

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1044/Bang/2023
Assessment Year : 2020-21

M/s. Shree Naradamuni Swamy Seva Trust, RPPCCS Complex, Near Apoorva Restaurant, P B Road, Davanagere – 577 002. PAN: AAMTS5826J	Vs.	The Assistant Director of Income Tax, Centralized Processing Centre, Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Rajeev C Nulvi, Advocate
Revenue by	:	Shri Subramanian .S, JCIT DR

Date of Hearing	:	25-01-2024
Date of Pronouncement	:	31-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 20.11.2023 passed by the Addl. / JCIT (A)-9, Mumbai for A.Y. 2020-21 on following grounds of appeal:

“1. The intimation u/s 143(1) issued by the CPC is against the fact, and based on hyper-technical reasons.

2. On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer of CPC erred in denying the exemption u/s 11 of the Income Tax Act, 1961, only for the reason of 10 days delay in filing the return of income, though the provisions for the claim of exemption are substantive provisions, strictly interpreted, due to COVID 19 Pandemic, the Honourable Supreme Court has extended the limitation period for all the laws until 29-05-2022. The action of the Assessing Officer is against the above Honourable Supreme Court judgment, which is the law of land.

3. On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer of CPC erred in denying the exemption u/s 11 of the Income Tax Act, 1961, only on the sole reason of 10 days delay in filing the return of income, which is hyper-technical and the Appellant Trust applied its income to the extent of 96% of the gross receipts for charitable purposes.

4. On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer of CPC erred in denying the exemption u/s 11 of the Income Tax Act, 1961 without intimation given to the Appellant Trust for such denial in writing or in electronic mode as mandated under the proviso to section 143(1). Hence the action of the Assessing Officer of CPC is bad in law.

5. On the fact and circumstances of the case and under the provisions of the law, the Hon'ble CIT, APPEAL, ADDL/JCIT (A) erred in dismissing the appeal of the Appellant Trust in limine without condoning the delay of 195 days in filing the appeal.

6. For these and other reasons which may be adduced at the time of the hearing, the Appellant Trust prays before this Hon'ble Bench to allow the appeal of the Appellant Trust by granting the exemption u/s 11 of the Income Tax Act, 1961 or pass any other order as Your Honour may deem think fit to allow the appeal of the Appellant Trust.

7. The appellant craves leaves for adding, deleting, and amending any grounds of the appeal at the time of the hearing.”

2. Brief facts of the case are as under:

2.1 The Assessee Trust is a public charitable trust, registered u/s 12A of the Income Tax Act, 1961 vide Registration No. CIT(E)/BLR/HPL419 dated 2408-2015 and got approval u/s 80G of the Income Tax Act, 1961.

2.2 The Assessee Trust for the assessment year 2020-21 filed the return of income on 25-02-2021 in ITR-7 by claiming exemption u/s 12A of the Income Tax Act, 1961.

2.3 For the financial year 2020-21, the specified due date u/s 139(4A) was 15-02-2021. But the Assessee filed return of income on 25/02/2021. Hence there was a delay of 10 days in filing the return of income due to which the CPC denied the exemption claimed by Assessee in intimation issued u/s 143(1) of the Income Tax Act, 1961 dated 30-11-2021 and determined the taxable income of Rs.65,59,866/-, which is gross receipts of the trust referred u/s 11 and 12 of the Act.

2.4 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.5 The Ld.CIT(A) held as under:

“3.4 In the present case, the appellant has not adduced any reasonable cause which prevented it from filing the appeal for 195 days after the relaxation provided by the Hon'ble Supreme Court. From the facts of the case it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s. 249(3) of the Act. Thus, it is clearly a case of lapse and is a direct result of deliberate inaction on the

part of the appellant. Respectfully following the ratio in the decisions of the Hon'ble Supreme Court supra, delay of 195 days in filing of appeal is not condoned.

In view of the above, the delay of 195 days in filing of appeal in this case is not condoned as no "sufficient cause" has been shown under section 249(3) of the Income Tax Act for the appellant's failure to file the appeal within prescribed period of limitation u/s 249(2) of the Act r.w.s 5 of the Limitation Act. Since, the delay in filing of appeal has not been condoned, consequently the appeal of the appellant becomes non-est and therefore the same is not admitted.

Keeping in view the facts and circumstances and the decision of the Honourable Courts and also the fact that since the appeal of the appellant is not admitted, the grounds of appeal raised by the appellant are not adjudicated on merit and the appeal is Dismissed."

2.6 Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

3. We note that the Ld.CIT(A) did not condone the delay of 195 days and has dismissed the appeal in limine. This in our considered opinion, is in violation of the principles of natural justice and that no person shall be judged without a fair hearing. We are therefore remanding this appeal back to the Ld.CIT(A) to examine the delay of 195 days in the light of the principles of natural justice envisaged by *Hon'ble Courts* and to grant an opportunity of being heard to the assessee in accordance with law. Needless to say that in case, sufficient cause is made out, the assessee shall be heard on merits and a detailed order is directed to be passed on the merits of the case. We are not expressing any view on the merits of the case at this juncture

and the Ld.CIT(A) is directed to consider the issues in accordance with law.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2024.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st January, 2024.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore