

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

ITA No. 1084/KOL/2024

&

ITA No. 1085/KOL/2024

Naxalbari Vivekananda Seba Bharaty, C/o. M/s Salarpuria, Jajodia & Co., 3 rd Floor, Laha Paint House, 7, Chittaranjan Avenue, Kolkata - 700072 (PAN: AADTN7438E)	Vs	ITO, Ward-1(1), Siliguri, 10B, Middleton Road, Kolkata - 700071
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sujay Sen, AR
Respondent by : Shri P.P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 14.08.2024
Date of Pronouncement : 20.08.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

These appeals filed by the assessee are against the two separate orders of the Ld. Commissioner of Income Tax, (Exemption), Kolkata (hereinafter referred to as “the Ld. CIT(E)”). Since both the appeals involve identical issues, the same were heard together and for the sake of brevity and convenience, are being disposed of vide this common order.

I. ITA No. 1084/Kol/2024

We would first take up the issue of ITA No. 1084/Kol/2024 which has been preferred by the assessee challenging the order, dated 06.02.2024, passed by the Ld. CIT(E) whereby he rejected the application

for registration under section 12A(1)(ac)(iii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. At the outset, it may be mentioned that the appeal is barred by limitation by 37 days. The assessee has filed an application for condonation of delay, which is as under:

"I, Sujit Das son of Late Ganesh Chanra Das residing at Dayaramjote, PO & PS Naxalbari, Darjeeling-734429,, being the Trustee of Naxalbari Vivekananda Seba Bharaty (hereinafter referred to as "the Trust") having Registered Office at, Naxalbari, PO & PS Naxalbari, Darjeeling-734429, do hereby solemnly affirm that -

1. That, the Trust have preferred an Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata;

2. That the Appeal No. is 1084/Kol/2023 130/Kol/2024 which is fixed for hearing before the "B" Bench of Hon'ble Income Tax Appellate Tribunal, Kolkata on 13th August, 2024.

3. That there has been a delay of 39 days in filing of the Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata.

4. The reasons for non-compliance are as follows-

- a) The Trust was in receipt of order for rejection of application for approval u/s 12A(1)(ac)(iii) dt. 5.2.2024 and the same came to its knowledge only in 3d week of April, 2024.*
- b) Such order was never received earlier nor the Trust was aware of such order having been passed and it came to its knowledge only in 3rd week of April, 2024.*
- c) Indeed such order was retrieved by the Trust from e-portal only and on perusal of same it was observed that it was an ex-parte order by CIT(E) and had been passed on 5.2.2024.*
- d) But the same was not served in physical mode or on e-mail at any point of time.*
- e) As soon as the fact of such order was brought to the knowledge, of the Trust, the concerned staff duly downloaded the same from e-portal since the same was not posted on our e-mail and thus the date of service of such order should be 18.4.2024 only when same was downloaded from e-portal.*
- f) However, since such order seems to be posted on e-portal, as a matter of abundant precaution, it is presumed that such order was/could have been served on 5.2.2024 and the date of order being 5.2.2024 is being treated as date of service of order although it came to the knowledge of the Trust only on 18.4.2024.*
- g) After receipt of such order from e-portal the matter was forwarded to the tax consultant and thereafter the matter was prepared and sent to us for signing etc. and thus it took further 12 days. In aggregate, there is delay of 39 days.*

- h) *However, such delay was only due to "reasonable cause" as stated above. Since the appeal couldn't be filed against the said order within time for filing the appeal i.e. by 5.4.2024 it has been filed on 13.5.24 with a petition for condonation of delay.*

It is humbly submitted that this Hon'ble Income Tax Appellate Tribunal, at Kolkata, on scrutinising the facts and circumstances in the accompanying application, may please construe facts and circumstances as "sufficient cause" for delay in filing of the Appeal by 39 days. The facts and circumstances elucidated in the accompanying application involves the question of "substantial justice", where the delay of 39 days, deserves to be condoned in the overall interest of justice. On the other hand if condoning the delay is being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the appellant.

3. In view of the submission made we are of the view that there is sufficient cause for the delay which was neither mala fide nor intentional nor has the delay given any undue benefit to the assessee. Hence, the delay of 37 days is hereby condoned and the appeal is adjudicated on merits.

4. The grounds of appeal raised by the assessee are reproduced as under:

1. *That on the facts and on the circumstances of the case, the order passed by the Learned CIT(E) in Form No. 10AD, rejecting the application for registration under section 12A(1)(ac)(iii) is bad in law, illegal, ab-initio void and the same is liable to be cancelled/set aside/quashed.*
2. *That on the facts and on the circumstances of the case, the Learned CI(E) had erred in not giving adequate opportunity to the Appellant before rejecting the Approval for registration under section 12A(1)(ac)(iii) and passing the order under appeal ex-parte.*
3. *Without prejudice to the aforesaid grounds, that on the facts and on the circumstances of the case, the CIT(E) had failed to appreciate the fact the Trust Deed, Copies of Accounts and all other relevant details were filed with him electronically at the time of applying for Provisional approval and on the basis of which, the provisional Approval in Form 10AC was granted to the Appellant.*
4. *That on the facts and on the circumstances of the case, all the necessary details which were required by the Learned CIT(E) for granting registration under section 12A(1)(ac)(iii) were already in his possession and such action of the CIT(E) in arbitrarily and mechanically disallowing the application of registration is bad in law and may kindly be deleted.*
5. *Without prejudice to the aforesaid grounds, that on the facts and on the circumstances of the case, the CITE have rejected the application for non-compliance of notice issues without appreciating the fact that merely*

uploading information about the date of a hearing on the Income Tax Portal does not constitute effective service of notice, as required by Section 282 of the Income Tax Act and the same may kindly be held accordingly.

6. *That the appellant craves leave to grounds of appeal before or add, alter, amend or at the time of hearing modify any or all of the appeal. of the above."*

5. It is observed that the application under section 12A(1)(ac)(iii) of the Act was rejected in absence of any reply by the applicant assessee and the application was decided ex-parte by the Ld. CIT(E). The assessee has filed an application in this regard along with an affidavit explaining the reasons for the default in compliance as under:

"I, Sujit Das son of Late Ganesh Chanra Das residing at Dayaramjote, PO & PS Naxalbari, Darjeeling-734429,, being the Trustee of Naxalbari Vivekananda Seba Bharaty (hereinafter referred to as "the Trust") having Registered Office at, Naxalbari, PO & PS Naxalbari, Darjeeling-734429, do hereby solemnly affirm that -

1. That, the Trust have preferred an Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata;

2. That the Appeal No. is 1084/Kol/2023 130/Kol/2024 which is fixed for hearing before the "B" Bench of Hon'ble Income Tax Appellate Tribunal, Kolkata on 13th August, 2024.

3. That the Appeal is against an order dated 6th February 2024, by the CIT(Exemption), Kolkata wherein the application for registration under section 12A(i)(ac)(iii) has been rejected due to non compliance of notices dated 20.12.23 and 10.1.2024 issued by the CIT(E).

4. The reasons for non-compliance are as follows-

a) That the person who looks after the taxation and the accounts work of the Trust, was sick on and from the middle of December, 2023 and was not attending office,

b) The said person joined office on and around the first week of February, 2024 and when he went to meet the CIT(E), he was informed that the order rejecting the application had already been passed.

It is humbly submitted that this Hon'ble Income Tax Appellate Tribunal, at Kolkata, on scrutinising the facts and circumstances in the accompanying application, may please construe facts and circumstances as "sufficient cause" for non-compliance before the CIT(E). The facts and circumstances elucidated in the accompanying application involves the question of "substantial justice", where the non-compliance to the notices of the CIT(E), deserves to be condoned in the overall interest of justice. On the other hand if condoning the non-compliance is being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the appellant."

6. We have heard the rival contentions. The appellant requested during the course of the hearing that the matter may be set aside to the Ld. CIT(E) for reconsideration as the assessee could not make proper representation

before the Ld. CIT(E). The Ld. Sr. DR relied upon the order of the Ld. CIT(E) but had no serious objection to the matter being sent back to the Ld. CIT(A). Hence in the interest of justice and fair play, the order of the Ld. CIT(E) is hereby set aside and he is directed to reconsider the application and grant the approval in accordance with law. In terms of the above, the appeal by the assessee is allowed for statistical purposes.

II. ITA No. 1085/Kol/2024

7. The grounds of appeal raised by the assessee are reproduced as under:

- “1. *That on the facts and on the circumstances of the case, the order passed by the Learned CIT(E) in Form No. 10AD, rejecting the application for registration under section 80G(5) is bad in law, illegal, ab-initio void and the same is liable to be cancelled/set aside/quashed.*
2. *That on the facts and on the circumstances of the case, the Learned CI(E) had erred in not giving adequate opportunity to the Appellant before rejecting the Approval for registration under section 80G(5) and passing the order under appeal ex-parte.*
3. *Without prejudice to the aforesaid grounds, that on the facts and on the circumstances of the case, the CIT(E) had failed to appreciate the fact the Trust Deed, Copies of Accounts and all other relevant details were filed with him electronically at the time of applying for Provisional approval and on the basis of which, the provisional Approval in Form 10AC was granted to the Appellant.*
4. *That on the facts and on the circumstances of the case, all the necessary details which were required by the Learned CIT(E) for granting registration under section 80G(5) were already in his possession and such action of the CIT(E) in arbitrarily and mechanically disallowing the application of registration is bad in law and may kindly be deleted.*
5. *Without prejudice to the aforesaid grounds, that on the facts and on the circumstances of the case, the CIT(E) have rejected the application for non-compliance of notice issues without appreciating the fact that merely uploading information about the date of a hearing on the Income Tax Portal does not constitute effective service of notice, as required by Section 282 of the Income Tax Act and the same may kindly be held accordingly.*
6. *That the appellant craves leave to grounds of appeal before or add, alter, amend or at the time of hearing modify any or all of the appeal. of the above.”*

8. This appeal is also barred by limitation by 37 days and similar affidavit as in ITA No. 1085/Kol/2024 has been filed requesting for

condonation of the delay. Since the issues raised in the appeal in ITA No. 1085/Kol/2024 are identical to the issues raised in the appeal for the ITA No. 1084/Kol/2024, the delay in filing the appeal is hereby condoned as the facts are similar and on the basis of the findings in ITA No. 1084/Kol/2024, this appeal is also set aside to the Ld. CIT(E) for reconsideration of the application and granting of approval in accordance with law as the application was rejected on account of non-representation for which similar reasons as in ITA No. 1084/Kol/2024 were mentioned during the course of the hearing before us. Hence, this appeal by the assessee is also allowed for statistical purposes.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 20th August, 2024.

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 20th August, 2024

AK, P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata