

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA (SMC) BENCH, AGRA**

BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

**ITA No. 88/Agr/2024
Assessment Year: 2015-16**

Aastitva Jain Family Trust, Ward No. 18, Subhash Ganj, Ashoknagar-473331, Madhya Pradesh.	v.	Income-tax Officer, CPC, Bangaluru.
PAN :AAFTA1477Q		
(Appellant)		(Respondent)

Assessee by	Sh. Subhash Chand Jain, CA
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	31.12.2024
Date of pronouncement	17.01.2025

ORDER

This appeal in ITA No. 88/Agr/2024 for the assessment year 2015-16 has arisen from the appellate order dated 29.01.2024 [DIN & Order No. ITBA/APL/S/250/2023-24/1060220415(1)], passed by learned ADDL/JCIT(A)-7, Mumbai, which appeal in turn, has arisen from the intimation/order dated 19.10.2017 passed by Central Processing Center(CPC), Bengaluru u/s. 143(1) of the Income-tax Act, 1961.

2. Grounds of appeal raised by the assessee in the Memo of appeal filed with Income-tax Appellate Tribunal, Agra Bench, Agra, reads as under :

“1. On the facts and circumstances of the case the Commissioner of Income Tax (Appeals) has erred in dismissing the appeal on the ground that appellant has delayed in filing of appeal and rejected the condonation application considering reason of delay as not bonafide.

2. On the facts and circumstances of the case the Commissioner of Income Tax (Appeals) has erred in not providing appropriate opportunity of being heard to the appellant for explaining the reason for delay in filing of appeal and dismissed the appeal which is against of law and principle of natural justice.

3. On the facts and in the circumstances of the case and in law the Learned CIT(A) has erred in confirming to action of the AO CPC who considered the Status of appellant as charitable trust instead of Individual/AOP.

4. On the facts and in the circumstances of the case and in law the Learned CIT(A) has erred in confirming the action of learned AO CPC who wrongly calculated to the tax liability in the intimation u/s 143(1) of the assessee trust by confirming to tax at Maximum Marginal rate instead of Normal Rate because appellant trust is a Private Discretionary trust and will hold same status as the beneficiaries/individual.

5. On the facts and in the circumstances of the case and in law the Learned CIT(A) has erred in confirming the action of learned AO CPC who wrongly assessed to tax Rs. 1,12190/- just ignoring to the fact that appellant trust is Private discretionary trust who hold the status of Individual and will be liable to Tax at Normal rate instead of MMR. Therefore since income was below taxable limit, hence no tax liability would arise and be deleted.

6. The appellant trust denies liabilities to be assessed to interest u/s 234 A, B & C.

7. That the appropriate order for granting justice and relief be passed.

8. Your appellant reserves its right to add to amend to alter or to modify any of above grounds and to pursue any other or further grounds as may be required.”

3. Brief facts of the case are that the assessee filed return of income belatedly for the impugned assessment year on 18.02.2017 u/s. 139(4)

of the Act, declaring income of Rs. 2,41,000/-. The CPC processed the return of income and issued intimation/order dated 19.10.2017 u/s. 143(1) of the Act, computing income of the assessee at Rs.2,41,000/- wherein returned income was accepted and applied maximum marginal rate (MMR) of taxation against the assessee.

4. Aggrieved, the assessee filed first appeal before Id. CIT(A) on 04.11.2023, which is an appeal filed belatedly by the assessee by 2176 days beyond the time prescribed u/s. 249(2) of the Act. During the course of appellate proceedings, in the Statement of Facts, assessee submitted as under :

“1. Appellant assessee is a Private discretionary Trust which is created by will of Late Smt. Kusum Bai exclusively for the benefit of relatives dependent for their support and maintenance, hence filed its income Tax return for the A.Y.2015-16 on 18.02.2017 vide acknowledgement no.626547700180217 declaring his total income Rs 241000/- without any tax liability being income below taxable limit by virtue of Section 164(1) of the Income Tax Act but order u/s143(1) was passed on 19/10/2017 with demand of Rs 112190/- after calculating tax on maximum marginal rate instead of Normal Tax even private family trust in which beneficiary is not having any taxable income.

1. The CPC Bengaluru has raised demand u/s 143(1) of the Income Tax Act after charging Income Tax at Maximum Marginal Rate (30 percent) instead of normal rate as assessee trust is only trust which is created by will of Late Smt. Kusum Bai

3 Thus CPC Bengaluru has wrongly calculated tax at MMR, even Trust was only Trust created through Will by Late Smt. Kusum Bai after observing on plea as Trust has been filed IT Return in ITR 5 which is not prescribed for Trust but Learned ITO overlooked to the Circular No. 6/2012 DT. 3rdAug. 2012 reported in 346 ITR(SF) 96 in which CBDT has directed that Private discretion Trust is assessable as an Individual hence Assessee is submitted its Return in ITR 5 from last several years and Department are also accepting to the returned income Thus action of the AO regarding applying to the Tax calculation on MMR is against

of above CBDT Circular. Therefore kindly be considered to trust correctly filed its ITR 5 and be also calculate tax at normal rate u/s164(1) of the Act due to beneficiary identifiable and their shares are ascertainable as on date of Trust Deed as well as beneficiary of trust is also not having any below taxable non business income.

4. Now applicant also request for kindly directing to calculate the tax at Normal Rate in place of MMR as wrongly calculated on the plea that assessee filed its Income Tax Return in ITR 5 because other Form i.e. ITR 7 is prescribed for Chantable and Religious Trust which is Registered u/s 12AA and 80G of the Income Tax Act, while Appellant Trust is not a Charitable and Religious Trust and also not Registered u/s12AA and 80G of the Income Tax Act but a Private Family Trust which is not liable for filing its Income Tax Return u/s139(4A) of the Income Tax Act. Moreover we are reproducing analysis of Sec 164(1) provided for Taxation of Private Discretionary Trusts: (a) When trust income includes any business income Proviso to section 164(1) In this case trust will pay tax at the rate 30percent plus SC plus HEC(b) When trust income does not include any business income Section 164(1) In this case trust will pay tax at the rate 30percent plus SC plus HEC EXCEPTION However, the maximum marginal rate will not apply in the following cases and relevant income will be liable to tax in the hands of the trustees as if it were the total income of an association of persons(i) where none of the beneficiaries has taxable income (Rs. 2,50,000 for assessment year 2020.21) is a beneficiary under any other private trust or (ii) where the relevant income or part of relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him or(iii) where the relevant income or part of relevant income is receivable under a trust created before 01.03.1970, by a non testamentary instrument exclusively for the benefit of the relatives of the settlor or where the settlor is HUF, exclusively for the benefit of dependent members support and maintenance or(iv) where the relevant income is receivable by the trustees on behalf of provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession. Since Appellant trust created through Will by Late Smt. Kusum Bai on 11.05.2001 and covered under ii proviso to Sec 164(1) of the Income Tax Act and hence assesses income is to be taxed at Normal Rate of Income as applicable to individual and not Maximum Marginal Rate. Thus appellant trust income should be for tax as per Normal Tax Slab as per second proviso to Sec 164(1) of Income Tax Act and be waived the tax levied by maximum marginal rate as not liable because said trust declared by Late Smt. Kusum Bai by his will exclusively for the benefit of relatives and oblige Hence appellant trust is filing this appeal on following grounds.”

4.2. The assessee with respect to delay in filing this appeal belatedly before Id. CIT(A) by 2176 days beyond the time prescribed u/s 249(2), submitted before Id. CIT(A) praying for condonation of delay as under :

"1. That I am the trustee of Aastitva Jain Family trust since inception of this trust and look after maintenance and other care of beneficiary Aastitva. Jain. This trust was created from the last will of Smt. Kusum Bai for the benefit of baby Aastitva Jain.

2. That said trust is not doing any business since inception except made deposits with known party on interest. Thus only income from interest since inception to as on date

3. That trust is having only one beneficiary who is not having any taxable income during the year 2014-15 as well as in subsequent year.

4. That I just received notice for recovery of tax from department hence I surprised after looking to the said demand notice because demand is raised of Rs. 112190/- after charging tax at Maximum Marginal rate instead of normal rate of tax even no business income of the trust as well as beneficiary was having below taxable income.

5. That on receiving of recovery notice, I just contacted to our tax consultant who login on the Portal and found that tax has been charged at MMR instead of normal rate of tax and advised for filing of appeal against arbitrary demand

6. That I requested to the consultant that to prepare the appeal against intimation, thus on preparing the appeal now I am filing appeal against the intimation u/s 143(1) of the Income Tax act

7. That, I am also filing my Appeal due to consequence informed by income tax department officials as full recovery of all taxes as well as launch prosecution against both trustee

8. That the delay is caused due to issue narrated above facts which is beyond to my control Hence delay in filing the appeal against Intimation u/s 143(1) dated 19.10.2017 of the Income tax act is 2176 days but from the date of download to the said intimation is no delay which not came to my knowledge earlier but known on just recovery of arbitrary demand

9. That the delay in filling to this appeal is due to non knowledge of passing of any demand raised against trust, thus by virtue of said unavoidable reasons there is delay in filing the appeal

10. That I am also confirming all above facts on affidavit which is enclosed herewith for your kind consideration

11. That the delay in filing of appeal is unintentional and bonafied and there was no benefit to the appellant assessee trust in delay in filing of appeal. Thus the assessee trust was prevented from sufficient cause."

4.3. Assessee also submitted before the Id. CIT(Appeals) that the assessee received recovery of demand notice from department, and then only came to know about processing of the return u/s. 143(1) of the Act and consequentially raising of the demand against the assessee by Revenue. It is stated that immediately thereafter the appeal was filed before Id. CIT(A) on 04.11.2023 ,and it was claimed that if the limitation period is computed from the date of coming to the notice/knowledge of the intimation u/s. 143(1)(i.e. date of downloading from the IT e-Portal), then there is no delay in filing the appeal with the Id. CIT(Appeals). Ld. CIT(Appeals) considered the contentions of the assessee and rejected the same ,as in view of the Id. CIT(A) there are no sufficient cause/justification demonstrated by the assessee in filing the appeal belatedly with Id. CIT(A) by 2176 days beyond the time prescribed u/s 249(2). Since,no bona fide cause has been shown by the assessee in filing this appeal belatedly, the Id. CIT(A) dismissed the appeal filed by the assessee on this short ground of limitation only ,and the Ld.

CIT(Appeals) did not proceed to adjudicate the issues arising in the appeal on merits.

5. Assessee being aggrieved has filed second appeal with ITAT ,and the Id. Counsel for the assessee submitted that the assessee is a Private Discretionary Trust and it is created by Will of Smt. Kusum Bai exclusively for the benefit of relatives. This is the only trust created by Smt. Kusum Bai and the shares of beneficiaries are determinative and hence, normal rate of tax shall be applicable keeping in view the provisions of section 164(1) of the Act, but the CPC applied MMR and raised demand against the assessee. It was submitted that there was delay of 2176 days in filing appeal before the Id. CIT(Appeals) beyond the time prescribed u/s 249(2), as the assessee was not having knowledge of the intimation/order of the CPC dated 19.10.2017 raising demand against the assessee by applying Maximum Marginal Rate(MMR) instead of normal rate of taxation. The Id. Counsel for the assessee stated before the Bench that it is only when the notice of recovery of demand was received, immediately steps were taken to file appeal. It was submitted that if period of limitation is computed from the date of the downloading of intimation u/s 143(1) from IT e-portal, there was no delay in filing the appeal belatedly with Id. CIT(A). It was submitted that the learned CIT(Appeals) has dismissed the appeal of the

assessee on the ground that there was delay of 2176 days in filing the appeal before the Id. CIT(Appeals) as assessee is not able to explain the reasonable cause/justification in filing the appeal belatedly with the CIT(Appeals). It was submitted that application for condonation of delay was duly filed with Id. CIT(A) duly supported with affidavit, but Id. CIT(A) did not condone the delay in filing the appeal belatedly. The Id. CIT(A) did not adjudicate the appeal of the assessee on the merits of the issues arising in the appeal filed before Id. CIT(A). Learned counsel for the assessee relied upon the judgments and orders in the case of :

- a) Mumbai ITAT order in the case of Phoenix Mills Limited v. ACIT, Mumbai in ITA no. 6240/M/2007
- b) Judgment and order of Hon'ble Supreme Court in the case of United Bank of India v. Naresh Kumar reported in (1996) 6 SCC 660
- c) Judgment and order of Hon'ble Allahabad High Court in the case of Bharat Auto Centre v. CIT , reported in (2006) 282 ITR 366(All)
- d) ITAT, Bangalore order in the case of Mcafee Software India Private Limited v. DCIT , in IT(TP)A no. 110/Bang./2024.
- e) ITAT , Bangalore order in the case of JCR Drillsol Private Limited v. ITO , reported in (2024) 164 taxmann.com 283(Bang. Trib.)
- f) ITAT, Chennai Order in the case of People Education and Economic Development Society v. ITO (2006) 100 ITD 87(Chennai)
- g) Judgment and order of Hon'ble Madras High Court in the case of Sreenivas Charitable Trust v. DCIT , reported in (2006) 154 Taxman 377
- h) ITAT, Kolkatta Order in the case of Effluent & Water Treatment Engineers Private Limited v. DCIT, reported in (2022) 140 taxmann.com 420(Kol.ITAT)
- i) Judgment and Order of Hon'ble Gujarat High Court in the case of CIT v. Maharaja Daljit Singh Ji Trust (1993) 204 ITr 135(Guj.)
- j) judgment and order of Hon'ble Gujarat High Court in the case of CIT v. Sanchay Angana Trust &Ors. , (1998) 234 ITR 772(Guj)

It was prayed by Id. Counsel for the assessee that the delay in filing the appeal before Id. CIT(A) be condoned and the matter be adjudicated on merits.

5.2 Learned Sr. DR submitted that there was delay of more than seven years in filing the appeal before the Id. CIT(Appeals). The income tax return filed by the assessee was processed u/s. 143(1) by the CPC and the intimation was available on e-portal of income tax department. The assessee has also e-filed the return of income through e-portal and the assessee had to be vigilant in verifying whether any processing is done or demand has been raised by the CPC which stood uploaded on IT e-portal.

5.3 Ld. Counsel for the assessee prayed that the matter can be set aside back to the file of Id. CIT(Appeals) for deciding the appeal on merits.

6. I have considered rival contentions and perused the material on record. I have observed that the assessee has e-filed his return of income belatedly on 18.02.2017 u/s. 139(4) vide e-filing acknowledgement No. 626547700180217. Said return of income was processed by CPC ,and intimation u/s. 143(1) of the Act dated 19.10.2017 was issued by CPC. The returned income of the assessee of Rs.2,41,000/- was accepted. Further, income-tax demand of Rs.74,469/- was raised against the assessee by CPC. Further, demand for interest

thereon u/s. 234A, 234B and 234C aggregating to Rs.37,721/- was raised by CPC against the assessee. Thus, in aggregate, total demand of income-tax and interest of Rs.1,12,190/- was raised against the assessee by CPC. Assessee filed first appeal belatedly with the Id. CIT(Appeals) with a delay of 2176 days beyond the time prescribed u/s. 249(2) of the Act, wherein the assessee has made legal challenge on merits before Id. CIT(A) to applicability of MMR to the assessed income against application of normal rate of taxation. Assessee had also submitted an application supported with affidavit for condonation of delay of 2176 days in filing the appeal belatedly with Id CIT(A) beyond the time prescribed u/s 249(2). It is the main contention of the assessee that the assessee was not aware of the processing of the return by CPC u/s 143(1), and consequently raising of total tax and interest demand of Rs. 1,12,190/- against the assessee vide intimation dated 19.10.2017, as the same was not served to the assessee, and it is only when the notice of demand for recovery issued by department was received by the assessee, the assessee came to know of the outstanding demand against the assessee vide processing of return u/s 143(1) vide intimation dated 19.10.2017. It is claimed that , thereafter, immediately steps were taken to file the appeal before Id. CIT(A). The assessee has claimed that if the date of knowledge of the said intimation u/s. 143(1) is deemed to

be the service of the intimation (i.e.date of download from IT e-Portal), then there is no delay on the part of the assessee. The Revenue has claimed that the said processing of return u/s. 143(1) and intimation dated 19.10.2017 was uploaded on IT e-portal, the same shall be deemed to be the service of intimation u/s. 143(1). I have observed that the Id. CIT(Appeals) has not made any enquiry as to the manner in which the service of intimation u/s. 143(1) was effected by the Revenue on the assessee. He has simply dismissed the appeal of the assessee on the ground that there is a huge delay of 2176 days in filing of the appeal before Id. CIT(A) beyond the time prescribed u/s. 249(2) of the Act, and the assessee could not submit sufficient/ justifiable cause for delay in filing this appeal belatedly with Id. CIT(A). This requires investigation of facts which can be ascertained only after enquiry. Reference is also drawn to the provisions of section 282 of the 1961 Act read with Rule 127 of the Income-tax Rules, 1962, which deals with the service of notice, summons, requisitions, order and other communications. I direct the Id. CIT(Appeals) to make enquiry as to the manner in which the service was effected by the Revenue of the Intimation u/s. 143(1) of the Act on the assessee, and to arrive at the finding/conclusion whether service of intimation u/s 143(1) effected by CPC was in compliance to section 282 of the 1961 Act read with Rule 127 of the 1962 Rules. At this point of time, it

will be relevant to refer to the judgment and order of Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship, Ludhiana v. CIT(E), Chandigarh (2024) Live Law (PH)106(Case No. CWP-21028-2023(O&M)*, in which Hon'ble Punjab and Haryana High Court has held that merely uploading of the communication(notice) in the Income Tax department e-portal is not sufficient mode of communication keeping in view principles of natural justice which are inherent in income tax proceedings as also keeping in view provisions of Section 282 of the 1961 Act and Rule 127 of the 1962 Rules. When technicalities are pitted against advancement of substantial justice, then the court will lean towards advancement of justice. Reference is drawn to the judgment and order of Hon'ble Supreme Court in the case of *Collector of Land Acquisition , Anantnag v. Mst. Katiji & Ors. 1987 AIR 1353*. Thus, I am restoring back the matter back to the file of Id. CIT(Appeals) to firstly decide afresh on the application for condonation of delay supported by affidavit filed by assessee before Id. CIT(A), keeping in view the provisions of section 282 of 1961 Act read with Rule 127 of the 1962 Rules as well judicial precedents in the matter, after making necessary enquiry as to the effecting of service of intimation dated 19.10.2017 u/s 143(1) by CPC, Bengaluru, as it requires investigation of facts . Once Id. CIT(A) adjudicates on condonation of

delay application/affidavit filed by the assessee, then thereafter, if the Id. CIT(A) decides to condone the delay on merits, then Id. CIT(A) shall proceed to adjudicate the appeal filed by the assessee on merits in accordance with law. I clarify that I have not commented on the merits of the issue arising in this appeal nor on the merits of the condonation of delay application filed by the assessee with Id. CIT(A). Needless to say that Id. CIT(A) shall give proper opportunity of being heard to both the parties. I order accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.01.2025.

Sd/-

**(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Dated: 17/01/2025

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra