आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

(***Convened through Virtual Court***)

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR

आयकर अपील सं./I.T.A. No. 228/Ahd/2021

(**निर्धारण वर्ष /** Assessment Year : NA)

Navi Masjid Mahfile Husen Madrase Tarkki Islam Husaini Tekri Kanodar, Palanpur, Banaskantha - 385520	**बनाम**/ Vs.	**ACIT(Exemption)** Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATN1634M		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से/**Appellant by :**	Shri Vartik Chokshi, Shri Biren Shah & Shri G. M. Thakor, A.R.
प्रत्यर्थी की ओर से / **Respondent by :**	Shri Sanjay Punglia, CIT. D.R.

सुनवाई की तारीख / **Date of Hearing**	09/03/2022
घोषणा की तारीख /**Date of Pronouncement**	13/04/2022

ORDER

PER MAHAVIR PRASAD, JM:

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Exemption), Ahmedabad ('CIT(E)' in short) dated 16.04.2019 regarding rejection of approval under s. 12AA(1)(b)(ii) of the Income Tax Act, 1961 ('the Act' in short) .

2. At the outset, the learned AR appearing on behalf of the assessee submitted that there was the delay in filing the appeal before the ITAT for 838 days. The learned AR has explained the delay for two reasons. Firstly, the assessee was under the impression that the registration application filed dated 15 April 2019 shall be validated for registration under section 12 AA of the Act from the year 2018-19 as the original application was filed dated 30 October 2018. According to the assessee, the 1st application dated 30 October 2018 for the registration under section 12 AA of the Act was rejected by the learned CIT exemption on the reasoning that the assessee has not furnished the requisite details in response to the query raised through email dated 5 March 2019 and 29 March 2019. But the fact is that the assessee has never received the emails therefore he failed to make the necessary compliance.

However, the assessee received the certificate of registration under section 12AA of the Act vide order dated 18 October 2019 on the separate application filed dated 15 April 2019. As such the assessee was under the bona fides believe that the registration certificate granted to it is effective from the original application made by it dated 30th October 2018 i.e. financial year 2018-19 corresponding to assessment year 2019-20.

3. Nevertheless, during the assessment proceedings for the assessment year 2019-20, the assessee was denied the benefit of exemption under section 11 of the Act for the reason that there was no registration for the year under consideration. At that point of time the assessee realised that the registration has not granted to it effective from assessment 2019-20.
Subsequently, the assessee has fallen sick. Accordingly, the doctors advised for the bed rest for one & half month. According to the assessee, because of these reasons as stated above, there was the delay in filing the appeal before the ITAT. The learned AR in support of assessee's

contention has drawn our attention on the affidavit and the medical prescription which is available on record. In view of the above, the learned AR prayed before us for the condonation of the delay for 838 days in preferring the appeal before the ITAT.

4. On the other hand, the learned DR submitted that there is inordinate delay in filing the appeal by the assessee and reasons given by the assessee for the delay have not been supported by the documentary evidence. Accordingly, the learned DR opposed to condone the delay occurred in filing the appeal by the assessee.

5. We have heard the rival contentions of both the parties and perused the materials available on record. Under the provisions of the Act, there is a time limit specified under the respective section of the Act for filing the appeal against the finding of the specified authority. However, the provisions of the Act also provides relaxation to the parties, if failed to file the appeal within the stipulated time, if there was the sufficient cause which prevented the assessee/party in doing so. It is the trite law that the Hon'ble Courts time and again in the series of cases have held that the expression "sufficient cause" should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay. In this regard we note that the Hon'ble Madras High Court in the case of Sreenivas Charitable Trust v. Dy. CIT reported in 280 ITR 357 has held that :

> ***"3.*** *The Supreme Court in Vedabai v. Shantaram Baburao Patil [2002] 253 ITR 798held as under :*
>
> *"In exercising discretion under section 5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance." (p. 799)*

4. The Calcutta High Court in CIT v. Orissa Concrete & Allied Industries Ltd. [2003] 264 ITR 186 held as under :

". . .what is really indicated in the various decisions cited and in section 5 of the Limitation Act itself, is that a litigant would be required to explain why the appeal and/or application could not be filed within the period prescribed by limitation and explain the delay for such period for the purpose of linking up the circumstances which had caused the delay during the period of limitation and thereafter." (p. 192)

5. Recently, the Allahabad High Court in Ganga Sahai Ram Swarup v. ITAT [2004] 271 ITR 512 has taken the view that liberal view ought to have been taken by the authority as the delay was only of a very short period and the appellant was not going to gain anything from it.

6. Applying the ratio laid down by the Apex Court as well as various High Courts, we find, it is stated in the petition filed by the assessee for condonation of delay that the order copy was misplaced and thereafter it was found and sent to counsel for preparing the appeal and then, the appeal was prepared and filed before the Tribunal and in that process, the delay of 38 days occurred. As held by the Apex Court, no hard and fast rule can be laid down in the matter of condonation of delay and the Courts should adopt a pragmatic approach and the Courts should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. We are, therefore, of the opinion that the Appellate Tribunal ought to have condoned the delay in filing the appeal, considering the reasons given by the assessee for the delay."

5.1 The assessee, in the present case, has filed the affidavit, explaining the reasons for the delay in filing the appeal before us. However, the Revenue has not filed any counter-affidavit to deny the allegation made by the assessee.

5.2 It is also important to note that Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down certain principles for considering the condonation petition for filing the appeal which are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late (2) Refusing to condone delay can result in a meritorious matter being thrown 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.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the 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.

(5) 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.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

5.3 From the above judgment of the Hon'ble Apex Court, we note that the substantial justice deserves to be preferred rather than deciding the matter on the basis of technical defect.

5.4 We also note that there is no allegation from the Revenue that the appeal was not filed within the time deliberately. Therefore, we are inclined to prefer substantial justice rather than technicality in deciding the issue.

6. The next controversy arises whether the delay of 838 days was excessive or inordinate. There is no question of any excessive or inordinate when there was reasonable cause which prevented the assessee in filing the appeal. As such we need to consider the cause for the delay and not the length of the delay. Accordingly in our considered view when there was a reasonable cause, the period of delay may not be relevant factor. We draw support from the judgment of the Hon'ble Madras High Court in the case of CIT v. K.S.P. Shanmugavel Nadai and Ors reported in 153 ITR 596 wherein it was held as under :

"Since in this case the assessee had been prosecuting other remedies, the time taken by those proceedings should naturally be taken while determining the question whether the assessee had sufficient cause for not presenting the appeal in time. Therefore, the revenue was not right in submitting that the appeal filed under section 17 was an appeal against the original order of assessment under the Act, which was passed about 20 years ago, as it was evident that the appeal was against an order of rejection of relief by the assessing authority. Thus, though the Tribunal's view that there was no question of limitation in such cases, was not correct yet the AAC was right in condoning the delay and entertaining the appeal."

From the above, we note that the Hon'ble Madras High Court in the above case was pleased to condone the delay for 20 years approximately by holding that there was sufficient and reasonable cause on the part of the

assessee for not filing the appeal within the period of limitation. The delay in the instant case is just of 838 number of days which cannot be considered to be inordinate or excessive in comparison to the delay of 7330 days approximately.

6.1 In view of the above we are of the opinion that when there is sufficient cause for not filing the appeal within the period of limitation, the delay has to be condoned irrespective of the duration/period of the delay. In this case, the non-filing of an affidavit by the Revenue for opposing the condonation of delay itself is sufficient for condoning the delay of 838 number of days. Thus, we condone the delay of 838 days in filing the appeal and proceed to hear the appeal on merit for the adjudication.

7. The only issue raised by the assessee is that the learned CIT exemption erred in not granting registration under section 12AA of the Act. At the outset we note that the learned CIT exemption required the assessee to furnish the necessary details in support of the application filed by it under section 12AA of the Act. However the assessee failed to make any compliance thereon. Thus the learned CIT exemption in the absence of necessary supporting documents rejected the application filed by the assessee.

8. Being aggrieved by the order of learned CIT exemption, the assessee is in appeal before us.

9. The learned AR before us contended that the learned CIT exemption on the subsequent application dated 15-4-2010 made by the assessee for the registration under section 12AA of the Act has granted the registration dated 18-10-2019. Thus, the objects and activities of the assessee are

beyond the doubts. As such the trust is carrying out charitable activities which has also been admitted by the learned CIT exemption. Thus the learned AR for the assessee before us prayed to restore the issue to the file of the learned CIT exemption for fresh adjudication as per the provisions of law.

10. On the contrary, the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessing after making the application for the registration under section 12AA of the Act should be vigilant enough to pursue the same. As such the job of the assessee does not come to an end on making the application for registration, rather after making the application, the job of the assessee begins to satisfy the learned CIT exemption in order to get the registration under section 12AA of the Act which is possible after making necessary compliances to the enquiries raised by the learned CIT exemption.

12. Be that as it may be, admittedly the assessee is carrying out charitable activities which is evident from the fact that the learned CIT exemption on a later date has granted registration under section 12AA to the assessee which is effective from the assessment year 2020-21. In other words, the assessee shall not be eligible for the benefit of exemption under section 11 of the Act for the assessment year 2019-20 for the reason that the registration application was rejected by the learned CIT exemption due to procedural lapse i.e. non-compliance of the notice issued by the learned CIT exemption. To our understanding, the assessee should not suffer merely on account of non-compliance particularly in a situation when its

activities are genuine. Accordingly, in the interest of justice and fair play, we set aside the issue to the file of the learned CIT exemption for fresh adjudication as per the provisions of law. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 13/04/2022

Sd/-	Sd/-
(WASEEM AHMED)	(MAHAVIR PRASAD)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Ahmedabad: Dated 13/04/2022

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।