

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(THROUGH E-COURT)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.137/Rjt/2021  
(निर्धारण वर्ष / Assessment Year- NIL)

Keshav Tirth Foundation Block No. M/8, Mahavir Park, Near Nirmala Convent School, Sojitrnagar, Rajkot	<b>बनाम/ Vs.</b>	The CIT(Exemption) Ahmedabad
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCK9858F</b>		
<b>(अपीलार्थी /Appellant)</b>		<b>(प्रत्यर्थी / Respondent)</b>

अपीलार्थी ओर से / <b>Appellant by</b> :	Shri D. M. Rindani, A.R.
प्रत्यर्थी की ओर से/ <b>Respondent by</b> :	Shri Shramdeep Sinha, CIT D.R.

सुनवाई की तारीख / <b>Date of Hearing</b>	06/02/2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	21/04/2023

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of Assessee against the order of the Learned Commissioner of Income Tax(Exemption), Ahmedabad [Ld. CIT(A)] in short] of order dated 23/05/2019 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (A.Y.) NIL.

2. At the outset, it was noticed that there was delay in filing the appeal by the assessee about 827 days. The assessee has filed a petition seeking condonation of the delay in filing the appeal which was supported by the affidavit available on record. It was explained by the assessee that application for registration under

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section 12AA of the Act in form No. 10A was filed 1<sup>st</sup> time dated 23-11-2018 wherein the email ID of the trustee namely Shri Balkrushna Kakkad was mentioned who suffered the brain stroke dated 28 February 2019. The necessary medical certificates were also placed on record.

3. Thus, it was contended that the questionnaire and the notices issued by the learned CIT exemption dated 5<sup>th</sup> April 2019 and 25<sup>th</sup> of April 2019 remained unanswered by the assessee as the medical condition of the trustee was not in good health. Finally, the learned CIT exemption rejected the application filed by the assessee vide order dated 23<sup>rd</sup> May 2019.

4. It was also submitted by the assessee that the trustee Shri Balkrushna Kakkad eventually passed away dated 10<sup>th</sup> April 2021 on account of his persistent illness. The assessee also filed the death certificate which is placed on record.

4.1 In view of the above, the learned AR appearing on behalf of the assessee contended that the delay in filing the appeal has occurred due to genuine difficulty.

5. On the other hand, the learned DR contended that the assessee after the rejection of the application filed under section 12AA of the Act for the registration has moved separate application dated 26<sup>th</sup> June 2019 and the registration under section 12AA of the Act was finally accorded dated 19<sup>th</sup> December 2019 by the learned CIT exemption. Thus, as per the learned DR the registration has finally been granted by the learned CIT exemption subsequently on the application filed by the assessee. As such, it was pointed out by the learned DR that there was negligent behavior on the part of the assessee for not filing the appeal before the ITAT upon the rejection of the registration application made 23<sup>rd</sup> November 2018. It is because when the assessee was able to move the registration application under section 12 AA of the Act 2<sup>nd</sup> time dated 26<sup>th</sup> June 2019, then at that time the assessee could have also approached to the ITAT by filing the appeal against

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the decision of the learned CIT exemption. Thus, it is improper on the part of the assessee to seek condonation for the delay in filing the appeal on the medical health of the trustee. Once, the assessee, despite the illness of the trustee was in a position to move 2<sup>nd</sup> application for the registration under section 12AA of the Act, it could have also approached the ITAT with the appeal against the decision of the CIT exemption. Thus, it was prayed by the learned DR not to condone the delay in filing the appeal by the assessee.

6. The learned AR in rejoinder contended that subsequently the assessment has been framed for the assessment year 2019-20 wherein the benefit of exemption under section 11 of the Act was denied in the absence of the registration certificate under section 12AA of the Act. Since the registration was granted effective from the financial year 2019-20 corresponding to assessment year 2020-21, the assessee was not in a position to avail the benefit of exemption under section 11(1) of the Act for the assessment year 2019-20. Thus, as per the learned AR there is no dispute about the genuineness of the activities of the assessee which is evident from the registration certificate granted under section 12AA of the Act. But the assessee merely on technical lapses has been denied the benefit of exemption under section 11(1)(a) of the Act for the assessment year 2019-20. Thus, it was prayed by the learned AR that the assessee should not be made suffer merely on account of procedural delay and thus pleaded for the condonation of the delay in filing the appeal with the request to restore the issue to the file of the learned CIT exemption for fresh adjudication as per the provisions of law.

7. Heard the rival contentions of both the parties and perused the materials available on record. On perusal of the necessary facts as culled out from the orders of the Id. CIT(Exemption) and the foregoing discussion, we note that on merit, what appears is this that the assessee has strong case. But the assessee has been deprived of the benefit of the exemption under section 11(1) of the Act

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on account of procedural lapses. We note that the Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165 has held as under:

*"18. The position is, therefore, that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is as a result of assessee's own mistake or otherwise, the CIT has the power to correct such an assessment under section 264(1) of the Act. If the CIT refuses to give relief to the assessee, in such circumstances, he would be acting de hors the powers under the Act and the provisions of the Act and, therefore is duty-bound to give relief to an assessee, where due, in accordance with the provisions of the Act.*

*19. In the present case, the respondent-CIT has nowhere stated that the petitioner is not entitled to the relief under section 10(10C) of the Act. In fact, the said position is undisputed. The Assessing Officer himself had passed an order under section 154 of the Act, granting such relief. In the circumstances, even the order under section 264 of the Act made on 29-3-2004, cannot be sustained.*

*20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay Chandulal Satia v. N.O. Parekh, CIT [Spl. Civil Application No. 622 of 1981 dated 20-8-1981], has laid down the approach that the authorities must adopt in such matters in the following terms:*

*"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and BabutmalRaichandOswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."*

7.1 From the above, it is revealed that the income of the assessee should not be over assessed, even if there is a mistake made by the assessee. As such the legitimate benefit to which the assessee is entitled should be allowed while determining the taxable income.

7.2 We also note that the Hon'ble Gujarat High Court in the case of Vareli Textile Industry vs. CIT reported in 154 Taxman 33 wherein it was held as under:

*"It is equally well-settled that where a cause is consciously abandoned (as in the present case) the party seeking condonation has to show by cogent evidence sufficient cause in support of its claim of condonation. The onus is greater. One of the propositions of settled legal position is to ensure that a meritorious case is not thrown out on the ground of limitation. Therefore, it is necessary to examine, at least prima facie, whether the assessee has or has not a case on merits."*

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7.3 In view of the above and after considering the facts in totality, we are of the view that it is a fit case where the delay in filing the appeal by the assessee deserves to be condoned. Accordingly, we condone the delay and proceed to adjudicate the issue on merit.

7.4 On merit of the case, we note that the assessee failed to furnish the necessary details as desired by the learned CIT exemption. In the interest of justice and fair play, we are restoring the issue to the file of the learned CIT exemption to decide the issue afresh as per the provisions of law. Needless to mention that the assessee should cooperate during the proceedings and should not seek any adjournment without just cause. Hence, the ground of appeal filed by the assessee is allowed for the statistical purposes.

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

**This Order pronounced in Open Court on**

**21/04/2023**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**TRUE COPY**

Ahmedabad, Dated 21/04/2023

*Tanmay*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)- II, Rajkot
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot**