

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos.1 to 6/Asr/2023
Assessment Years: 2004-05 to 2006-07
& 2008-09 to 2010-11**

Smt. Krishna Devi Educational Charitable Society, Vill. & P.O. Langari, Chandigarh Road, Hoshiarpur Mahilpur, Distt. [PAN: ABIFS7407A] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle-I, Jalandhar. (Respondent)
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Appellant by	None.
Respondent by	Smt. Balvinder Kaur, CIT. DR

Date of Hearing	08.05.2023
Date of Pronouncement	12.05.2023

ORDER

Per: Bench:

A batch of appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana,[in brevity the 'CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act],for A.Ys. 2004-05 to 2006-07 & 2008-09 to 2010-11. The impugned orders were emanated from the order of the Id. Asstt. Commissioner of Income Tax, Central Circle-II, Jalandhar (in brevity the Id. AO), order passed u/s 271(1)(b) of the Act.

2. At the outset, in all the appeals have the same factual backdrop as well as the grounds under the same order related to challenging the penalty u/s 271(1)(b). The ld. AR filed an adjournment petition before the bench and mention that not “physical well” but there is no such any supporting evidence was filed against the prayer of adjournment. The bench has rejected the application for adjournment of the ld. AR for assessee and has taken the appeal for hearing by considering the submission of the ld. DR. Therefore, the ITA No. 1/Asr/2023 is taken as a lead case.

ITA No. 1/Asr/2023

3. The assessee has taken the following grounds:

- “1. That the order passed by CIT(A) is against law and facts of the case.*
- 2. That the penalty u/s 271(1)(b) is wrongly imposed and confirmed by CIT(A).*
- 3. That there were regular changes in the management of the society and previous management was not aware about facts of this case.*
- 4. That the judgements quoted by CIT(A) are not squarely applicable to this case.*
- 5. That the assessee requests to add or amend the grounds of appeal before the same is heard or disposed off.”*

4. Brief fact of the case is that the assessment of the assessee was completed u/s 153A of the Act related to search and seizure operation u/s 132 of the Act which was conducted at the premises of the assessee on dated 18.02.2010. The penalty was issued for non-compliance of notice u/s 142(1) which was issued on 18.03.2011. The penalty was levied pursuant to section 274 r.w.s. 271(1)(b) of the Act, amount of Rs.10,000/- for non-compliance of the notice. Being aggrieved, assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) passed the order on basis of the delayed submission of the appeal but finally the order was passed on point of limitation and merit also. The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed appeals before us.

5. The Id. Counsel for the assessee prayed for adjournment but the adjournment petition was rejected. The counsel further submitted a written submission on 31.03.2023, which is kept in the record. As per the submission of the Id. AR the Society is formed on 18.11.2005. So, it is first assessable for the year is 2006-07. The appeal before the Id. CIT(A) was filed in delay for 9 years. The Id. AR explained that there is a change of the trustee and accordingly the delay was made for filing the appeal before the Id. CIT(A). The verification of the record, it is found that the assessment u/s 153A of the assessee is already disposed for A.Ys. 2007-08 to 2009-10 bearing ITA No. 125/Asr/2013, 126/Asr/2013 and

127/Asr/2013 date of order 21.12.2022 by the order of ITAT-Amritsar Bench. So, the ITA No. 04/Asr/2023 for A.Y. 2008-09 and ITA No. 05/Asr/2023 for A.Y. 2009-10 related the penalty U/s 271(1)(b) is not standing as the related assessment is itself quashed. But there is no such any submission from the end of the assessee related to other assessment years about the fate of the quantum appeal.

6. The ld. DR vehemently argued and fully relied on the order of the revenue authorities. The ld. DR only relied on the order of the ld. CIT(A) in page no. 6 which is reproduced as below:

“On condonation of delay

Aslo, as the appeal has been filed with a delay of close to 10 years, the condonation of delay cannot be accepted as the reasons given for the delay of 10 years are without merit. As the proceedings under Section 271(l)(b) have been consequential to a search action u/s 132 which led to notices under Section 153A and 142(1), which were not complied with, the assessee cannot claim ignorance of the proceedings which were going on in his case. Hence, the condonation of delay application is rejected in this case.

Reliance is being placed on the judgment of Hon'ble Supreme Court in the case of Mani Mandir Sewa Nyas Samiti Ramghat Ayodhya vs. Commissioner of Income-tax reported in [2020] 119 taxmann.com 383 (SC) in which it has been held that "Where assessee sought for condonation of delay of four and half years in filing appeal against order of Tribunal on ground

of ailment of manager but High Court declined to condone delay on ground that there was nothing on record to show that manager was suffering from ailments which did not permit him to take initiative for filing of appeal, SLP against said decision was to be dismissed. It was otherwise duty of the assessee to watch the affairs of its firm and in any case, Late Padam Prakash Singh died on 22-11-2017. At least thereupon, the assessee was expected to file appeal immediately, but it was filed almost after one and half years. The delay in filing the appeal is not of few days or months but is of more than four and half years. Taking note of the aforesaid, we do not find any ground to condone the delay. Accordingly, the application for condonation of delay is dismissed."

5. In the result, the appeal is dismissed both being barred by time limitation and on merits also."

7. We heard the rival submission and considered the documents available in the record. We find that for A.Y. 2008-09 and 2009-10, the assessment order is already disposed of and rejected. So, there is no question for levying of penalty u/s 271(1)(b) of the Act which is emanated from the assessment proceedings. Although, the ITA No.4/Asr/2023 and 5/Asr/2023 are allowed in favour of the assessee. But for the rest of the appeals, the- assessee was unable to bring the fact about the fate of quantum appeals u/s 153A. Further, the assessee was unable to submit the reasonable cause for non-compliance of notice during assessment

proceeding. So, the section 271(1)(b) stands firmly against the assessee. The assessee was not able to submit any such document related the other assessment years. The Id. CIT(A) has not made any discussion about the merit and grounds of the assessee. So, for ITA Nos. 1/Asr/2023, 2/Asr/2023, 3/Asr/2023 and 6/Asr/2023 are remitted back to the Id. CIT(A) for further adjudication on basis of the merit of the case.

8. In the result, the appeals of the assessee bearing **ITA No. 4/Asr/2023 and 5/Asr/2023 are allowed in favour of the assessee and ITA Nos. 1/Asr/2023, 2/Asr/2023, 3/Asr/2023 and 6/Asr/2023** are allowed for statistical purposes.

Order pronounced in the open court on 12.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

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