



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA Nos.405 & 406 /CTK/2024
Assessment Years : 2017-18 & 2021-2022

Saint Xavier Educational & Charitable Trust, Plot No.12, Janapath, Satyanagar, Bhubaneswar	Vs.	ITO (Exemption) Ward, Bhubaneswar
PAN/GIR No.AAITS 4367 A		
(Appellant)	..	(Respondent)

Assessee by : Shri Brajabandhu Bihari, Adv
Revenue by : Shri Saroj Kumar Dubey, CIT DR
and Charan Dass, Sr DR

Date of Hearing : 04/12/2024
Date of Pronouncement : 04/12/2024

ORDER

Per Bench

These are appeals filed by the assessee against the separate orders of the Id CIT(A), NFAC, Delhi dated 8.7.2024 in Appeal No.NFAC/2016-17/10272115 for the assessment year 2017-18 and Addl/JCIT(A)-1, Vadodara dated 22.3.2024 in Appeal No.Addl/JCIT(A)-1 Vddodara/10001/2020-2021 for the assessment year 2021-2022

2. Shri Brajabandhu Bihar, Id AR appeared for the assessee and Shri Saroj Kumar Dubey, Id CIT DR and Shri Charan Dass, Id Sr. DR appeared for the revenue.

3. It was submitted by Id AR that the appeals have been dismissed by the Id CIT(A), NFAC, Delhi and Id ADDL/JCIT(A), Vadodara *in limine* on account of non-condonation of delay. It was the submission that admittedly, there was 1331 days delay in filing the appeal before the Id CIT(A) for the assessment year 2017-18 and for the assessment year 2021-22, the delay was 345 days. It was the submission that for the assessment year 2017-18, the appeal was liable to be filed before the Id CIT(A) on 10.1.2020 but the same has been filed only on 2.9.2023. For the assessment year 2021-22, the appeal was liable to be filed on 23.9.2022 but the appeal has been filed on 2.9.2023. It was the submission that the delay in filing appeals before the Id CIT(A) for both the assessment years was on account of illness and subsequent demise of the Accountant of the assessee. It was also the submission that when filing the appeal before the Tribunal for the assessment year 2017-18, there is delay of 24 days and for the assessment year 2021-22, there is a delay of 132 days. It was the submission that this delay was on account of the illness/hospitalization of the Chairman of the assessee trust. It was the submission that from the Id CIT(A), admittedly, no notice had been received by the assessee and consequently, the assessee was unable to give further explanation for the

delay. It was the prayer that the delay in filing in both the appeals may be condoned and issues restored to the file of the Id CIT(A) for adjudication on merits.

4. In reply, Id CIT DR submitted that though the assessee has made various claims such as illness and subsequent demise of the Accountant, the details of the period of illness of the Accountant much less the name of the Accountant who was deceased also not provided. It was the further submission that in respect of delay in filing of appeal before the Tribunal though there is a claim that the Chairman of the Trust was hospitalized due to cardiac problem but no medical certificate and evidence had been produced. It was the submission that in respect of issue of condonation of delay, the Hon'ble Supreme Court in the case of Pathapati Subba Reddy in S.L.P. (Civil) No.31248 of 2018 has in para 26 interpreted various earlier decisions of the Hon'ble Supreme Court on the aspect/principles of condonation of delay and has laid down various conditions. For better understanding, para 26 of the said order is extracted hereinbelow:

"26. 26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law [laid down by](#) this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the [Limitation Act](#) have to be construed differently, such as [Section 3](#) has to be construed in a strict sense whereas [Section 5](#) has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in [Section 3](#) of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reasons that the conditions have been imposed, tantamount to disregarding the statutory provision."

5. It was the submission that the assessee has not complied with any of the conditions and, therefore, the delay should not be condoned.

6. We have considered the rival submissions. At the outset, a perusal of the decision of the Hon'ble Supreme Court in the case of Pathapati Subba Reddy (supra) shows that same is in respect of Limitation Act. We are live to the very basic principles that the Limitation Act specifically does not apply to the Income Tax Act, 1961. However, we are live to the fact that the

principles laid down by the Hon'ble Supreme Court in respect of the issues of limitation being the Rule of Law can also be considered. A perusal of the principles laid down by the Hon'ble Supreme Court shows that firstly, there should be an end to litigation by forfeiting the right to remedy rather than the right itself. In the present case, clearly the fact that the assessee has filed its appeal and has disputed the demand created on it itself shows that it has not forfeited its right to the remedy.

7. The second principle is that the right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time. In the present case, the Hon'ble Supreme Court itself in its suo moto order had extended the period of limitation on account of Covid. 2020-2022 was a period of great hardship when Covid had struck the country financially and through loss of life. The Hon'ble Supreme Court itself had shown its hand of mercy suo moto by staying the law of limitation so that genuine litigant is not put to hardship. In the present case, the period of delay is the period during which the country went through Covid. Admittedly, this was a period after effect of Covid had also hit the country.

8. The next principle is in regard to the interpretation of Section 3 and Section 5 of the Limitation Act, to which, we would not try to apply the facts in the present case.

9. The next principle is that in order to advance substantial justice, the law of limitation should not be defeated. A perusal of present case shows that the assessee has challenged the intimation and the rectification application which has been rejected by the Revenue. A perusal of the intimation shows that under the guise of intimation for rectification of mistake, entire expenditures incurred by the assessee which are nothing but the application of income have been disallowed bringing to tax the entire receipts of an Organisation. How and under which principles of mistake apparent from the record, the entire receipts get disallowed in intimation without verification. We are not going into the issue of substantial justice but substantial injustice has been noticed. Admittedly, the liberal approach is called for from the Court.

10. Coming to the next principles laid down by the Hon'ble Supreme Court that Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained and the Courts have also the powers to refuse to apply the discretion even if sufficient cause is provided for such as, where there is inordinate delay, negligible and want of due diligence. In the present case, admittedly, if the Covid period is removed, the delay in respect of assessment year 2017-18 would be nearly 1 and ½ years and for the assessment year 2021-22, it would be nearly one year. This cannot be considered as inordinate delay

nor has shown any cause to raise the issue of negligence or want of due diligence on the assessee.

11. The other conditions which have been laid down by the Hon'ble Supreme Court do not apply to the case before us. In these circumstances, we are of the view that the issue of limitation cannot be very strictly applied unless it shows that there has been negligence or there has been failure of due diligence by the assessee when it has filed appeal before the Appellate Forum. In these circumstances, looking into the facts of the case and considering the fact that the assessee has categorically mentioned the delay in filing appeal before the CIT(A) was on account of the illness of the Accountant and subsequent demise, we are of the view that the assessee has shown reasonable cause. The affidavit filed by the assessee in respect of reasons for the delay before the Tribunal has also not found to be false. This being so, in the interest of justice and fair play, the delay in filing of appeal before the Tribunal is condoned and heard on merits. The delay in filing appeal before the Id CIT(A) is also condoned and the issues on merits are restored to the file of the Id CIT(A) for adjudication after granting the assessee adequate opportunity of being heard. We may mention here that the order of the Id CIT(A) does not show of any opportunity having been given to the assessee for the assessment year 2017-18.

12. One of the arguments of Id CIT DR is that after the Faceless Scheme have been introduced, the notice could only be issued through IT Portal.

We are not in agreement with this contention. It is true that the Id CIT(A) cannot issue notice directly to the assessee, however, the notice can be issued through Assessing Officer also. Just because the Id CIT(A) when hearing the appeals also intimates the AO in the event the AO who represent from his side and if the assessee has not cooperated or has not stated anything, nothing stopped the Id CIT(A) from using the alternate method to intimate the assessee of hearing using the system available in the department itself.

13. In the result, appeals of the assessee stand partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 04/12/2024.

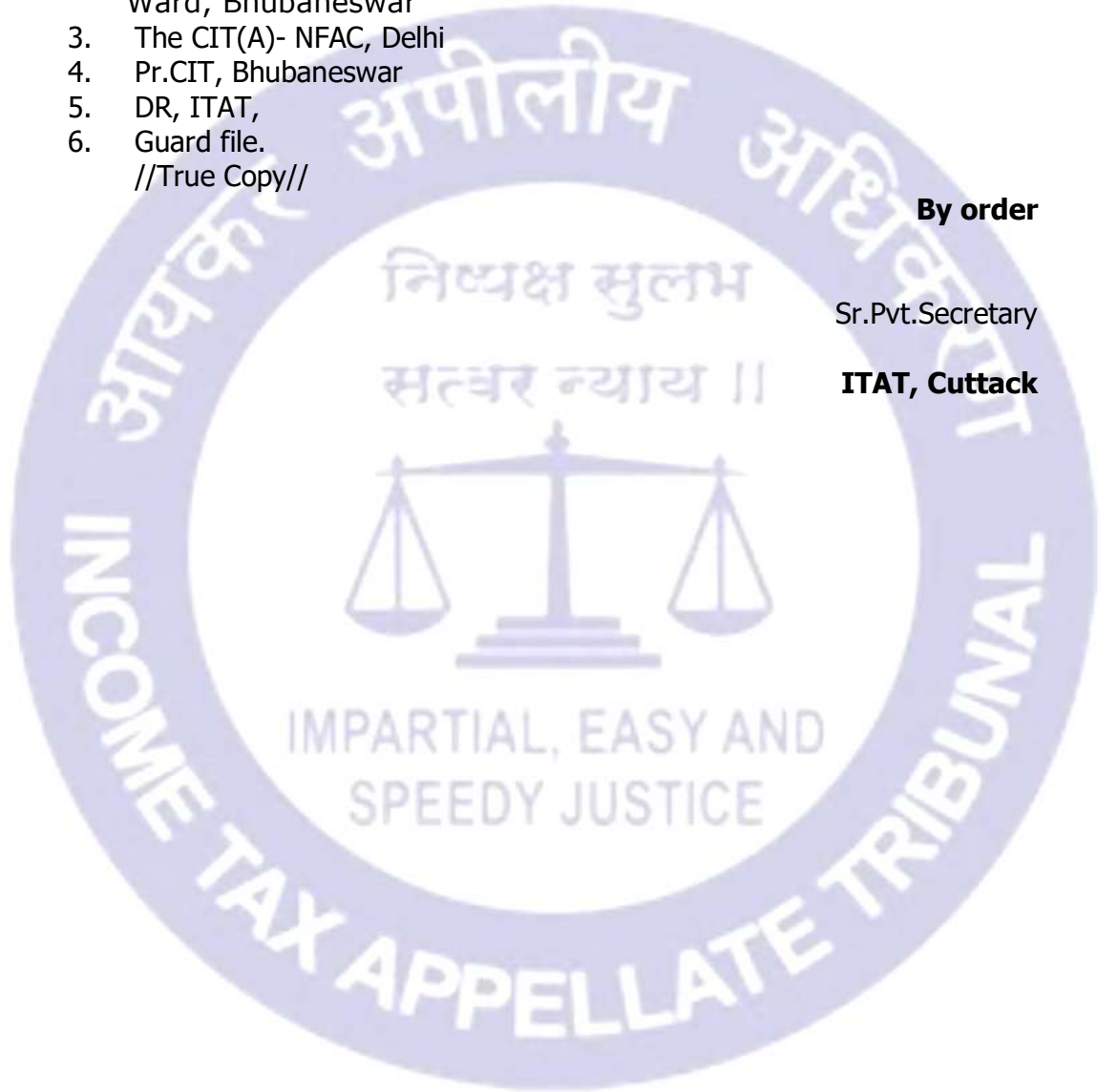
Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 04/12/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Saint Xavier Educational & Charitable Trust, Plot No.12, Janapath, Satyanagar, Bhubaneswar
2. The Respondent: ITO (Exemption) Ward, Bhubaneswar
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Bhubaneswar
5. DR, ITAT,
6. Guard file.
//True Copy//



By order

Sr.Pvt.Secretary

ITAT, Cuttack