectation of any married couple, the expectation of a child from the wedlock was highly yearned. However, as luck would have it as also the apparent the desire of almighty, the unfortunate couple could not conceive a child naturally and took assistance of artificial methods through medical technology and had to undergo many medical procedures including IVF etc. (Copy of various medical reports is annexed.*
4. *That, seeking condonation of delay in filing the instant appeal, initially an application was moved before the Hon'ble Court in an omnibus manner as the medical exigency involved is absolutely private to the couple and is not felt desirable to be elaborated in detail, in any case upon a perusal of the medical records, it would transpire so, as well.*
5. *That, fundamentally, the above milieu gave foundational structure to setting up of the present charitable adventure and was motivated by the philanthropic and reasons under metaphysics.*
6. *It is however, no gainsaying that one cannot achieve anything against the desire of almighty; although the couple was successful in achieving the birth of a child, the same could not survive during birth.*
7. *That in spite of being meted with such cruelty at the hands of nature, the couple is determined to charitable causes. It is however submitted that as experienced in past, one cannot fight the course of nature; accordingly the application seeking condonation of delay in moving the court is submitted with the above averments and no more.*

8. *The delay getting occasion due to the above mentioned reasons was inadvertent and not deliberate. There is no malafide in the assessee not preferring the appeal within the prescribed period of limitation and accordingly it is prayed that the delay of 274 days may kindly be condoned in the interest of justice and the appeal be heard on merits.”*

3. In view of the above contents of the application for condonation of delay, duly supported by the affidavit of the Secretary of the assessee Trust, it is seen that the assessee was prevented by sufficient cause from filing the appeal in time. The delay is inadvertent. Accordingly, the delay of Two hundred seventy four days in filing the appeal is condoned.

4. The facts of the case, in brief, are that the assessee society applied for registration u/s 12A(a) of the Act with CIT (Exemption) vide application dated 10/01/2018. The Id. CIT (Exemption) issued a letter dated 30/05/2018 to the assessee calling for specific queries regarding the application for registration u/s 12A for compliance on 09/07/2018. On that date, i.e., 09.07.2018, assessee's counsel appeared and sought adjournment for 16.07.2018, however, none appeared on 16/07/2018 nor any adjournment application was filed, therefore, Id. CIT (Exemption) rejected the application of the assessee for registration u/s 12A(a) of the Act on the ground that sufficient material required for formation of satisfaction has not been produced.

5. We have heard the rival parties and have gone through the material placed on record. From the order of Id. CIT (Exemption), it is apparent that the Id. CIT (Exemption) had issued only one letter dated 30/05/2018 calling for certain queries regarding its application for

registration u/s. 12A of the Act. The assessee could not file books of account, Bank statement and vouchers and the CIT (Exemption) passed the order and rejected the application of the assessee for registration u/s 12A of the Act. In these facts, we feel that one more opportunity should be given to the assessee to explain its case before the Id. CIT (Exemption). We are of the view from the facts of the case that the assessee has not been given proper and sufficient opportunity before disposing of the application of registration by the Id. CIT (Exemption). We, therefore, in the interest of justice, set aside the order of the Id. CIT (Exemption) and restore the matter to his file with the direction to consider the application of the assessee for registration u/s 12A afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing and provide the material / clarification as asked for by the Id. CIT (Exemption).

6. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 02/02/2021)

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

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

Dated:02/02/2021
Aks/-

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