

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA Nos.1934 to 1936/KOL/2024
(Assessment Years: 2013-14 to 2015-16)**

Sasha Association for Craft Producers	ITO, Ward 1(3), Exemption
15, Chatu Babu Lane, CIT Road, Kolkata-700104, West Bengal	Income Tax Officer, 10B, Middleton Row, Kolkata-700071, West Bengal
(Appellant)	(Respondent)

PAN No. AABTS5580N

Assessee by : Shri S.M. Surana, AR
Revenue by : Shri Abhishek Kumar, DR

Date of hearing: 07.01.2025
Date of pronouncement : 15.01.2025

ORDER

Per Rajesh Kumar, AM:

These are appeals preferred by the assessee against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") even dated 05.08.2023 for the AYs 2013-14 to 2015-16.

02. At the outset, we note that there is a delay in filing the appeal by the assessee by 349 days, for which the assessee has filed condonation petition along with affidavit of Shri Roopa Mehta Executive Director of assessee's trust. It was stated in the affidavit that the assessment order u/s 143(3) for A.Y. 2013-14 was passed on 23.06.2026, which was appealed before the Id. CIT (A) and the Id. CIT (A) dismissed the appeal vide order dated 05.08.2023. It was further argued that the



assessee did not receive any mail in this regard and therefore, the order dated 05.08.2023, passed u/s 250 of the Act, could not be reached. It was only when the portal was accessed on 06.09.2024, when the assessee received a communication from demand facilitation center IT Department for the outstanding demand that the Id. CIT (A) has already passed the order dated 05.08.2023. Thereafter, steps were taken for filing the appeal and the appeal was filed with delay of 349 days.

03. We have duly considered the rival contentions and gone through the record carefully. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression "sufficient cause" employed in this Section has also been used identically in sub-Section 3 of Section 249 of the Act, which provides power to the Id. Commissioner to condone the delay in filing of the appeal before the Commissioner. Similarly, it has been used in Section 5 of the Indian Limitation Act, 1963. Whenever interpretation and consideration of this expression has fallen for consideration before the Hon'ble High Courts as well as before the Hon'ble Supreme Court then, the Hon'ble Courts were unanimous in their conclusion that this expression has to be construed liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of *Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353* wherein it has been held that where substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the



other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

04. Moreover, making the appeal time-barred has not been used by the assessee as a tactics to avoid the litigation with the Revenue because such strategy would not give any benefit to the assessee in this type of litigation. Therefore, we condone the delay and proceed to decide the appeal on merit.

ITA No. 19354/KOL/2024 for A.Y. 2013-14

05. The Id. Counsel for the assessee stated that the assessee is a charitable trust and filed the return of income on 28.09.2013, declaring total income as NIL. The case of the assessee was selected under CASS for scrutiny and statutory notices were duly issued and served upon the assessee along with questionnaire. The assessee's trust was registered under section 12A of the Act vide registration dated 28.11.2019. The charitable activities of the trust covers services to the poor craftsman in the nature of providing relief for affording and holding working environment, tools and implements assisting to get market of the handicraft products and updating the knowledge of design and demand. These poor people being artisan and craftsman of our society who are not only financially handicapped but are also not in a position to get proper price for their product, therefore, the assessee has been providing these activities/ assistances which are not of charitable in nature. According to the Id. AO the said activity is hit by the proviso to Section 2(15) of the Act and accordingly, the assessee falls within the category of advancement of any other of general public utility . Accordingly, the net profit as per the income



and expenditure account was treated as total income and the taxed accordingly.

06. In the appellate proceedings, the appeal of the assessee was dismissed by the Id. CIT (A) by observing that in the general test u/s 2(15) of the Act set by the Hon'ble Apex Court while deciding the case of ACIT exemptions) Vs. Ahmedabad Urban Development in Civil appeal No. 21762 of 2017 dated 19.10.2022, that the assessee has seen to be engaged in trade and commerce which are not for general public utility and further the receipt from such business or commercial activity for service in relation thereto, exceed the quantified limit of ₹25 lacs and thus, the assessee fall within the purview of changed definition of charitable Trust with effect from 01.04.2009 and thus, the assessee is not entitle to get exemption u/s 11 and 12A of the Act.
07. After hearing the rival contentions and perusing the materials available on record, we find that the case of the assessee is squarely covered by the decision of the co-ordinate bench in assessee's own case for A.Y. 2008-09 in ITA No.914/KOL/2023 dated 27.04.2016 for A.Y. 2008-09 & ITA Nos. 439 to 441/KOL/2017 for A.Ys. 2009-10, 2011-12 and 2012-13, IT No. 147/KOL/2023 for A.Y. 2010-11 vide order dated 27.09.2023, wherein identical issue has been decided in favour of the assessee by allowing the claim of the assessee u/s 11 of the Act. We also find that the Id. CIT (A) in A.Y. 2016-17 has allowed the appeal and the copy of order is available from page no.28 to 43. For the sake of ready reference, the decision of the co-ordinate Bench for A.Y. 2018-19 in ITA No.980/KOL/2023 is extracted below:-

"6. We, after going through the fact of the case and perusing the material available in the record and also considering the judgment rendered by the Tribunal in the case of the assessee where claim of the assessee was allowed by the Tribunal by dismissing the Revenue's appeal in ITA No. 439- 441/KOL/2017

treating the assessee for providing relief to the poor by allowing assessee's claim made u/s 11 of the Act. Accordingly, applying the same ratio rendered by this Tribunal, we allow the instant appeal of the assessee by setting aside the order passed by the authorities below and direct the AO to allow the claim of the assessee in terms of our above direction.

7. So far regarding the issue of adding back of Rs. 8,41,842/- referring the amendment made in Section 11(6) of the Act on account of depreciation as not allowable application since the purchase of the fixed asset has already been considered as application without appreciating the fact by Id. CIT(A) as well as Id. AO. The said depreciation was already added back in the computation and return filed by the assessee. Therefore, such disallowance is also not sustainable. Similarly, Id. AO as well as Id. CIT(A) erred in adding back Rs. 1,04,929/- referring the amendment in Section 11(6) of the Act on account of loss on sale of car as non-allowable application since the purchase of fixed asset has already been considered as application without appreciating the reply filed by the assessee that said amendment was restricted to the depreciation and not applicable in the case of loss or profit on sale of the assets.

8. On the other hand, Id. D/R supported the contention made by the authority below.

9. We have heard the rival submission and perused the material on record. The instant addition made by the AO in respect of claim of assessee's depreciation of Rs. 8,41,842/- and loss on sale of car of Rs. 1,04,929/- is not sustainable. Accordingly, such addition is hereby set aside and grounds taken by the assessee are hereby allowed. In terms of the above, appeal of the assessee is allowed. 10. In the result, the appeal filed by the assessee is allowed."

08. Therefore, considering the decision of the co-ordinate Bench in the preceding and succeeding assessment years, we are inclined to set aside the order of Id. CIT (A) and direct the Id. AO to allow the exemption u/s 11 and 12 of the Act.

**ITA Nos. 1935 & 1936/KOL/2024
for A.Y. 2014-15 and 2015-16, respectively**

09. The issue raised in these appeals are similar as decided in ITA No. 1934/KOL/2024 for A.Y. 2013-14, wherein we have directed the Id. AO to allow the exemption u/s 11 and 12 of the Act. Accordingly, our decision in the above ITA 1934/Kol/2024 A.Y.2013-14 would apply mutatis mutandis in this appeal in ITA Nos.1935 & 1936/KOL/2024 for AYs 2014-15 and 2015-16 As well and accordingly we direct the Id. AO



to allow the exemption u/s 11 and 12 of the Act. The appeal of the assessee are allowed.

010. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 15.01.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.01.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata