

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 76/Chny/2023

Dolphin Educational Foundation, Income Tax Officer  
43, Harvey Nagar, 2<sup>nd</sup> Street, v. (Exemptions),  
Arasaradi, Madurai. Chennai.  
**[PAN: AACTD-2565-K]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. G. Baskar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri. M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing : 29.03.2023

घोषणा की तारीख/Date of Pronouncement : 31.03.2023

**आदेश / O R D E R**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Exemptions), Chennai, dated 15.10.2019.

2. At the outset, we find that there is a delay of 1136 days in appeal filed by the assessee. During the course of hearing, when defect was brought to the notice of the learned AR present, he has submitted that delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of spread of Covid-

19 infections and in view of the Hon'ble Supreme Court **suomotu** Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in **suomotu** Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

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

*"1. The action of CIT(E) in summarily rejecting the application for registration u/s 12AA of the Act springs out from non-appreciation of facts of the case.*

*2. The CIT(E) having taken note of the fact that the Appellant was earlier granted registration u/s.12AA considering the genuineness of the . educational activities, ought not to have rushed to dispose of the present application in a summary manner.*

*3. The CIT(E) failed to consider the fact that the Appellant having already obtained registration u/s.12AA on 03.12.2003, there is no necessity of re-registration when there is only change in the trustees.*

*4. The CIT(E) erred in not granting the Appellant reasonable opportunity of being heard, as stipulated under the proviso to section 12AA(1)(b) of the Act.*

*5. The CIT(E) ought to have enlarged the time limit for disposing of the registration when the Trustee wasn't aware of the complications and compliances under the Income Tax Act."*

6. The brief facts of the case are that, the appellant filed an online application in Form no. 10A for registration u/s. 12AA of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 23.04.2019. The CIT(E), Chennai rejected application filed by the assessee vide order u/s. 12AA of the Act, dated 15.10.2019, on the ground that the assessee could not file any evidence in support of its application in spite of various dates of hearing was provided to file necessary evidences. Being aggrieved by the CIT(E) order, the assessee is in appeal before us.

7. The Ld. Counsel for the assessee, referring to paper book filed by the assessee dated 28.03.2023, submitted that the assessee trust was came into existence by way of trust deed dated 20<sup>th</sup> August, 2001. Further, the assessee trust has got registration u/s. 12AA of the Act, vide order dated 03.12.2003 from the CIT(E), Madurai w.e.f. assessment year 2004-05. The assessee has amended its trust deed on 11<sup>th</sup> February, 2015 and by mistaken of law filed fresh application for registration of trust in Form no. 10A on 23.04.2019, even though, it has got registration w.e.f. assessment year 2004-05. Since, the trust has already got registration u/s. 12AA of the Act, further application for registration, by mistaken of law is incorrect and thus, prayed for setting aside the order of the CIT(E) to go back to the CIT(E) to withdraw its application.

8. The Id. DR, on the other hand submitted that there is no clarity in copy of order filed by the assessee to prove that trust was registered u/s. 12AA of the Act, for assessment year 2004-05. Further, the appellant had filed application on the basis of amended trust deed dated 11.02.2015. Therefore, the CIT(E) has rightly rejected application filed by the assessee for non-prosecution.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per provisions of section 12AA of the Act, once a trust is registered u/s. 12AA, it is permanent unless it was withdrawn by a specific order from the authority. However, the law has been amended by the Finance Act, 2020 w.e.f. 01.04.2021 and as per said amended provisions, registration of any trust is restricted for a period of five years. In this case, there is no dispute with regard to the fact that the application filed by the assessee on 11.02.2015, is as per pre-amended regime of registration of trust. Therefore, from the above, it is very clear that once the trust has been registered u/s. 12AA of the Act, its registration will continue unless it was withdrawn by a specific order. In this case, the assessee claims that the trust has got registration u/s. 12AA of the Act from assessment year 2004-05 onwards and said registration is valid. Further, the assessee has filed a fresh application on the basis of amended trust deed dated 11.02.2015, by mistaken of law, as if when the trust deed is being amended fresh registration is required to be taken. The CIT(Exemptions), rejected application filed by the assessee for non-prosecution and non-filing of necessary details and said order is in force. Unless the latest order passed by the CIT(E) is withdrawn, the assessee may lose the benefit of exemption u/s.

11 of the Act, even though it has got valid registration u/s. 12AA of the Act. Therefore, we are of the considered view that an opportunity should be given to the assessee to rectify the mistake committed by the assessee itself for filing a fresh application for registration and said rectification can be done by the CIT(E) itself. Therefore we set aside the order passed by the CIT(E) and restore the issue back to the file of the CIT(E) to allow one more opportunity of hearing to the assessee to decide the issue in accordance with law.

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

Order pronounced in the court on 31<sup>st</sup> March, 2023 at Chennai.

**Sd/-**  
**(महावीर सिंह )**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /Vice President

**Sd/-**  
**(मंजुनाथ. जी)**  
**(MANJUNATHA. G)**  
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> March, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |