

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC-1” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1113/Ahd/2018
Assessment Year: 2014-15**

Anubhav Charitable Trust,
5, Tejas Apartment,
38, Azad Society,
Ambavadi,
Ahmedabad.
[PAN – AADTA 1443J]
(Appellant)

vs. The Income Tax Officer,
Ward – 5(2)(3), Ahmedabad.

(Respondent)

Appellant by : Shri S.N. Divatia, AR
Respondent by : Shri V.K. Singh, Sr. DR

Date of hearing : 22.07.2022

Date of pronouncement : 26.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Assessee against the order dated 22.03.2018 passed by the CIT(A), Ahmedabad for the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal :-

- “1. *The learned Commissioner of Income Tax Appeals has erred in facts and in law by rejecting the condonation request filed by appellant.*
2. *The communication made by CPC was automatically transferred to junk emails being message generated from automated server. Hence appellant failed to read it within time and filed the appeal late by 148 days. The learned CIT Appeal has erred in facts and law by not considering it as reasonable & sufficient cause for granting condonation.*
3. *The learned CIT Appeal has erred in facts and law by not considering clerical error made while filing of return of income as mistake being*

apparent from record and thus being valid ground for filing rectification request u/s. 154 of the Income Tax Act.”

3. The assessee Trust was not registered with the Commissioner of Income Tax (Exemption). Thus, the same should have filed its return in the capacity of AOP. However, while filing return of income, the assessee made clerical mistake related to expenditure made by the assessee trust and the same was put in the column of amount applied for charitable purpose. Being the mistake apparent on record, the return was rectified and the expenditure was claimed by making entry in the proper column. However, the CPC has considered it as fresh claim and rejected the rectification request.

4. The Ld. AR submitted that the CPC has rejected the claim under Section 11 of the Income Tax Act, 1961 and taxed the trust at maximum marginal rate of 30.90% on total income of Rs.8,12,223/-. The mistake was communicated to the CPC through email. However, the email setting of the assessee was made in such a manner that all the mails received from automated server were automatically diverted to the junk mails. Later by checking the status of the rectification the assessee trust came to know that the rectification was rejected so he approached to CIT(A) with condonation of delay. The CIT(A) dismissed the appeal of the assessee thereby rejecting the condonation of delay.

5. Ld. DR relied upon the Assessment Order and the order of the CIT(A).

6. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has explained the delay before the CIT(A) and the CIT(A) without taking cognisance of the actual mistake and the subsequent rectification of the return of income has not taken into consideration at all and dismissed the appeal on delay basis. Thus, in the interest of justice it will be appropriate to remand back this issue to the file of the CIT(A) to properly explain the related delay as well as to decide the case on merit. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice. Appeal of the assessee is thus partly allowed for statistical purpose.

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

Order pronounced in the open Court on this 26th day of August, 2022.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 26th day of August, 2022

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad