

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1532/KOL/2024  
Assessment Year : 2019-20**

Om Shanti Charitable Trust, Kolkata, 24, Gopi Krishto Paul Lane, Barabazar, Kolkata - 700006 (PAN: AALAA5893M)	Vs	Income Tax Officer, Ward 1(2), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, 4 <sup>th</sup> Floor, Kolkata - 700069
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Prakhari Dhoot, AR (online)  
Respondent by : Susanta Saha, Sr. DR

Date of Hearing : 25.09.2024  
Date of Pronouncement : 09.10.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal has been e-filed by the assessee along with a hardcopy of Form No. 36, which is against the order of the Ld. Addl./JCIT(A)-11, Delhi [hereinafter referred to as “the Ld. Addl./JCIT(A)”] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2019-20, dated 09.11.2023, which has been passed against the intimation u/s 143(1) of the Act, dated 11.05.2020 issued by the CPC, Bengaluru.

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

“1 The order of the Learned CIT Appeal is erroneous on the facts and in the Law.

2. *The Learned CIT Appeal has erred in disallowing the claim of exemption of Rs. 797367/- on ground that the trust has not furnished the details of Registration u/s 12A/ 12AA. Hence the exemption is not allowed.*
3. *The Learned CIT Appeal did not provide the opportunity to provide the Registration detail of the trust.*
4. *That the Learned CIT Appeal passed the order without providing hearing opportunity which is against the principles of Natural Justice.*
5. *That Learned CIT Appeal did not notice that all donation are done by Accounts payee cheques.*
6. *That the Appellant Craves Leave to Add, Alter, Adduce OR Amend any Ground of Appeal or before or in course of hearing.”*

3. The appeal of the assessee is time barred by 189 days and a petition for condonation of delay has been filed, which is available on record. In the said petition, the assessee has stated as under:

*“In exercise of the powers conferred under section 250 of the Income Tax Act, 1961 (hereinafter referred to as act) The central Board of Direct Taxes (CBDT) authorized the commissioners of Income Tax to admit application of condonation of delay in filing Form No. 36 for Ay. 2019-20 or for any subsequent Assessment year where there is delay of 183 days and decide on merits. The notice was not serve within time and also I was on medical ground due to which it was not possible file Appeal so please grant the condonation of delay.*

*Shri OM Prakashji Modani is suffering from Parkinson. He is the main Trustee of Om Shanti Charitable Trust. He is unable to check the email. Hence order of CIT Appeals got unnoticed. While filing the current years IT Return. The order was notice. Then we approached the CIT Appeals at Middleton Row for order Copy. But they provided us unsigned computer copy. All the communication from CIT Appeals could not be attended due to illness of Om Prakash Modani. Hence there was genuine delay. Again the department has not served the physical Copy of the Income Tax order. Hence kindly condone the delay in filing the appeal and oblige....*

*.  
 .”*

3.1 The assessee has also relied upon several judicial pronouncements in support of the claim for condonation of delay. We find on perusal of the application for condonation of delay that the assessee had sufficient cause for justification of the delay and on the facts mentioned, the delay in filing the

appeal is hereby condoned and the appeal is admitted for adjudication.

4. Brief facts of the case as culled out from the Statement of Facts filed before the Ld. CIT(A) are that the assessee is a Trust and had filed the return of income in which income/receipts were shown at Rs. 3,53,318/- and exemption was claimed for Rs. 7,97,367/-. The Ld. AO, CPC, Bengaluru computed the total income at Rs. 3,53,318/- and issued an intimation under section 143(1) of the Act and denied the claim of exemption as the Trust was apparently not registered/approved u/s 12AA of the Act. Aggrieved with the intimation under section 143(1) of the Act, the assessee filed an appeal before the Ld. CIT(A) but as there was no response to the various notices issued for granting opportunity of being heard, the Ld. CIT(A) dismissed the appeal of the assessee after relying upon several judicial pronouncements. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made and the record were examined. The CPC disallowed the claim of exemption as the trust was not registered u/s 12AA of the Act. Before the Ld. CIT(A), it was claimed that the assessee was registered u/s 12A and had filed Form No. 10B. The Ld. AR was asked to inform whether the Trust had been granted registration u/s 12A/12AA of the Act so as to claim exemption u/s 11 of the Act. Our attention was drawn to Page 40 of the Appeal Memo. However, the same is a certificate for exemption u/s 80G(5)(vi) of the Act and valid for the period 01.04.2009 to 31.03.2012, which had been issued by the Director of Income Tax (Exemption), Kolkata and is not an approval for registration

under section 12A/12AA of the Act. Hence, neither before the Ld. AO, CPC, Bengaluru, nor before the Ld. CIT(A) any such evidence was filed. Even before us, no document evidencing that the assessee was registered u/s 12AA of the I.T. Act, 1961 has been filed. The conditions for applicability of the provision of section 11 are specified under section 12A and are reproduced as under:

*12A. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—*

*(a)...*

*(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;*

*(ab) the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996), and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;*

*.....*

6. Even before us no evidence has been filed in support of the claim that the assessee trust was registered under section 12AA of the Act. Hence there does not arise any occasion to interfere with the intimation u/s 143(1) of the Act issued by the Ld. AO,

CPC, Bengaluru and the appeal of the assessee challenging the order of the Ld. CIT(A) is hereby dismissed.

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

Order pronounced in the open court on 9<sup>th</sup> October, 2024.

*Sd/-*  
(Sonjoy Sarma)  
Judicial Member

*Sd/-*  
(Rakesh Mishra)  
Accountant Member

***Dated: 9<sup>th</sup> October, 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