

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**  
**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No.150/Ahd/2020**

**Assessment Year :-**

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| Shree Anta Kadava Patidhar<br>Samaj Unjha<br>Unava, Dish Ni Vadi<br>Opp: Poonam Complex<br>Unjha<br>PAN : APTS 8034 D | Vs. | Commissioner of Income-Tax<br>(Exemption)<br>Ahmedabad. |
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| Assesseeby : | Shri H.V. Doshi, AR     |
| Revenue by : | Shri Durga Dutt, CIT-DR |

सुनवाई की तारीख/Date of Hearing : 15 /01/2024

घोषणा की तारीख /Date of Pronouncement: 24 /01/2024

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

The present appeal has been filed by the assessee against the order passed by the Ld.Commissioner of Income Tax (Exemption), Ahmedabad (in short referred to as ld.CIT(E)), dated 23.2.2017 passed under section 12AA of the Income Tax Act, 1961 ("the Act" for short) rejecting the assessee's application seeking registration under section 12AA of the Act.

2. At the outset itself, the ld.counsel for the assessee contended that the appeal is barred by limitation by 1020 days. He contended that there were good and sufficient reasons for the delay in the filing of the appeal, and therefore, sought condonation of the delay.

3. Application to this effect was also filed before the Tribunal. The contents of the same areas under:

In the matter of Shree Anta Kadava Patidar Samaj Unjha for the Application u/s 12AA Affidavit for condonation of delay in filing the appeal against order of commissioner of income Tax (Exemption), Ahmedabad in respect of rejection of application u/s 12AA.

I, Mahendrabhai Patel (Trustee of Shree Anta Kadava Patidar Samaj Unjha) aged about 67 years, son of Revabhai Patel identified by PAN ABZPP0197P do solemnly affirm and state on oath as uder:

- 1) That an order under section 12AA of the Income Tax Act 1962 made on 23.01.2017 was in respect of rejection of 12AA application. Our trustee board did not know about this letter.
- 2) Later when I was appointed as the trustee, I was advised by my legal consultant that to file an appeal before the Hon'ble ITAT but the appeal become barred by time limitation. Nevertheless, the appeal is filed before this Hon'ble ITAT before the date of 24/01/2020 accompanied by an application for condonation of delay.
- 3) That in this way there is a delay of 1064 days for which application is being filed along with memorandum of appeal.
- 4) That delay in filing the appeal is due to lack of knowledge and ignorance of facts by the trustee.

4. Referring to the same, the ld.counsel for the assessee contended that the delay in filing of the appeal was on account of the trustees of the assessee-trust being unaware of the implication of the cancellation of the registration to the assessee-trust. He contended that the assessee-trust was a newly formed trust created on 11.8.2015; that thereafter on 3.8.2016, the assessee had filed an application seeking registration under section 12AA of the Act, which was rejected by the ld.CIT(E) vide his order dated 23.2.2017; that subsequently another application was filed seeking registration

on 22.8.2017, and the assessee was granted registration in consequences to the said application vide order dated 8.2.2018. Copies of both the orders of the Id.CIT(E) – one in which initial grant of registration was denied to the assessee, and the subsequent order granting registration to the assessee was filed before us. The Id.counsel for the assessee pointed out that the order refusing grant of registration was denied for the reason of non-appearance before the Id.CIT(E) in response to the notice issued by him, and therefore not being satisfied with the genuineness of the activities carried out by the assessee, he refused the assessee's application seeking registration under section 12A of the Act. He pointed out that the Id.CIT(E) noted that the assessee apparently being a newly formed entity, had not even commenced any activity, and therefore, as per him, the assessee was not a genuine charitable trust. The Id.counsel for the assessee contended that, it is against this order of the Id.CIT(E) that the assessee has preferred the appeal before us. He stated that trustees of the assessee-trust were unaware of the legality of the proceedings before the Id.CIT(E) and nature and purport of the order passed by him; that for these reasons neither anybody appeared before the Id.CIT(E) nor was an appeal preferred against the order of the Id.CIT(E) denying the grant of registration to the assessee-trust. He contended that the subsequent application of the assessee seeking registration was allowed granting registration under section 12A to the assessee w.e.f. Asst.Year 2018-19. The Id.counsel for the assessee stated that it was only when during the assessment proceedings for Asst.Year. 2017-18 that the AO charged the assessee with higher rate of tax on the income returned in the absence of any grant of registration that the assessee awoke to the implication of the order refusing registration to the assessee and approached its consultant, who advised the assessee accordingly to

file appeal against the order of the ld.CIT(E) refusing grant of registration. The ld.counsel for the assessee pointed out that the assessment order for Asst.Year 2017-18 charging the assessee with higher rate of taxes on the returned income in the absence registration under section 12A was passed on 22.10.2019, and immediately thereafter on 18.1.2020 the assessee filed appeal before the ITAT on the advice of the consultant against the order of the ld.CIT(E) denying the grant of registration to the assessee on the assessee's application dated 3.8.2016. The ld.counsel for the assessee stated that the assessee has a strong case in its favour since for *bona fide* reasons, the proceedings before the ld.CIT(E) could not be attended, and therefore, the ld.CIT(E) could not be appraised with the actual facts of the case; that the assessee was in operation during the period in which registration was sought, but on account of non-presence from the assessee, the ld.CIT(E) noted that no activities were being carried out by the assessee, and therefore, denied grant of registration. The ld.counsel for the assessee contended that in the subsequent year, the assessee was granted registration from Asst.Year 2018-19 onwards noting the genuineness of the charitable activities carried out by the assessee. He stated, therefore, that the assessee was carrying out similar nature of activities in the preceding year also; the assessee was entitled to registration in the preceding years also, and if the appeal filed by the assessee is not entertained on account of delay, gross injustice/miscarriage of justice will be caused to the assessee. He therefore pleaded that the delay 1020 days in the present case infiling of the appeal be condoned.

5. The ld.DR, however, vehemently objected to the pleadings of the assessee stating that sufficient and genuineness reasons were

not demonstrated by the assessee for the delay and that ignorance of law was not acceptable as reason for condoning the delay.

6. Having heard both the parties at length, we hold that the assessee has adduced sufficient cause before us for the delay of 1020 days in the filing of the present appeal before us, against the order passed by the Id.CIT(E) dated 23.2.2017 denying the grant of registration under section 12A of the Act to the assessee.

7. Admittedly, the assessee was a newly created trust formed on 11.8.2015 and the assessee had filed application seeking registration on 3.8.2016 which was denied by the Id.CIT(E) for the failure of the assessee to appear before him, and demonstrate the genuineness of the activities carried out by the assessee trust. The Id.CIT(E) has noted absence of any activity carried out by the assessee as the reason for denying the grant of registration under section 12A of the Act, holding that since the assessee has failed to commence any activity, since creation of the assessee-trust, it appears that the assessee has no intention of carry out of any charitable activities. The Id.counsel for the assessee pleaded ignorance of legality and implication of the orders and notices which were received by the trustees of the assessee-trust that resulted in both non-compliance of the assessee-trust before the Id.CIT(E) in the first round, and also to the non-filing of the appeal against the order of the Id.CIT(E) denying grant of registration under section 12A. It is true that ignorance of law cannot be pleaded by the assessee for explaining delay in filing appeal, but it is not unusual and improbable for a commonman to be not aware of the implications of the different kinds of orders passed by the Revenue authorities, and income-tax being a very complex Act with lot of intricacies involved,

the plea of inaction on the part of the trustees on account of ignorance of the import of the order passed by the Id.CIT(E) cannot be simply rejected and brushed aside. Coupled with this fact that on an another application filed by the assessee seeking grant of registration the assessee-trust was granted the same w.e.f. Asst.Year 2018-19. It has been demonstrated before us that the reasons for not granting registration in the first instance of the assessee was the absence of any evidence filed to the Id.CIT(E) regarding any charitable activity carried out by the assessee. The Id.counsel for the assessee has demonstrated to us that the assessee did carry out charitable activities in the preceding year also, pointing out the income and expenditure account for the year ending 31.3.2016 filed before us at PB Page No.25. Apparently, if the delay is not condoned, it will surely result in miscarriage of justice by allowing the order of the Id.CIT(E) denying grant of registration under section 12AA of the Act on assumption of incorrect facts ,to survive.Considering the serious miscarriage of justice which mayresult by not condoning the delay and finding the explanation of the assessee for the delay to be *bonafide*, we condone the delay of 1020 days in the filing of the present appeal before us. This order was pronounced in the Open Court.

8. Having condoned the delay, we now proceed with the appeal before us.

We note that the assessee wasdenied grant of registration by the Id.CIT(E) in the absence of any representation of the assessee before the Id.CIT(E). As noted above the Ld.CIT€ accordingly held that the assessee did not intend carrying out any charitable activity and therefore denied grant of registration u/s 12A of the Act to the

assessee. Before us Ld.Counsel for the assessee has demonstrated that a subsequent application of the assessee was accepted by the Ld.CIT(E) and the assessee had furnished financial data for the impugned year also therein demonstrating thereby the fact of being actively engaged in carrying out charitable activity. In the light of the same the assessee's application for grant of registration u/s 12A needs reconsideration. The ld.counsel for the assessee undertook that they shall remain present in the proceedings before the ld.CIT(E) as and when called for and furnish necessary papers as required by the Revenue authority for consideration registration of the assessee-trust.

10. In view of the above undertaking of the ld.counsel for the assessee, we consider it necessary and in the interest of justice to restore the issue back to the file of the ld.CIT(A) to decide the application of the assessee, seeking registration under section 12A of the Act dated 13.8.2015 afresh, and thereafter decide the application in accordance with law.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

**Order pronounced in the Court on 24<sup>th</sup> January, 2024 at Ahmedabad.**

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

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 24/01/2024

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