

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 2677/Del/2019
(Assessment Year: 2015-16)**

SPS Educational and Welfare Society, 206-207, Ansal Satyam, RDC, Ghaziabad (Appellant)	Vs.	DCIT-CPC, Bangalore (Respondent)
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PAN: AAQTS2096E

Assessee by :	Shri Akhilesh Kumar, Adv
Revenue by:	Shri Abhishek Kumar, Sr. DR

Date of Hearing	04/08/2022
Date of pronouncement	31/08/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 20.01.2019 of Ld. CIT(A), Ghaziabad (hereinafter referred as Ld. First Appellate Authority) arising out of an appeal before it against the assessment order dated 30.08.2017 passed u/s 154 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the AO, Id. DCIT-CPC, Ghaziabad (hereinafter referred as the Ld. AO).
2. Brief facts of the case are that the assessee is a society running an educational Institution under the name and style of Indraprastha Public School. The case of assessee is that the Income tax return for A.Y. 2015-2016 was filed on 25.03.2016. In Part A -GEN (Personal Information) of ITR-7 it was clearly mentioned that this society is exempt u/s

10(23C)(iiiad). Further in Para B of other details it is also mentioned that it is eligible for exemption u/s 10(23C)(iiiad) as its aggregate annual receipts is below Rs. 1 crore (i.e. Rs. 8553876/-). Further in reply to a question in Part C of other details of ITR-7 It is clearly mentioned that the society is not registered u/s 12A. Due to certain inbuilt default in the software used for filing of return (MDA Software), the amount of Rs. 8553876/- was automatically shown in column no 7 which was neither filled in by the assessee nor intended to do so. It is stated that this column pertains to society registered u/s 12A/12AA. After filing return on 25.03.2016, CPC issued notices u/s 139(9) which was finally replied on 06.12.2016. The above return was treated as invalid return on 10.03.2017. So the assessee has again filed its original ITR for A.Y. 2015-2016 on 30.03.2017. Meanwhile CPC processed the above invalid return suo moto on 27.03.2017 which in fact came to the knowledge of the assessee only after 30.03.2017. The Ld. CPC has not taken any action against the return filed on 30.03.2017 hence assessee opted to file application u/s 154 on 26.08.2017 against the order passed u/s 143(1) for an invalidated return. In fact the society has gross receipts of Rs. 8553876/- against which Rs. 8227530/- was used for educational purpose leaving behind a surplus of Rs. 326346/- only which is exempt u/s 10(23C)(iiiad). But the CPC has processed the return u/s 143(1)(a) of the Income tax Act 1961 by treating the whole receipts of Rs. 8553876/- as income of the assessee and levied a huge demand of tax of Rs. 3268230/- which is erroneous and is liable to be deleted. Through the rectification application filed u/s 154 of the Income Tax Act 1961 on dated 26.08.2017, a fresh xml file duly correcting the mistakes apparent from the records was filed wherein it is clearly mentioned that the income of the trust is exempt u/s 10(23C)(iiiad) of the Income Tax Act 1961 being an educational institution solely for educational purpose gross receipts of which does not exceed Rs. 1 crore but that application was summarily rejected by the CPC Bangalore and order of rejection was received by the assessee on 16.02.2018.

3. However, the Id CIT(A) dismissed the appeal of the Assessee with the following order held as under:-

"2.1 Admittedly the appellant received the order u/s 154 dt. 2.,03.2017. Thus there is unjustifiable delay of more than 1 year in filing the appeal, it is also noted that appellant preferred application u/s 253(5) which is not maintainable before undersigned. Thus there is unjustifiable delay in filing the appeal. Condonation of delay is not a matter of right since appellant has failed to show reasons of delay on last day of limitation and thereafter for each day, it is felt that appellant has not acted with reasonable diligence in prosecuting the appeal Reliance in this regard is placed on decision in the case of Rankak & Ors, Vs Rewa Coalfields Ltd. AIR 1962 SC 361, JCIT vs Tractors & Farm Equipments Ltd. (ITAT, Chennai-TM) 1Q41TD149, Madhu Dadha vs ACIT(Mad) 317 m 458. Considering above facts and circumstances this appeal preferred by the appellant is treated as non-est being defective."

4. The Assessee is in appeal before us raising following grounds of appeal:-

- "1. Because, Ld. CIT (Appeals) grossly erred in law and on the facts and circumstances of the case in dismissing the appeal by wrongly alleging the same as non-maintainable.*
- 2 Because, order of Ld. CIT (Appeals) is inherently wrong in presuming the delay of four months or delay of one year in filing the appeal which is filed well within the period of limitation of 30 days, hence order is against all the canons of law.*
- 3 Therefore, it is very respectfully prayed that this court may kindly be pleased to set aside the order under question with the direction deemed fit to CIT(A) to hear matter on merits."*

5. Heard and perused the record. The Ld. Counsel for the Assessee relied upon the judgments/ orders of the **Hon'ble Allahabad High Court in the case of Subhash Malik Vs. CIT, Meerut (2010) 325 ITR 243, M/s. Bangalore Metro Rail Corporation Ltd Vs. DCIT, Bangalore in ITA No. 1111/bang/2019** to contend that the Id. CIT(A) has been harsh to apply the stringent provision without taking into consideration the merit of the ground. Ld DR however submitted that there is no error in findings of Ld CIT(A).

6. Appreciating the matter on record and the submissions it is apparent from the findings of the Id CIT(A) that said Appellate Authority was of the view that the Assessee was unable to cite explanation of every day of delay. In the case in hand the Assessee is a registered society acting through it's office bearers and the Assessee filed before the Id CIT(A) an affidavit of the Manager of the society explaining the circumstances of delay and also the CA looking after the affairs of the company had also filed an affidavit.

7. It can be appreciated that the Assessee's claim is primarily is of wrong advice in choosing the forum under law to contest the assessment order. The bench is of considered opinion that in case of society or other incorporated entities a decision to contest any order of authorities, has to be examined and decision to contest has taken following a procedure. The stringent laws of limitation require liberal interpretation. In the case in hand apparently the Id CIT(A) has not gone at all into discussing the grounds which were submitted and with the cursory observations the appeal has been dismissed barred by limitation. In fact it appears that at the time of adjudication of the appeal also none from the Assessee was present. The ends of the justice require condonation of delay and giving an opportunity to contest the assessment on merits.

8. In the result the grounds are allowed and **appeal of the Assessee is allowed for statistical purpose.** The impugned order is set aside with direction to the Ld CIT(A) to decide the grounds of assessee on merits, after reasonable opportunity of hearing.

Order pronounced in the open court on 31/08/2022.

-Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 31/08/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi