

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.128/Nag./2023**  
**(Assessment Year : 2016-17)**

Nageshwara Charitable Trust  
101, Laxmi Vilas Apartment  
Khare Town, Dharampeth ..... Appellant  
Nagpur 440 010 PAN – AAATN2648F

v/s

Income Tax Officer  
Exemption, Ward-3, Nagpur ..... Respondent

**ITA no.129/Nag./2023**  
**(Assessment Year : 2016-17)**

Nageshwara Charitable Trust  
101, Laxmi Vilas Apartment  
Khare Town, Dharampeth ..... Appellant  
Nagpur 440 010 PAN – AAATN2648F

v/s

Income Tax Officer  
Exemption, Ward-1, Nagpur ..... Respondent

Assessee by : Shri Kapil Hirani  
Revenue by : Shri Vikash Agrawal

Date of Hearing – 06/11/2024

Date of Order – 18/11/2024

**ORDER**

**PER K.M. ROY, A.M.**

The present appeals by the assessee challenging the impugned orders of even date 05/04/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17.

**ITA no.128/Nag./2023**  
**Assessee's Appeal – A.Y. 2016–17**

2. The assessee has raised following grounds:–

*"1. The Ld. AO has erred in treating donation of Rs. 9103120/- as not genuine and remains unexplained. Section 115BBC is not applicable to Appellant since the Appellant is religious and charitable trust and not merely Public Charitable Trust. Tax has been levied on the donation received treating it as anonymous donation under section 115BBC.*

*Grounds of Appeal: On the facts and circumstances of the case the order is not according to law to the extent of section 115BBC.*

*2. The opportunity to submit details in the case was not given properly. Order was made after 15 months of our submission keeping the CBDT instructions aside. On the other hand due to the above referred CBDT instruction in clause 5 above, Appellant was expecting to receive a notice of hearing so as to submit some more details in support of its case and the grounds of appeal referred to in Form 35. Not issuing such notice of hearing is against the principles of natural justice.*

*Grounds of Appeal: By not giving a chance to submit more details in support of the case the order is not according to the principles of natural justice.*

*3. The Ld. AO has erred in treating donation of Rs. 9103120/- as not genuine and remains unexplained, the donors being verified on test check basis, on erroneous calculations, without examining the donors on oath and without providing an opportunity of cross verification. Grounds of Appeal: On the facts and circumstances of the case; like the donors being verified on test check basis, on erroneous calculations, without examining the donors on oath and without providing an opportunity of cross verification; the order is not according to law.*

*4. Grounds of Appeal: The Appellant prays to allow it to add, alter, amend, modify and/or delete any or all of the above grounds of appeal at or before the time of hearing."*

3. Facts in Brief:– The assessee is a religious and charitable trust. The main source of its receipts is grants received from various projects. The assessee trust works for the relief of the poor and other charitable and religious objects since inception for which the trust is formed and whole of its income has been applied towards achieving the objects for which the assessee trust has been created. The case of the assessee trust was selected

for scrutiny. The Assessing Officer, during the course of assessment proceedings, on a perusal of the account statements, noticed that the assessee, during the year under consideration, had received grants from various projects aggregating to ₹ 1,29,85,980, donation received from General Public to the tune of ₹ 1,03,13,811, service charges at ₹ 83,43,201, interest from Bank at ₹ 17,75,454, and surplus on sale of Vanamrut at ₹ 6,45,432. The Assessing Officer also noted that the assessee trust has also claimed corpus donation at ₹ 80,000, which was verified from receipt books. In this regard, the Assessing Officer granted opportunity to the assessee to produce the donors for verification and/or submit the confirmation letters with valid identity proof. The result of enquiry made by the Assessing Officer under section 133(6) of the Act was also communicated to the assessee the the reason, as sought by the Assessing Officer, as to why the aforesaid donation should not be treated as anonymous donation under section 115BBC of the Act.

4. The Assessing Officer concluded that the assessee failed to establish genuineness of donation received of an amount of ₹ 96,22,811, and the same was treated by the Assessing Officer as anonymous donation which was taxed under section 115BBC of the Act. The Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act separately for furnishing inaccurate particulars of taxable income. The assessee being aggrieved, carried the matter before the first appellate authority.

5. The learned CIT(A), on a perusal of Form no.35, observed that there is a delay of 405 days in filing the appeal before him. The assessee, while

requesting for condonation of delay in filing its appeal before the learned CIT(A), the reason submitted by the assessee is that, the President of the Society was not keeping good health and ultimately left for heavenly abode on 23/11/2019. Due to prolonged illness of the President of the Society, the delay occurred in filing the present appeal. Consequently, the learned CIT(A) did not condone the delay in filing the appeal before him and dismissed the appeal in limine filed by the assessee trust without dealing with the grounds of appeal raised by the assessee on merit. The relevant observations of the learned CIT(A) are reproduced below:–

*"20.0. In the present case, the appellant has not adduced any reasonable cause which prevented it from filing the appeal within the 30 days' time limit which ended on 20.01.2020 and even thereafter for more than 405 days. Unless and until it is demonstrated that there was sufficient cause that prevented the appellant from exercising its legal remedy of filing appeal within that prescribed period of 30 days, the delay thereafter cannot be condoned without there being compelling grounds as advocated by the Hon'ble Courts.*

*21,0. From the facts of the case, it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s.249(2). Thus, this clearly is a case of laches and is directly the result of deliberate inaction on the part of the appellant.*

*22.0. This is not a case of change in law which is beneficial to the appellant and hence the delay in seeking such remedy may be condoned in the furtherance of substantial justice. Therefore, there is no denial or destruction of a statutory right in this case, by adhering to the prescribed period of limitation as otherwise it will only lead to protract the matter endlessly and will undoubtedly render the legislative scheme and intention behind the concerned provision otiose as held by the Hon'ble Supreme Court in the case of Assistant Commissioner (CT) LTU, Kakinada & Ors. v. M/s Glaxo Smith Kline Consumer Health Care Limited 2020[36] G.S.T.L. 305.*

*23.0. For these reasons, the delay of 405 days in filing of appeal in this case is not condoned as no "sufficient cause" has been shown u/s.249(3) of the Income Tax Act, 1961 for the appellant's failure to file the appeal within the prescribed period of limitation u/s.249(2) of the Income Tax Act, 1961 r.w.s. 5 of Limitation Act and hence the appeal sought to be instituted belatedly is hereby rejected.*

*24.0. In the result, as delay in filing of appeal is not condoned, the appeal is not admitted and is rejected accordingly."*

The assessee being unsuccessful in first appellate proceedings is in further appeal before the Tribunal.

6. Before us, the learned Counsel, Shri Kapil Hirani, appearing for the assessee, at the very outset, drew our attention to the meticulous written submissions, which are culled out below:–

*"1) The Appellant is a trust formed/created as Public Religious and Charitable Trust hence the provisions of Section 115BBC are not applicable to it. Trust deed and registration Certificate was submitted during the scrutiny proceedings.*

*2) The Appellant works for the relief of the poor and other charitable and religious objects since inception for which the trust is formed and whole of its income has been applied towards achieving the objects for which the trust has been created.*

*3) The Appellant's case was selected for scrutiny and the assessment order was appealed with the Honorable CIT Appeals.*

*4) Even though the section 115BBC is not applicable to the Appellant as per clause 1 above, there is addition of anonymous donations under section 115BBC. The calculation of amount is also not proper. It is based on only part donation received and not total donations received. As per section 115BBC (1) the amount brought to tax is the aggregate of anonymous donations received in excess of the higher of the 5 percent of the total donations received by the assessee or Rs. 100000. Total donation received by the trust is Rs. 23299791.00 as per the Income and Expenditure Account for the year and not Rs. 10393811.00 as considered by AO.*

*5) Section 115BBC is not applicable to Appellant, even then, during the scrutiny proceedings, the Appellant submitted a list giving details of the donors as per para 3 on page 2 of the scrutiny order under section 143 (3) dated 19/2/2018.*

*6) The donors were verified on test check basis. Address and other details of 1333 donors. Out of these only 68 donors were verified either through issuing notice under section 133 (6) or by field verification. Only 5 persons denied of giving donation due to non-repayment of loans given to them by the trust. Trust acts as the Microfinance institution with due approval from Hon'ble Additional Charity Commissioner, Nagpur. The Trust, with Revolving Fund Assistance (RFA) from NABARD and other Govt Agencies provides refinance to women self-help groups, popularly known as SHGs for the construction of Toilets and livelihood activities. The statements of these 5 persons should have been taken on oath so as*

to ascertain the correctness of their verdict. An opportunity of cross examination of these persons was not provided.

7) As per clause 3.7 on page 5 of the original assessment u/s 143(3) dated 19.12.2018, order, an opportunity to produce only donation receipts was granted and the same were produced and verified.

8) The order under section 250 was made on 05th April 2023 and on the basis of our partial response on 07.01.2022. Thereafter there was enablement of communication window on 04.11.2022. The Appellant was waiting for an opportunity to submit further documents and reasons in support of the grounds of appeal in the case. The Appellant relied on the CBDT Instruction No. 20/2003 [file no. 279/Misc 53/2003-ITJ], Dated 23.12.2003) and CBDT reminder dated 19th June 2015. According to this reminder also, the Instruction was reiterated vide CBDT letter F. No. 279/Misc.53/2003-ITJ dated 19.06.2015 for strict compliance. The instruction number 20/2003 is attached as annexure.

9) The Appellant had applied for interest waiver u/s 234B and 234D. The decision on this interest waiver application was to be received. The health of the then President was not proper and unfortunately the then President of the Trust died on 23.11.2019. Thereafter new President was to be appointed and the procedure with Charity Commissioner was started. The Charity Commissioner accepted the appointed of new President on 27.02.2020. There was delay in filing first appeal against the order u/s 143(3) dated 19.12.2018 by 405 days. The reasons were submitted in Form 35 and also in our reply dated 13.12.2021. The condonation was not granted to us and the order has been passed without giving further opportunity of being heard.

The reason for delay is due to application of interest waiver with Honourable CIT (Exemptions) and the health problems of the then President of the trust. Regarding the Appeal to be filed for penalty order u/s 271(1)(c), it was independent advice given by our consultant who was recently appointed and so an appeal was filed by the secretary in the interest of the Appellant Trust. Appellant thought that it would not be proper to file the Appeal against scrutiny order without waiting for the result of interest waiver application. After being appointed as President of the trust on 27.02.2020, the trust decided to file the appeal and on 29.02.2020, the appeal was filed.

By not granting the condonation in delay of filing appeal, the Appellant will be deprived of proper justice. Moreover, there will be heavy loss in the developmental projects undertaken by the trust, mainly for the upliftment of poor and tribals. There will be loss of Public funds received for the above purpose."

The learned Counsel thus prayed that the entire matter be restored to the file of the learned CIT(A) with direction to condone the delay and

adjudicate the grounds of appeal raised on merit emphasizing the need of providing adequate opportunity of hearing.

7. The learned Departmental Representative vehemently objected to the submissions of the learned Counsel for the assessee and argued that the appeal filed by the assessee was not maintainable before the learned CIT(A) due to abnormal delay of 405 days. The assessee failed to furnish sufficient cause for the substantial delay of more than a year and, therefore, the learned CIT(A) was justified in not condoning the delay in filing the appeal and dismissed the same in limine.

8. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. It is crystal clear that the delay of 405 days in filing of appeal was not condoned, as no sufficient cause was shown under section 249(3) of the Act for the failure to file the appeal within the prescribed period of limitation as contained under section 249(2) of the Act r/w section 5 of the Limitation Act, 1963 and hence, as delay in filing of appeal was not condoned and as a result of which the appeal was not admitted and was rejected accordingly. While going through the material available on record, we find that the assessee trust has satisfactorily explained the cause of delay due to the ill-health of the President of the assessee trust who later unfortunately expired on 23/11/2019, and subsequent procedural formalities which further accentuated the delay in filing of the appeal before the first appellate authority. In our considered opinion, such delay needs to be condoned, because the trust was vigilant and was pursuing its legal rights in right earnest. In view of forgoing

discussions, we set aside the impugned order passed by the learned CIT(A) and restore the entire matter to the file of the learned CIT(A) and direct him to condone the delay and adjudication the grounds of appeal raised by the assessee on merit by considering the evidences and materials on record and after providing reasonable opportunity of being heard to the assessee and in accordance with law. Accordingly, all the grounds raised by the assessee trust are allowed for statistical purposes.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

**ITA no.129/Nag./2023**  
**Assessee's Appeal – A.Y. 2016-17**

10. The assessee has raised following grounds:-

*"Ground 1 – By not giving a chance to submit more details in support of the case the order is not according to the principles of natural justice.*

*Ground 2 – On the facts and circumstances of the case the order is not according to law to the extent of section 115BBC to the extent of legal provision.*

*Ground 3 – On the facts and circumstances of the case the order is not according to law to the extent of section 115BBC to the extent of calculations.*

*Ground 4 – The Appellant prays to allow it to add, alter, amend, modify and/or delete any or all of the above grounds of appeal at or before the time of hearing."*

11. The issue arose in this appeal relates to levy of penalty under section 271(1)(c) of the Act.

12. During the quantum proceedings, the learned CIT(A) did not condone the delay in filing the appeal by the assessee before the first appellate

authority and dismissed the appeal without dealing with the grounds of appeal raised by the assessee. Resultantly, the quantum appeal has been restored to the file of the learned CIT(A) with direction to condone the delay of 405 days in filing the appeal by the assessee and adjudicate the grounds of appeal on merit. We find that the Assessing Officer has also initiated penalty proceedings under section 271(1)(c) of the Act. The levy of penalty is dependent on such adjudication because the quantification of income is since qua non. Accordingly, the impugned order passed by the learned CIT(A) is hereby set aside to the file of the learned CIT(A) to re-adjudicate the issue of levy of penalty under section 271(1)(c) of the Act and pass order on merit in accordance with law. Thus, all the grounds raised by the assessee trust are allowed for statistical purposes.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

14. To sum up, both the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 18/11/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 18/11/2024**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Nagpur; and*
- (5) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur