

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री संजय अवरथी, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE-PRESIDENT

&

SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 547/KOL/2024

Assessment Year: N.A.

Agami Nirman 2003.....Appellant
[PAN: AABAA 1502 H]

Vs.

CIT (Exemption), Kolkata.....Respondent

Appearances:

Assessee represented by: P.K. Roy, Adv.

Department represented by: Subhendu Datta, CIT D/R.

Date of concluding the hearing : June 6th, 2024

Date of pronouncing the order : June 12th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case, the appellant is aggrieved with the order passed by the Commissioner of Income Tax (Exemption), Kolkata [in short Id. CIT (Exemption)] u/s 80G(5)(iii) of the Income Tax Act, 1961 (in short the 'Act'). In brief, the issue revolves around denial of registration u/s 80G(5)(iii) of the Act on the ground that the said institution has not complied with notices issued for hearing. The Id. CIT (Exemption) has mentioned that in the absence of verification of financial transactions for the genuineness etc. the

said Trust could not be eligible for approval u/s 80G(5)(iii) of the Act in Form No. 10AB.

2. It is seen that in this case, there is a delay of 322 days for which a condonation application, along with affidavit have been filed. Since these two documents would be critical in deciding on the issue of limitation, the same are reproduced below:

Condonation Petition:

“Reference: IT Appeals No. 548 & 547 / Kol/2024 [Agami Nirman 2003 (PAN: AABAA1502H) vs. Commissioner of Income Tax (Exemptions), Kolkata, filed by the Appellant.

Sir/s

Subject: Prayer FOR CONDONATION OF DELAY IN FILING APPEAL against rejection of registration for grant of registration under section 12A(1)(ac)(iii) and under clause (iii) of second proviso to sub-section (5) of Section 80G of the Income Tax Act, 1961 for more or less than 125 and 154 & 310 days, respectively .

On behalf of the Appellant, I beg to pray before the Hon’ble Income Tax Appellate Tribunal, Calcutta that the Appellant could not file Appeal before your goodself in due course due to some circumstances as the Ld. Assessing Officer did not consider the Application of Income under section 11 (1) of the Income Tax Act, 1961 during the Assessment proceeding for the Assessment year 2022-23 under section 143(3) of the Income Tax Act, 1961 as Rejection of the approval required u/s 12A/ 12AB for the registration/ approval of the Charitable Trust although under the order for registration or approval or rejection or cancellation under Form No. 10AD, there is specified mentioned that “the Application for approval under section 12A(1)(ac)(iii) of the Income Tax Act, 1961 is rejected in limine” and “the Application for approval under clause (iii) of second proviso to section (5) of section 80G of the Income Tax Act, 1961 is rejected in limine”, however, the registration have valid as per provision section 12A(1)(ac)(i) and under clause (iv) of second proviso to subsection (5) of Section 80G of the Income Tax Act, 1961 upto Assessment year 2026-27 and 2024-25, respectively . So, that, the Appellant could not take any right decision about for filling appeal before your lordship in due course.

So, the Appellant filled an application cum declaration in form of affidavit submits before your Bench for praying condonation of delay.

Therefore, on the above facts and circumstances of the case, the Appellant earnestly request your goodself before your Bench for considering the same.

And for this act of kindness the Appellant shall ever be grateful, which is suitable to your bench.”

Affidavit:

“Affidavit of Dibyaloke Rai Chaudhuri, Secretary of Agami Nirman 2003, is a registered society under the Registrar of Firms, Societies & Non-Trading Corporations, West Bengal That I the above-named deponent, am well conversant with the facts deposed to below.

1. That the appeal filed by the Assessee in disposed the matter rejection of exemptions Under clause (iii) of second proviso to sub-section (5) of Section 80G of the Income Tax Act, 1961, dated 02.03.2023 passed by the Ld. Commissioner of Income Tax (Exemptions) Kolkata,

2. That the time for filing of the appeal before the Tribunal was to expire on 01.05.2023 (more or less 310 days)

3. That the Assessee engaged the pre planned activity of the Charitable Intuition, so that the Assessee could not bear the time with the Attorney/Advocate of the Assessee, Sri Paban Kumar Ray at Kolkata, so the Deponent could not file in due course.

That the Assessee have also awarded that the facts of rejection when the assessment proceeding under section 143(3) of the Income Tax Act, 1961 for the Assessment year 2022-23 has been completed by the Ld. Assessing Officer.”

2.1. During the course of hearing before us efforts were made to try and understand the reasons for substantial delay in the matter from the ld. A/R. Ld. A/R relied on his letter seeking condonation of delay (*supra*) and the affidavit filed by the Principal Officer of the Society.

2.2. A perusal of the affidavit (*supra*) gives an impression that the management of the said Society were engrossed in carrying out activities of the said Society and thus, could not find the time to file the appeal on time. It is difficult to understand that an aggrieved appellant has casually allowed the matter of filing appeal in time to transpire in such a manner that the said substantial delay has occurred. While a judicial forum like the ITAT is also bound by the time tested principle of not allowing technical matters to interfere with the issue of deciding matters on the basis of the principle of “substantive justice”, but discretionary powers for allowing condonation of delay are not designed in a manner whereby every delay, whatever may be the

reason, deserves to be condoned on the ground that the concern of “substantive justice” would perforce override the issue of a technical matter like delayed filing of appeal.

3. The Hon'ble Apex Court in catena of decisions has held that the law of limitation being substantive, the power of discretion to condone the delay is to be exercised judiciously and cannot be exercised in a routine manner. The parties are expected to approach the Court in adherence to this general principle. Thus, filing an appeal is the rule and condoning the delay is the exception, wherein the Courts have to exercise their discretionary power judiciously and by recording reasons. Excessive delay, as in this case, cannot be simply missed away by casually mentioning that the Principal Officer was hard pressed for time. Such casually explained delay is to be construed as an uncondonable delay. Once there is a delay, the person who is filing the condonation petition is expected to furnish the reason which must be acceptable to this Bench.

3.1. Hon'ble Supreme Court in the case of *Collector, Land Acquisition vs. Mst. Katiji (1987) 1987 taxmann.com 1072 (SC)*, has observed that it is for the assessee to explain each and every day of delay in filing of appeal. Before us in the present case, no such petition/prayer/application for condonation of delay is filed much less a sufficient and satisfactory explanation to prove that there is a reasonable cause for the said delay.

4. In this case, it is evident that the appellant has conveniently decided not to justify the delay in filing by informing this Bench on the detailed reasons, even on day-to-day basis, for which the appeal could not be filed in time.

4.1. At this juncture, it is necessary to delve into the genesis of limitation and how a judicial forum needs to deal with matters pertaining to condonation of delay.

4.2. Almost all the tax laws, whether they relate to direct taxes or Indirect taxes, contain provisions for condonation of delay in filing appeals, if the

appellant (whether it is the taxpayer or the revenue) proves to the satisfaction of the appellate authority that he had sufficient cause for not filing the appeal within time. The genesis for such provisions can be traced to section 5 of the Limitation Act, 1963, which reads as follows:

"Extension of prescribed period in certain cases. — Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he has sufficient cause for not preferring the appeal or making the application within such period.

Explanation: The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

4.3. The two essential ingredients for condoning delays are: (i) the existence of 'sufficient cause', and (ii) the satisfaction of the competent authority that such sufficient cause was proved as existing. Thus, the first issue about the existence of sufficient cause covers the factual matrix in respect of which the onus to prove is squarely on the litigant, while the second issue about 'satisfaction' covers the discretionary area in which the competent authority, this Bench, is expected to act. It is by now well settled that the expression 'sufficient cause' has to be understood to mean a cause beyond the control of the appellant or one which the appellant, even with the exercise of due care and attention, could not avoid. The expression is required to be interpreted liberally so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant. Further, it is a general principle of law that whenever a Court is vested with a discretionary power, such a discretion must be exercised not in an arbitrary, vague or fanciful manner but on judicial principles. The fundamental principle, which has been universally recognised as the true rule of guidance for the exercise of discretion to condone delays is to see whether the party claiming indulgence has been reasonably diligent in prosecuting his appeal. In the case of *State of Gujarat v. Sayed Mohd. Baquir E1 Edross AIR 1981 SC 1921*, the Supreme

Court laid down the following principles that should govern the exercise of powers of condonation under section 5:

The party seeking relief has to satisfy the Court that he had sufficient cause for not preferring the appeal, etc., within the prescribed time.

The explanation has to cover the entire period of delay.

A litigant should not be permitted to take away a right which has accrued to his adversary by lapse of time.

The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court under section 5. After sufficient cause is shown, the Court is to inquire whether in its discretion it should condone the delay.

The discretion conferred on the Court is a judicial discretion and must be exercised to advance substantial justice.

No liberal view should be taken merely because the defaulting party is a Government.

Even if there was a strong case for acceptance of the appeal on merits that could not be a ground for condonation of delay.

When there is remiss on the part of the advocate, the question that comes up for consideration is whether the mistake was bona fide or was merely a device to cover the ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way.

4.4. It was also held in an earlier decision in the case of Ramlal Motilal v. Rewa Coalfields AIR 1962 SC 361, that 'every day's delay must be explained'. Another important requirement is that the 'cause' for the delay must have arisen before the expiry of the limitation period, and, as held by the Supreme Court in the case of Ajit Singh Thakur Singh v. State of Gujarat MR 1981 SC 733, "no event or circumstance arising after the expiry of limitation period can constitute sufficient cause".

5. Considering the detailed discussion above, it is our considered opinion that the appellant has not been able to demonstrate any reasonable cause to allow condonation of delay in the matter. Accordingly, this appeal is dismissed on the point of limitation, without any decision on the merits of the case.

5.1. However, before parting with this issue it is observed that the appellant's case is squarely covered by *CBDT Circular No. 7/2024* dated 25.04.2024 which affords an opportunity to the appellant to approach the income tax authorities again. The following extract from the said Circular (*supra*) needs to be reproduced for ready reference:

“4.1 Further, in cases where any trust, institution or fund has already made an application in Form No. 10AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date or that the application has been furnished under the wrong section code, it may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 3(ii) i.e. 30-6-2024.

5. It is also clarified that if any existing trust institution or fund who had failed to file Form No. 10A for AY 2022-23 within the due date as extended by the CBDT Circular No. 6/2023, dated 24-5-2023 and subsequently, applied for provisional registration as a new trust, institution or fund and has received Form No. 10AC, it can avail the option to surrender the said Form No. 10AC and apply for registration for AY 2022-23 as an existing trust, institution or fund in Form No. 10A within the extended time provided in paragraph 3(i) i.e. 30-6-2024.”

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 12th June, 2024.

Sd/-

[Rajpal Yadav]

Vice President

Dated: 12.06.2024

Bidhan (P.S.)

Sd/-

[Sanjay Awasthi]

Accountant Member

Copy of the order forwarded to:

1. **Agami Nirman 2003, 64, Southern Avenue, Sarat Bose Road S.O. Kolkata, West Bengal, 700029.**
2. **CIT (Exemption), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata