

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1151 & 1152/Del/2024
(Assessment Year: 2015-16 & 2017-18)**

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| Samarpan, Hari Nagar, Rohtak, Haryana (Appellant) | Vs. | ITO (Exemption), Rohtak (Respondent) |
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PAN:AAAAS5226R

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| Assessee by : | Shri Lalit Mohan, CA |
| Revenue by : | Shri N. K. Bansal, Sr. DR |

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| Date of Hearing | 22/07/2024 |
| Date of pronouncement | 24/07/2024 |

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA Nos.1151 and 1152/Del/2024 for AYs 2015-16 and 2017-18, arise out of the order of the Add/JCIT(A)-1, Visakhapatnam [hereinafter referred to as 'Id. JCIT', in short] dated 19.01.2024 against the order of assessment passed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.03.2019 by the Assessing Officer, CPC, Bengaluru (hereinafter referred to as 'Id. AO').

2. Identical issue is involved in both these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. Though the assessee has raised several grounds of appeal before us for both the years, we find that the only effective issue to be decided by us is as to whether the Id. CIT(A) was justified in dismissing the appeal of the assessee for both the years by not condoning the inordinate delay in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee is a trust, registered u/s 12A of the Act vide registration granted by the competent authority on 3.5.1999. The return of income for the Asst Year 2015-16 was filed by the assessee on 9.10.2015 declaring Nil income after claiming exemption u/s 11 of the Act. On 31.10.2015, Form 10 for accumulation of income and Form 10B audit report was uploaded by the assessee on e-filing portal. The return was processed u/s 143(1) of the Act and the said intimation was uploaded on e-filing portal on 27.3.2017 denying exemption u/s 11 of the Act to the assessee. The time limit for preferring the appeal before the Id. CIT(A) expired on 26.4.2017. The assessee did not keep track of uploading of intimation u/s 143(1) of the Act and ultimately noticed about the same only in December 2022 when new management took over the helm of affairs pursuant to the death of erstwhile President of the trust on 22.2.2021. Soon after noticing the fact of intimation u/s 143(1) of the Act uploaded as above, the assessee preferred an appeal before the Id. CIT(A) with a delay of 2114 days. The assessee filed a delay condonation petition on 8.12.2023 before the Id. CIT(A) which is reproduced hereunder:-

"Respectfully submits that the present appeal is against Intimation Order u/s 143(1) passed by the learned AO/CPC vide order dated 27.3.2017. Order u/s 143(1) was uploaded on portal. Technically it was served to the appellant on 27.3.2017, but the fact remains that it was not in the knowledge of appellant that any intimation order u/s 143(1) has been passed against the appellant. It was only in the month of December 2022, it came to the knowledge of appellant that any Intimation Order u/s 143(1) has been passed against him and has been uploaded on portal. As soon as the appellant came to know about the Initiation order u/s 143(1), appellant immediately filed an appeal against the said order before your goodself on 09.01.2023. Moreover, Sh. Pritam Ahuja, President of the appellant Trust, who mainly manages the affairs of Trust expired on 22.02.2021. Due to his demise, other office bearers didn't came about the addition made.

Appellant's case is covered by the judgment of Hon'ble Supreme Court in Mst. Katiji and Others in 167 ITR 471:

In the view of the above submission, it is prayed that a liberal view may kindly be taken and technical delay in filing of appeal may kindly be condone and oblige."

5. It was pleaded before the Id. CIT(A) that until December 2022, the assessee did not have any knowledge of the passing of intimation u/s 143(1) of

the Act. The Id. CIT(A) however rejected the plea of the assessee by stating that the erstwhile President expired on 22.2.2021, whereas the intimation u/s 143(1) of the Act has been passed on 27.3.2017 itself. In any case, the trust is an organization and is not dependent upon any individual trustee. The Trust should run in collaboration with all the trustees and every trustee is responsible members of the Trust apart from the President of the Trust. Accordingly, the reasons stated by the assessee for the delay in filing appeal were considered not tenable by the Id. CIT(A) and hence the appeal filed by the assessee was dismissed by not condoning the delay.

6. For the Asst Year 2017-18, the return of income was filed by the assessee on 28.10.2017 declaring Nil income after claiming exemption u/s 11 of the Act. On 27.10.2017, Form 10 for accumulation of income was uploaded by the assessee on e-filing portal. The return was processed u/s 143(1) of the Act and a communication was received from Central Processing Centre (CPC) for incorrect claim u/s 143(1)(a)(ii) of the Act on 21.8.2018. On 8.10.2018, a communication was received from CPC for proposed adjustment u/s 143(1)(a) of the Act. Later the intimation u/s 143(1) of the Act was uploaded on e-filing portal on 27.3.2019 denying exemption u/s 11 of the Act to the assessee. The time limit for preferring the appeal before the Id. CIT(A) expired on 26.4.2019. The appeal was ultimately preferred by the assessee before the Id. CIT(A) on 9.1.2023 with a delay of 1384 days. On 8.12.2023, the assessee filed a delay condonation petition. For the very same reasons as was adduced for Asst Year 2015-16, the Id. CIT(A) dismissed this appeal for the Asst Year 2017-18 by not condoning the delay.

7. At the outset, we find that the intimation u/s 143(1) of the Act stood passed in the case of the assessee on 27.3.2017 and 27.3.2019 for Asst Years 2015-16 and 2017-18 respectively and uploaded on the e-filing portal. We find that the assessee has been accessing the very same e-filing portal for filing its regular income tax returns for Asst Year 2016-17 and 2017-18 and also for uploading of Form 10 and Form 10B on various dates. Hence it cannot be said that assessee either did not have access to its e-filing portal or its portal was not

functioning due to some technical glitches. The facts of the case clearly prove negligence on the part of the assessee. Though the assessee does not stand to gain by filing an appeal before the Id. CIT(A) belatedly, which might be a ground for condonation of delay, but at the same time, the assessee is duty bound to explain the delay day by day that it was prevented by sufficient cause in not filing in appeal in time. But in the reasons stated in the condonation petition by the assessee, no such sufficient cause was brought on record by the assessee. The Id. AR relied on the decision of co-ordinate bench of this Tribunal in the case of Max Maintenance Limited vs ITO in ITA Nos. 2208 & 2209/Del/2022 dated 5.10.2023 . We have gone through the said order and we find that in that case, the email ID of the professional was mentioned in the ITR and not that of the assessee. Moreover, it was alleged that the erstwhile professional had not taken due action on the intimation received in his email, which stood further confirmed by way of an affidavit from the Directors of Max Maintenance Limited. None of these facts are prevalent in the instant case before us. The present assessee in its delay condonation petition before the Id. CIT(A) had categorically admitted to have received the intimation u/s 143(1) of the Act on 27.3.2017 and 27.3.2019 for Asst Years 2015-16 and 2017-18 respectively technically as it was uploaded in e-filing portal. It was trying to take shelter of the death of the erstwhile President of the Trust on 22.2.2021. Even if this has to be construed as a reasonable cause, the delay from 26.4.2017 to 22.2.2021 for Asst Year 2015-16 and delay from 26.4.2019 to 22.2.2021 for Asst Year 2017-18 does not stand explained by the assessee with sufficient cause. This is a clear case of negligence on the part of the assessee in not responding to the statutory proceedings in time. Hence the delay in preferring appeal before the Id. CIT(A) is not properly explained by the assessee with sufficient cause. Further we find that the assessee had filed the delay condonation petition only on 8.12.2023 though the appeal was filed on 9.1.2023 before the Id. CIT(A). Hence it cannot be said that no notice of hearing was issued by the Id. CIT(A) to the assessee as argued by the Id. AR before us. In these facts and circumstances, in our considered opinion, the Id. CIT(A) was duly justified in dismissing the appeals by not condoning the delay for both the years under

consideration. Accordingly, the grounds raised by the assessee are dismissed for both the years.

8. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 24/07/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 24/07/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi