

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
(VIRTUAL COURT)
BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 264/Asr/2022
Assessment Year: 2017-18

Guru Teg Bahadur
Educational Trust,
Gurudwara Thara Sahib,
Vill. Hazara, Distt.- Jalandhar

[PAN: AAATG 9403B]

(Appellant)

**V. The Commissioner of Income
Tax (Exemptions), Chandigarh**

(Respondent)

Appellant by : Sh. K. Bhagat, CA

Respondent by : Sh. S. R. Kaushik, CIT-DR

Date of Hearing : 27.02.2023

Date of Pronouncement : 14.03.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Exemptions), Chandigarh dated 30.03.2022 in respect of Assessment Year 2017-18.

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

- “1. That the order passed by the CIT(Exemptions) Chandigarh is against law and facts of the case.*
- 2. That the assessee had applied for registration to the CIT(E) Chandigarh for A.Y.2017-18 but the That the - lessee had applied for registration to the CIT (Exemptions) Chandigarh for A.Y. 2017-18 as per Form- 10A but worthy CIT(Exemptions) had granted registration from AY: 2018-19 vide order dt 30.03.2022. As the application was submitted on 16.05.2016 i.e from AY: 2017-18 and but it has been allowed from AY: 2018-19 necessary modification is required. Aggrieved, the assessee files this appeal.*
- 3. That the assessee requests to add or amend the grounds of appeal before the same is heard or disposed off.”*

3. At the outset, the counsel of the assessee submitted there was a delay of 211 days in filing appeal before the ITAT in respect of assessment year 2017-18 due to change of counsel. The Id. AR submitted that the assessee has bona fide reasons without deliberate intention for such delay of 211 days. He pleaded that for the cause of substantial justice, the delay may be condoned. The counsel explained that the Commissioner of Income Tax (Exemptions) had passed the order dated 30.03.2022 granting exemption u/s 12AA from AY: 2018-19. However, the assessee had applied for AY: 2017-18 but there was delay of 204 days in filing the appeal. In this connection the assessee relies upon the judgment of the Hon'ble Supreme Court in the case of Collector Land Acquisition vs. MST

Katiji & ORS. [167 ITR 471] wherein it was held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side can't claim to have a vested right in injustice being done because of a non-deliberate delay. He also referred to another judgement of the Hon'ble Supreme Court of India in the case of Vedabai Alias Vaijyanatabai Baburao Patil vs. Shantaram Baburao Patil and others [253 ITR798] where it was held that in exercising discretion under section 5 of Limitation Act, 1963, to condone delay for sufficient cause is not preferring an appeal or other application within the period prescribed, 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 consideration of prejudice to the other side will be a relevant factor and calls for a more cautious approach, 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 no exercise its 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. The expression "Sufficient cause" should be received a liberal construction.

4. The counsel had argued 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. In view of sufficient cause, the request of the assessee is accepted as genuine. Accordingly, the delay is hereby condoned and appeal is admitted on merits.

5. The CIT(Exemptions), Chandigarh vide order dated 26.03.2018 rejected the assessee application for registration u/s 12A. Aggrieved by the order of the department, the applicant filed an appeal before the Hon'ble ITAT, Amritsar. However, the Hon'ble ITAT has allowed the appeal of the assessee CIT(E) in ITA No. 301/Asr/2018 dated 16.08.2021 for the statistical purposes. In compliance to the Tribunal order, the Ld.CIT(E) granted registration to the appellant Trust by observing as under:

1. Keeping in view the directions of the Hon'ble ITAT, the applicant society/non-profit company is hereby granted registration with salient activities as "Education" and the provisions of sections 11 and 12 shall apply in the case from the Assessment Year: 2018-19

The registration is being granted to the applicant on, inter-alia, the following conditions:-

1. As and when there is a move to amend or alter the objects/rules and regulations of the applicant, prior approval of the Commissioner shall be sought along with the draft of the amended

deed and no such amendment shall be effected until and unless the approval is accorded.

- 2. In the event of dissolution, surplus and assets shall be given to an organization, which has similar objects and no part of the same will go directly or indirectly to anybody specified in section 13(3) of the Income Tax Act, 1961.*
- 3. In case the trust/institution is converted into any form, merged into any other entity or dissolved in any previous year in terms of provisions of section 115TD, the applicant shall be liable to pay tax and interest in respect of accreted income within specified time as per provisions of section 115TD to 115TF of the Income Tax Act, 1961 unless the application for fresh registration under section 12AA for the said previous year is approved by the Commissioner.*
- 4. The Trust Institution should quote the PAN in all its communications with the Department.*
- 5. The registration u/s 12AA of the Income Tax Act, 1961 does not automatically confer any right on the donors to claim deduction u/s 80G.*
- 6. Order u/s 12AA(1)(b) read with section 12A does not confer any right of exemption upon the applicant u/s 11 and 12 of Income Tax Act, 1961. Such exemption from taxation will be available only after the Assessing Officer is satisfied about the genuineness of the activities promised or claimed to be carried on in each Financial Year relevant to the Assessment Year and all the provisions of law acted upon. This will be further subject to provisions of section 2(15) of the Income Tax Act, 1961.*
- 7. No change in terms of Trust Deed/ Memorandum of Association shall be effected without due procedure of law and its intimation shall be given immediately to this office. The registering authority reserves the right to consider whether any such alteration in objects would be consistent with the definition of "charitable purpose" under the Act and in conformity with the requirement of continuity of registration.*

8. *The Trust/ Society/ Non Profit Company shall maintain accounts regularly and shall get these accounts audited in accordance with the provisions of the section 12A(1)(b) of the Income Tax Act, 1961. Separate accounts in respect of each activity as specified in Trust Deed/ Memorandum of Association shall be maintained. A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on/ to be carried on and the target group(s) (intended beneficiaries) shall be duly displayed at the Registered/ Designated Office of the Organization.*
9. *The Trust/ Institution shall furnish a return of income every year within the time limit prescribed under the Income Tax Act, 1961.*
10. *Separate accounts in respect of profits and gains of business incidental to attainment of objects shall be maintained in compliance to section 11 (4A) of Income Tax Act, 1961.*
11. *The registered office or the principal place of activity of the applicant should not be transferred outside the jurisdiction of undersigned except with the prior approval.*
12. *No asset shall be transferred without the knowledge of undersigned to anyone, including to any Trust/ Society/ Non Profit Company etc.*
13. *The registration so granted is liable to be cancelled at any point of time if the registering authority is satisfied that activities of the Trust/ Institution/ Non Profit Company are not genuine or are not being carried out in accordance with the objects of the Trust/ Institution/ Non Profit Company.*
14. *If it is found later on that the registration has been obtained fraudulently by misrepresentation or suppression of any fact, the registration so granted is liable to be cancelled as per the provision u/s section 12AA(3) of the Act.*
15. *This certificate cannot be used as a basis for claiming non-deduction of tax at source in respect of investments etc. relating to the Trust/ Institution.*

16. *All the Public Money so received including for Corpus or any contribution shall be routed through a Bank Account whose number shall be communicated to this office.*
17. *The society will not engage in any of the activities which are not covered u/s 2 (15) of I. T. Act, 1961.*
18. *The society will have to necessarily file the return of income u/s 139(4A) of I.T. Act before the due date in Form No. ITR 7 along with the audit report.*
19. *The society shall apply at least 85% of the income derived from the property held by the Society for charitable purpose during that year as per the condition laid down u/s 11(1) of I.T. Act.*
20. *The society shall inform the concerned Assessing Officer in writing in Form No.10 before the due date of filing of Income Tax Return in case 85% of the income derived from the property held by the Society during that year was not applied for charitable purpose as per the condition laid down u/s 11 (2) of I.T. Act.*
21. *The society will invest or deposit the money referred to in Clause (b) Section 11(2) as per the condition laid down u/s 11(5) of the I.T. Act, 1961.*
22. *The society will have to fulfill the FCRA requirements if any foreign donation is received by the society. The registration is liable to be cancelled at any point of time if it is found that FCRA requirements have been flouted.*
23. *In the event of any change in the composition and memorandum of the Society the same shall be duly registered with the competent authority under the relevant law. The fact, thereafter, shall be conveyed to the undersigned that reserves the right to examine afresh the need for continuation of the registration in the new circumstances.*
24. *It is emphasized that the registration under section 12AA doesn't preclude the applicant assessee from adhering to the basic*

requirements inherent in the related provisions of the Act. These requirements, it is reiterated, shall include inter alia filing of audit reports, adherence to the norms of utilization of income for the intended charitable purposes etc. This certificate does not give any exemptions to the society from Income Tax automatically. The Assessing Officer will examine the conditions for exemptions u/s 11, 12, 12A (b) & 13 of the Act at the time of assessments.

25. The activities/fund of the Trust/ Society/ Non-Profit Company shall not be employed towards Money Laundering, Terrorism, Front/show entities etc.

26. A separate account shall be maintained of all the investments made in accreting Capital Assets which shall be examined by the Assessing Officer every year to see whether they qualify as utilization for charitable purposes.

27. The registration u/s 12AA of the Act is being accorded subject to outcome of the appeal filed by the department on such issue before the Hon'ble High Court of Punjab & Haryana, if any."

6. Having heard both the sides, perusal of impugned order, Tribunal order and material evidence on record, it is undisputed fact on record that the assessee had applied for registration to the CIT(E) Chandigarh for A.Y.2017-18 as per Form- 10A but worthy CIT(Exemptions) had granted registration in respect of Assessment Year 2018-19 vide order dated 30.03.2022 in the 2nd round of adjudication in compliance to the Tribunal Order remanding back the matter for adjudication on facts and in law. Since, the appellant Trust has filed application dated 16.05.2016 in respect of the Assessment Year 2017-18, the registration is required to be granted

with effect from the Assessment Year 2017-18. The Ld. DR has no objection to the request of the appellant Trust in granting registration with effect from the date of application for registration in respect of the Assessment Year 2017-18 under consideration.

7. Accordingly, the CIT(E) is directed to grant registration u/s 12AA of the Act, to the applicant Trust from the date of application i.e. dated 16.05.2016 in respect of the Assessment Year 2017-18.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 14.03.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order