IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

SHRI SANJAY GARG, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 1373 & 1314/Kol/2024

GV Kachrewaale Foundation,
Emerald Gecko, Sitapur Be Ach,
Neil Island, Andaman,
Andaman Islands - 744104
[PAN: AAHCG9971E] ..... **Appellant**

vs.

CIT(Exemption), Kolkata,
Aayakar Bhawan, P-7,
Chowringhee Suare,
Kolkata – 700069 ..... **Respondent**

Appearances by:

Assessee represented by	:	None
Department represented by	:	Abhijit Kundu, CIT-DR

Date of concluding the hearing	:	19.12.2024
Date of pronouncing the order	:	31.12.2024

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This is a batch of two appeals of the same assessee, filed in response to the rejections orders u/s 12A(1)(ac)(iii) of the Income Tax Act, 1961 (hereafter 'the Act') and u/s 80G of the Act. The action rejecting the two applications has been challenged. It is seen that there is a delay of 258 days in filing of both of these appeals. The assessee has filed affidavits, listing out reasons for delay in detail, praying for condonation of the said delay. For the sake of convenience, the affidavit filed for ITA No. 1374/Kol/2024 is extracted partially.

"2. The Appellant is located in the Andaman and Nicobar Islands. The Appellant has had three Chartered Accountants in the past, the first one was from the Andaman and Nicobar Islands. The latter two Chartered Accountants were from Mumbai respectively.

3. Due to the change of Chartered Accountants from time to time, there was a lack of clear communication between the Directors of the Foundation and also confusion regarding various proceedings.

4. The Applicant had not received any notice of hearing or even the Impugned order on the dates that the CIT (Exemption), Kolkata purports to have sent them. These e-mails were found much later by the Directors of the Appellant in the spam folder in the inbox after the Chartered Accountant of the Appellant appraised them of the order.

5. The impugned order of CIT (Exemption), Kolkata dated 08.08.2023 had gone to the spam folder of the Appellant.

6. Due to the change of Chartered Accountants, there was confusion regarding the status of the exemption under Section 80G. The Second Chartered Accountants were engaged in August 2022. The Second Chartered Accountants had applied for exemption under Section 12A/80G, since he and the Appellant were not told by the first CA that he had already applied for the same, compounding the confusion further.

7. The Appellant was told by the second CA that for reasons unknown to him there was no progress on this application. The Appellant reached out to Income Tax Dept in Kolkata with a lot of difficulty and was told that there was an older application for 80G, which was shared by them. When the Appellant saw it, they saw that emails ids, contact details, address and the activities of the NGO were all filled in incorrectly on this form by the first CA. The Appellant was also told that there already exists an 80G certification for the new application made by the second CA, and that is valid for one year.

8. The third CA tried to apply for the extension of the provisional 80G and was unable to do the same. It was then that the Appellant reached out to a tax counsel to find out what is the problem. It was the Counsel that brought the impugned order to the notice of the Appellant.

9. As per the advice of the tax counsel, assessee company decided to file appeal and requested the tax counsel to draft the appeal.

10. The tax counsel requested assessee company to give the details relating to Assessment proceedings. It took few days for the give the details to the tax counsel. Hence, there was a further delay in filing of the appeal.

11. We therefore pray that the delay in filing the appeal may be condoned."

1.1 Considering the detailed reasons filed for justifying the said delay, the delay is condoned and the two appeals are admitted for adjudication.

2. ITA No. 1373/Kol/2024 – the appeal arises from order u/s 12A(1)(iii) of the Act passed by the Ld. Commissioner of Income Tax (Exemptions)

(hereafter 'the Ld. CIT(E). In ITA No. 1374/Kol/2024 – these appeals arise from orders dated 08.08.2023 passed by the Ld. CIT (E), Kolkata, u/s 80G of the Act. Through both of these orders, the Ld. CIT(E) has rejected the claim of the assessee on the identical ground of non-appearance and non-supply of requisite documents.

2.1 Aggrieved with the action of the Ld. CIT(E), the assessee has filed two appeals. For the sake of convenience, the grounds of ITA No. 1373/Kol/2024 are being reproduced for reference:

> *"1. That on the facts and in the circumstances of the case and in Law, the Ld. CIT (Exemption), Kolkata erred in rejecting the Application for approval under Section 12A(1)(ac) (iii) of the Income-tax Act, 1961, filed by the Appellant in Form No. 10AB with all the required documents through order dated 08.08.2023.*
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> *2. That on the facts and in the circumstances of the case and in Law, the Ld. CIT (Exemption), Kolkata erred in rejecting the Application for approval under Section 12A(1)(ac)(ii) of the Income-tax Act, 1961, filed by the Appellant in Form No. 10AB without considering the documents already placed on record by the Appellant.*
>
> *3. That on the facts and in the circumstances of the case and in Law, the Ld. CIT (Exemption), Kolkata erred in rejecting the Application for approval under Section 12A(1)(ac) (iii) of the Income-tax Act, 1961, filed by the Appellant in Form No. 10AB in limine, without giving the Appellant a sufficient opportunity of being heard in violation of the principles of natural justice.*
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> *4. That on the facts and in the circumstances of the case and in Law, the Ld. CIT (Exemption), Kolkata erred in rejecting the Application for approval under Section 12A(1)(ac)(iii) of the Income-tax Act, 1961, filed by the Appellant in Form No. 10AB in limine, by merely observing that the communications asking for details were made with the Appellant through e-mail and that the same were available on the e-filing portal without considering the material already on record filed by the Appellant with the Application.*
>
> *5. That on the facts and in the circumstances of the case and in Law, the Ld. CIT (Exemption), Kolkata erred in rejecting the Application for approval under Section 12A(1)(ac)(ii) of the Income-tax Act, 1961, filed by the Appellant in Form No. 10AB in limine, without doing proper service upon the Appellant in violation of the principles of natural justice as the e-mails from the Income Tax Department went to the Junk Mail folder of the Appellant.*
>
> *6. The appellant craves leave to add to, to alter or to amend the above Grounds of Appeal."*

3. The Ld. DR was requested by the Bench to assist in going through the facts as also the documents on record. It is evident that the assessee was unaware of the notices fixing the dates for hearing and submission of

documents. The detailed reasons given in the affidavit for condonation of delay and the averments made in the grounds of appeal persuade us to believe that the assessee/trust deserves a second chance to present the requisite information and documents before the Ld. CIT(E), Kolkata so that a fair view may be taken on merit. Accordingly, we remand these two matters back to the file of Ld. CIT(E), Kolkata for conducting the proceedings afresh in the two cases. Needless to say, the assessee/trust would do well to be vigilant about the notices issued from the office of Ld. CIT(E) and would do well to promptly respond to the same.

6. In the result, these two appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the court on 31.12.2024

Sd/-	Sd/-
[Sanjay Garg]	**[Sanjay Awasthi]**
Judicial Member	**Accountant Member**

Dated: 31.12.2024.
AK, PS

Copy of the order forwarded to:

1. GV Kachrewaale Foundation
2. CIT(Exemption), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches