

**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. Nos. 192 & 193/Asr/2023

Assessment Year: NA

Lakshay Foundation
H. No. 316, Part-1, Chhoti
Baradari, Jalandhar
144001 Punjab

[PAN: AAAAL 7307G]

(Appellant)

Vs. Commissioner of Income Tax
(Exemptions), Chandigarh

(Respondent)

I.T.A. Nos. 194 & 195/Asr/2023

Assessment Year: NA

Hindustan Welfare Blood
Donor Club Guru Ravidas
Gurdwara Khalwara Road,
Banga Road, Old Sabzi
Mandi, Phagwara-144400

[PAN: AAAAH 7258N]

(Appellant)

Vs. Commissioner of Income Tax
(Exemptions), Chandigarh

(Respondent)

Appellant by : Sh. Sudhir Sehgal, AR

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

Date of Hearing: 24.07.2023

Date of Pronouncement: 27.07.2023

ORDER**Per Bench:**

This bunch of four appeals have been filed by the assesseees against the separate orders of the Ld. Commissioner of Income Tax (Exemptions), Chandigarh dated 16.01.2023 & 18.01.2023.

2. The assessee has raised the following grounds of appeal in ITA No. 192/Asr/2023:

- “1. *That the Ld. CIT (Exemptions), Chandigarh has erred in not granting registration u/s 12AB/12AA of the Income Tax Act, 1961 vide order, dated 16.01.2023 by passing an ex-parte order.*
2. *That the said society had been engaged in pursuing the cause of Education namely to the poor children and other activities of the charitable nature.*
3. *That no notice of hearing as may have been issued by the Ld. CIT (Exemption), was received in ‘physical mode’ and all the notices were sent through portal, which the assessee could not access, neither the same were in the knowledge and, as such, the assessee was prevented by sufficient and reasonable cause in complying with the notices as sent by the Ld. CIT(Exemptions). Further, even no intimation about the notice was sent through email/SMS was received by the assessee before finalization of case and, as such, the assessee was prevented by sufficient and reasonable cause in not attending the proceedings before the CIT(Exemptions).*
4. *That even the reliance is being placed on the judgment of Hon’ble ITAT, Mumbai Bench, Mumbai that since the system of e-communication has*

been a recent development, many peoples are not aware of the same and, as such, lenient view deserves to be taken.

5. *Notwithstanding the above said facts, the assessee has good and arguable case for granting registration u/s 12AB/12AA of the Income Tax Act, 1961 and, as such, the order of CIT(Exemptions) may, please, be set aside.*
6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. Grounds of appeal in ITA No. 193/Asr/2023

- “1. *That the Ld. CIT (Exemptions), Chandigarh has erred in not granting registration u/s 80G(5)(iii) of the Income Tax Act, 1961 vide order, dated 18.01.2023 and, as such, denial of the claim for exemption u/s 80G(5)(iii) is against the facts and circumstances of the case.*
2. *That the said society had been engaged in pursuing the cause of Education namely to the poor children and other activities of the charitable nature.*
3. *That no notice of hearing as may have been issued by the Ld. CIT (Exemption), was received in ‘physical mode’ and all the notices were sent through portal, which the assessee could not access, neither the same were in the knowledge and, as such, the assessee was prevented by sufficient and reasonable cause in complying with the notices as sent by the Ld. CIT(Exemptions). Further, even no intimation about the notice was sent through email/SMS was received by the assessee before finalization of case and, as such, the assessee was prevented by sufficient and reasonable cause in not attending the proceedings before the CIT(Exemptions).*
4. *That even the reliance is being placed on the judgment of Hon’ble ITAT, Mumbai Bench, Mumbai that since the system of e-communication has been a recent development, many peoples are not aware of the same and, as such, lenient view deserves to be taken.*

5. *Notwithstanding the above said facts, the assessee has good and arguable case for granting registration u/s 12AB/12AA of the Income Tax Act, 1961 and, as such, the order of CIT(Exemptions) may, please, be set aside.*
6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

4. Grounds of appeal in ITA No. 194/Asr/2023

- “1. *That the Ld. CIT (Exemptions), Chandigarh has erred in not granting registration u/s 12AB/12AA of the Income Tax Act, 1961 vide order, dated 16.01.2023 by passing an ex-parte order.*
2. *That the said society is engaged in holding the Blood donation camps during the previous year and the same is then provided to much needed persons in case of emergency through various hospitals.*
3. *That no notice of hearing as may have been issued by the Ld. CIT (Exemption), was received in ‘physical mode’ and all the notices were sent through portal, which the assessee could not access, neither the same were in the knowledge and, as such, the assessee was prevented by sufficient and reasonable cause in complying with the notices as sent by the Ld.CIT (Exemptions). Further, even no intimation about the notice was sent through email/SMS was received by the assessee before finalization of case and, as such, the assessee was prevented by sufficient and reasonable cause in not attending the proceedings before the CIT (Exemptions).*
4. *That even the reliance is being placed on the judgment of Hon’ble ITAT, Mumbai Bench, Mumbai that since the system of e-communication has been a recent development, many peoples are not aware of the same and, as such, lenient view deserves to be taken.*
5. *Notwithstanding the above said facts, the assessee has good and arguable case for granting registration u/s 12AB/12AA of the Income Tax Act, 1961 and, as such, the order of CIT(Exemptions) may, please, be set aside.*

6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

5. Grounds of appeal in ITA No. 195/Asr/2023

- “1. *That the Ld. CIT (Exemptions), Chandigarh has erred in not granting registration u/s 80G(5)(iii) of the Income Tax Act, 1961 vide order, dated 18.01.2023 and, as such, denial of the claim for exemption u/s 80G(5)(iii) is against the facts and circumstances of the case.*
2. *That the said society is engaged in holding the Blood donation camps during the previous year and the same is then provided to much needed persons in case of emergency through various hospitals.*
3. *That no notice of hearing as may have been issued by the Ld. CIT (Exemption), was received in ‘physical mode’ and all the notices were sent through portal, which the assessee could not access, neither the same were in the knowledge and, as such, the assessee was prevented by sufficient and reasonable cause in complying with the notices as sent by the Ld.CIT(Exemptions). Further, even no intimation about the notice was sent through email/SMS was received by the assessee before finalization of case and, as such, the assessee was prevented by sufficient and reasonable cause in not attending the proceedings before the CIT(Exemptions).*
4. *That even the reliance is being placed on the judgment of Hon’ble ITAT, Mumbai Bench, Mumbai that since the system of e-communication has been a recent development, many peoples are not aware of the same and, as such, lenient view deserves to be taken.*
5. *Notwithstanding the above said facts, the assessee has good and arguable case for granting registration u/s 80G (5) (iii) of the Income Tax Act, 1961 and, as such, the order of CIT(Exemptions) may, please, be set aside.*
6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

6. At the outset, the Ld. Counsel for the appellant assessee submitted that matter in ITA Nos. 192 and 193 /Asr/2023 may be taken as a lead case on identical facts that the applications of the appellant for 12 AA and 80G are rejected exparte qua the appellant in violation of principles of natural justice. In support, he filed written synopsis as under:

- “1. *The facts in both the cases are common and while ITA No. 192/ASR/2023 is the appeal u/s 12A against the exparte order passed by the CIT (Exemption), Chandigarh and ITA No. 193/Asr/2023 is appeal against the order of CIT(Exemption) against order u/s 80G, wherein, she has stated that there is non-compliance to certain notices in both the appeals as under:-*

ITA No. 192/ASR/2023
List of Notices - (Application for registration u/s 12A)

Notice u/s	Date of Notice	Date of Hearing
Questionnaire	07.11.2022	22.11.2022
Reminder to file reply to questionnaire	12.12.2022	21.12.2022
Final Opportunity	27.12.2022	02.01.2023

ITA NO. 193/ASR/2023
List of Notices - (Application for approval u/s 80G)

Notice u/s	Date of Notice	Date of Hearing
Questionnaire	10.11.2022	25.11.2022
Reminder to file reply to questionnaire	14.12.2022	22.12.2022
Final Opportunity	29.12.2022	05.01.2023

2. *It is submitted that both the appeals are late by 104 days and, for which, the condonation application, dated 24.06.2023 had been filed and the facts are as under:-*

<i>i) Date of filing Appeal</i>	<i>27.06.2023</i>
<i>ii) Order uploaded by the CIT(Exemption) on the portal of assessee</i>	<i>16.01.2023</i>
<i>iii) Appeal was to be filed before Hon'ble ITAT</i>	<i>16.03.2023</i>
<i>Delay in filing the appeal</i>	<i>104 dyas</i>

3. *The main reason for filing the appeals late, kindly refer to Page 34 of the Paper Book, which gives the data of portal of the assessee, where telephone Number of the key person and email ID have been given and no notice of hearing, which were issued on 07.11.2022, 12.12.2022 and 27.12.2022 have been received by the assessee, neither any intimation was sent on email or any message in telephone was sent to assessee's representative and for which, the evidences are being furnished at pages 1,2, & 3 , which have been sent today by email and where this detail of the above said notices of hearing have been given and, from which, your goodself would find that none of the notice had been sent on email or any message on telephone as given in portal.*

3. *It so happened as mentioned in condonation letter in paragraph 2, that the counsel was to file the information regarding 80G and he had accessed to the portal on 31.05.2023 and noticed the order u/s 12AA/80G and immediately made the arrangement for filing the appeal and even filed the appeal on 27th of June 2023, causing delay of 104 days.*

4. *It is submitted that the assessee was prevented by sufficient and reasonable cause in not attending to the hearings in view of the above said unavoidable circumstances.*

5. *The assessee in the condonation application has also relied upon the judgment of Mumbai Bench of the ITAT in the case of Triumph International Finance India Ltd. bearing ITA No.1870/Mum/2020, in which, following finding has been given:-*

"The year 2019 being the initial year of shift towards digital and electronic mode, the mistake appears to be bonafide. The assessee has been able

to show reasonable cause for the failure to ocom9ply with the stator notice u/s 142(1) of the Act."

6. *Reliance is also being placed on the judgment of ITAT, Amritsar Bench in the case of 'GurFateh films and Sippy Grewal Productions (P) Ltd.', for Asstt. Year 2013-14, where there was a delay of 665 days and after relying upon the judgement of Hon'ble Apex Court in the case of 'Esha Bhattacharjee' as quoted in that judgment at page 4, it has been held that condonation of delay in filing the appeal should receive liberal construction to advance substantial justice and generally, the delay in preferring the appeal are required to be condoned in the interest of justice and equity.*
7. *It is prayed that the condonation of 104 days may, please be condoned as the assessee has also filed affidavit duly signed by the President of the Society and in para 8-9 of the affidavit, it has been stated as under:-*
 - "8 *That it is requested that the case may, please, be remanded back to the office of Worthy CIT(Ex.) to be heard afresh and it is assured that we will duly comply with all the notices that will be issued in the future.*
 - "9. *That it has duly submitted that the assessee is engaged in charitable activities and helps in different ways such as providing books and stationery, financial aid to the needy students in order to support them to pursue schooling and attain education, including Vocational trading in pursuit of Women Empowerment and self Reliance.*
8. *Further, the assessee is engaged in charitable activities and the CIT(Exemption) has passed the order u/s 12AA/80G without discussing the merits of the case. It is, therefore, prayed that the order as passed by the Ld. CIT (Exemption) may, please, be set aside to the file of CIT (Exemptions) and the assessee undertakes to cooperate with the department for deciding the issue of exemption u/s 12AA and the facts in both the appeals are same."*

7. Admittedly, none of the notice of hearing, issued on 07.11.2022, 12.12.2022 and 27.12.2022 have been received by the assessee, as there was neither any intimation sent on email or any message on telephone to assessee's representative (APB, Pgs.1,2, & 3). The Ld. DR failed to rebut the fact of non-service of notices and communication of hearing thereof in the present case. The AR placed reliance on the judgment of ITAT, Amritsar Bench in the case of 'Guru Fateh films and Sippy Grewal Productions (P) Ltd.', for Asstt. Year 2013-14, where there was a delay of 665 days condoned after relying upon the judgement of Hon'ble Apex Court in the case of 'Esha Bhattacharjee', by taking liberal construction to advance substantial justice in the interest of justice and equity.

8. The appellant request for the condonation of 104 days is duly supported by affidavit duly signed by the President of the Society affirming the fact of bonafide reasons. Considering bonafide reasons for condonation of delay, we condone the delay of 104 days and admit the appeal on merits.

9. We have considered the rival contentions and perused the impugned order. Admittedly, the CIT (Exemption) has passed the order u/s 12AA and 80G in respective appeals without discussing the merits of the case, though

the Ld. AR claimed that the assessee is engaged in charitable activities. Accordingly, the Ld. counsel for the appellant has requested that the case may, please, be remanded back to the Ld. CIT (Exemption) to be heard afresh with the assurance that appellant will duly comply with all the notices that will be issued in the afresh proceeding by the CIT(Exemption). The Ld. AR contended that the assessee is engaged in charitable activities and helps in different ways such as providing books and stationery, financial aid to the needy students in order to support them to pursue schooling and attain education, including Vocational training in pursuit of Women Empowerment and self-reliance.

10. Considering peculiar facts of the instant case and in view of the principle of natural justice, we consider it deems fit to remand the matter back to the file of the CIT (Exemption) with the direction to adjudicate the appeal afresh on merits after considering the material evidence filed on record, to be filed during fresh proceedings and by granting adequate fresh opportunity of being heard. Accordingly, the cases in ITA No. 192 and 193/Asr/2023 on the issue of grant of registration u/s 12AA and approval u/s 80G of the Act are restored to the CIT(Exemption), to decide the appeal

afresh by speaking order on merits of the case as per law. No doubt, the assessee shall cooperate in the fresh proceedings.

11. The facts and issues in ITA No. 194 and 195/Asr/2023 are similar to the facts and issues in ITA No. 192 and 193/Asr/2023 and therefore, our observation and finding given in ITA No. 192 and 193/Asr/2023 shall apply in the cases of appeals in ITA No. 194 and 195/Asr/2023 in *mutatis mutandis*. Ordered Accordingly.

12. In the result, the appeals of the assessee in ITA No. 192, 193,194 and 195/Asr/2023 are allowed for statistical purpose.

Order pronounced in the open court on 27.07.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

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

GP/Sr.PS

Copy of the order forwarded to:

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

True Copy
By Order