

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT
MEMBER AND MS. MADHUMITA ROY, JUDICIAL
MEMBER**

ITA No.73/Del/2023
Assessment Year: 2014-15

Himalaya Trust, B-60/61 C/o Bajaj Auto Limited, Naraina Industrial Area, Phase-II, Delhi.	Vs.	ACIT, Centralized Processing Centre (CPC), Bangaluru
PAN :AAATH0282M		
(Appellant)		(Respondent)

Assessee by	Ms. Vasanti Patel, Adv. & Shri Mahendra Gohal, CA
Department by	Shri Vivek Kumar Upadhyay, Sr. DR

Date of hearing	22.04.2024
Date of pronouncement	08.05.2024

ORDER

PER MS MADHUMITA ROY, JUDICIAL MEMBER:

The instant appeal filed at the behest of the assessee is directed against the order dated 30.11.2022 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 14.01.2016 passed by the ACIT, Centralized Processing Centre

(CPC), Bangaluru under Section 143(1) of the Income-Tax Act, 1961 (hereinafter referred to as “The Act” for Assessment Year 2014-15 whereby and whereunder the appeal preferred by the assessee before the Learned First Appellate Authority stood rejected on barred by limitation. Hence, the instant appeal before us.

2. The brief fact leading to this case is that the appellant filed its return of income for the Assessment Year under consideration on 29.07.2014 in the status of Association of Persons (AOP) declaring total income at Rs. Nil. The same was processed under Section 143(1) of the Act on 14.01.2016 upon determining the total income of the assessee at Rs.44,81,577; the said amount claimed for deduction under Chapter VIA under Section 80G/80GGA was added to the total income of the assessee, appeal whereof was filed by the appellant before the First Appellate Authority.

3. In fact, there was a delay of 1190 days in preferring the said appeal before the First Appellate Authority challenging the order of intimation dated 14.01.2016 passed under Section 143(1) of the Act

by the ACIT, CPC, Bangaluru. The reason for such delay as has been narrated before the said authority by the appellant is as follows:

- i) The assessee claimed deduction for a sum of Rs.44,81,577 under Chapter VI A read with section 80G/80GGA of the Act.
- ii) Considering the violation of the provisions of section 13(1)(d) read with section 11(5) of the Act since the appellant was not eligible for the benefit under Section 11 of the Act and, therefore, entitled to claim deduction under Section 80G/80GGA of the Act, in respect of the donation paid to the eligible trust/institution, the claim was made by the appellant.
- iii) However, the said claim was not accepted and the amount of Rs.44,81,577 was added to the total income of the assessee by the Assessing Officer, CPC, Bangaluru while processing the return under Section 143(1) of the Act holding the appellant claimed deduction under Section 11 of the Act.
- iv) The assessee, therefore, filed rectification application under Section 154 of the Act against the said intimation issued by the Assessing Officer, CPC, Bangaluru.
- v) The same is still pending as on date.
- vi) The other trusts, similarly circumstanced filed applications under Section 154 of the Act in the same lines which stood rejected and confirmed by the First Appellate Authority being Learned Commissioner (Appeals)-14, New Delhi. Thereafter, upon being advised by the Learned Senior counsel to prefer an appeal against the said order dated 14.01.2016 passed by the Assessing Officer, CPC, Bangaluru before the First Appellate Authority further consultation was made with the Chartered Accountant,

Mumbai, who in turn prepared such appeal to be filed before the Learned First Appellate Authority.

vii.As intimation was received on 14.01.2016, the due date for filing the appeal against such intimation expired on 12.02.2016.

viii.In that view of the matter, there was a delay of 1190 days in preferring the said appeal before the learned Commissioner (Appeals).

4. However, Learned Commissioner (Appeals) was not satisfied with the explanation so rendered by the appellant as narrated hereinabove and dismissed the appeal on the ground of limitation. Hence, the instant appeal is before us.

5. While rejecting the appeal, the Learned Commissioner (Appeals) is of the opinion that the burden is entirely on the appellant to demonstrate that the delay was for reasons beyond its control. “Reasonable Cause” should be such that would have prevented a man of ordinary prudence acting under normal circumstances without negligence or inaction or want of bona fides, from filing the appeals timely. Even, otherwise negligence cannot be ignored and the ineluctable fact remains that the appellant did not exercise elementary

diligence in looking after his tax proceedings. He finally relied upon few judgments passed by the different Hon'ble High Courts and also the Hon'ble Apex Court reported in (2013) 14 Supreme Court Cases 81 has stated as follows:

“The appellant must satisfy the court that he was prevented by any sufficient cause from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Mohindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee, Mata Din v. A. Narayanan, Parimal v. Veena and Maniben Devraj Shah v. Municipal Corpon. Of Brihan Mumbai.)”

6. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record, the orders passed by the authorities below and also the explanation rendered by the appellant before the Learned First Appellate Authority in explaining the delay of 1190 days, the reasons whereof found to be acceptable by us. Keeping in view the peculiar facts and circumstances of the matter, we do not find any negligence on the part of the assessee which could lead the Learned Commissioner (Appeals) in rejecting the appeal preferred by the appellant against the intimation dated 14.01.2016 under Section

143(1) of the Act. Rather, according to us, sufficient cause has adequately been shown by the appellant in preferring the said appeal. Further that it has been submitted by the Learned authorized representative of the assessee that one Jasmina Trust, similarly circumstances, filed appeal before the Learned Commissioner (Appeals) against the intimation order, though delayed on the same ground as narrated in the instant case but the same was condoned by the Learned Commissioner (Appeals)/NFAC and relief was also extended to the appellant therein, on merits, a copy whereof has also been submitted before us which has been duly considered. Thus, keeping in view the entire aspects of the matter, we condone the delay in preferring the appeal before the Learned Commissioner (Appeals) having been satisfied with the explanation so rendered by the appellant before the said authorities.

7. However, so far as the merits of the matter is concerned, we would like to dispose of this appeal by setting aside the issue to the file of the Learned Assessing Officer to verify the details of donations made by the assessee and to pass orders accordingly keeping in view

this particular aspect of the matter that the assessee has not claimed deduction under Sections 11 of the Act, since, violation of the provision of section 13(1)(d) read with section 11(5) of the Act is apparent and the assessee, therefore, finally, is entitled to claim deduction under Section 80G/80GGA of the Act. The Learned Assessing Officer is further directed to dispose of the matter upon giving an opportunity of being heard to the assessee and upon considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. The Learned Assessing Officer is to pass a reasoned order on the issue afresh in the light of the observations made by us hereinabove and also the finding of the Learned Commissioner (Appeals) in the case of Jasmina Trust as mentioned by us hereinabove in regard to the merits of the matter.

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

Order pronounced in the open court on 08/05/2024.

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
MS. MADHUMITA ROY
JUDICIAL MEMBER

Dated: 08th th May, 2024.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi