

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.6/Ind/2024
Assessment Year:2023-24

Shri Rishabdev Motilal Jain 154 Jawaharmarg, Rajgarh Dhar (Assessee/Appellant)	<u>बनाम/</u> Vs.	CIT (Exemption) Bhopal (Revenue/Respondent)
PAN: AAMTS5941A		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	22.01.2025	
Date of Pronouncement	27.01.2025	

आदेश / O R D E R

Per UDAYAN DAS GUPTA, J.M.:

This appeal is filed by the assessee on 4th January, 2024, against the order of the Ld CIT(E) , Bhopal, rejecting the application for registration u/s 12AA(1)(b)(ii) of the Act 61 , vide order dated 2nd March, 2021, on the ground that the application for registration filed in Form 10A , was an incomplete application without necessary particulars.

2. It is pointed out by the registry that this appeal is filed belatedly by 972 (nine hundred seventy two) days . In order to explain the delay the assessee has filed an affidavit through its authorised signatory Mr. Manohar Lal Jain, stating that the order of the Ld CIT (E) dated 2nd March , 2021 has been received on 8th March, 2021, through the income tax portal

and the time period of sixty days in filing this appeal has expired on 7th May, 2021 , but the same has been actually filed on 4th January, 2024 , which is belated by 972 days (nine hundred seventy two days) .

2.1 He further submitted that Shri Pramod Kumar Jain an office bearer of the trust who was looking after the accounts and taxation matters of the trust expired on 15th April, 2021 (*which is just after receipt of the rejection order*) , and the responsibility of the taxation work devolved on another office bearer of the trust Mr. Ramesh Chandra Jain , who unfortunately expired being effected by COVID – 19, on 28th March, 2022 (during COVID period itself) (Death certificate attached) .

2.2 The Ld AR of the assessee , present before the tribunal , submitted , that if the COVID period is excluded , up till 30th May, 2022, the remaining period of delay is 584 (*five hundred eighty four*) days . He further submitted that this is a trust which is registered under Registrar of Public Trust 1951, on December, 2019, and during COVID, all paper work was totally disrupted due to death of two office bearers and because of subsequent change in management, the existence of the Ld CIT (E) order , was totally not known to the incoming management and gradually , the matter went out of sight. Subsequently, when the new management came to learn of the same in the month of December, 2023, they contacted the present CA Mr. Ashish Goyal, and with his help and guidance, the appeal has been prepared and filed before the tribunal on 4th January, 2024, belated by 584 days (excluding COVID period) . He further prays , that it is a public charitable trust , and the delay in filing this appeal was not intentional , and the concerned persons of the earlier management has already expired and the new management is trying its best to cope up with the provisions of law and to do its best in the matter and he prays that the appeal may please be admitted to be decided on merits.

2.3 In support of his argument the assessee relied on the decision of this Bench , in the case of *Ayushmati Education and Social Society, Bhopal vs CIT [2016] 2 ITJ online 255 (Indore) (2007)8 ITJ 444* , where the Hon'ble Bench relying upon the judgment of the Hon'ble Apex court in the case of *Collector Land Acquisition v Mst Katji and Others (1987) 167 ITR 471*, has condoned the delay . The relevant portion is reproduced:

"The Legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational, common sense and pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, the 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.

5. There is no presumption that delay is occasioned deliberately or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

3. The Ld DR objected to the condonation of delay on principal but considering the successive death of two office bearers during COVID period, honestly , left it to the discretion of the Hon'ble Bench to take a call.

4. As such considering the entire factual aspect of the matter , and also the fact that two successive committee members entrusted with the responsibility of accounts and taxation matters , has expired , during COVID , and a new management has stepped in , it arguably does take some time to get accustomed with the normal working and functioning of the public trust in the post COVID era , and to figure out the pending compliances before Government authorities , and also considering the law laid down by the Hon'ble Apex court that in order to do substantial justice , the law should be applied in a meaningful manner which subserves the ends of justice, we are of the opinion that proper justice will be done in this case by condoning the delay , and as such we admit the appeal to be heard on merits.

5. Now coming to the merits of the case , the Ld AR of the assessee submitted that the registration has been denied by the Ld CIT (E) for non filing of Registration bye laws of the trust and due to mismatch in registration dates stated in registration certificate and in application form 10A . He furnished before the tribunal a short paper book consisting of the copy of the registration certificate of the trust , dated 30th. March, 2019, issued by Registrar Public Trust, trust deed dated 1st March 2013, on NJ stamp of Rs.500/- , (H 725049) , which has been registered on 1st February, 2018 under the hand of Sub Registrar Roshni Nimama , Sardarpur Office, Sardarpur.

6. He further submitted , that before the Ld CIT(E) adequate opportunity of producing these two documents were not provided , because the order itself was passed on March 2021, a period which was covered under TOLA . As such he prayed for an opportunity of furnishing the requisite papers before

the registration authority for proper consideration and for proper consideration of the application for registration in Form 10A .

7. We have considered all the materials on record and the arguments of the rival counsels and we find that the Ld CIT(E) has rejected the application in Form 10A for non submission of Trust registration certificate and the copy of the Registration bye laws , which the assessee has now submitted by way of its paper book , which needs verification as per satisfaction of the Ld CIT (E) . As such in the interest of justice we remand the matter to the file of the Ld CIT (E) , to consider the application for registration in Form 10A afresh and we direct the assessee to file all necessary papers and documentary evidences as required as per provisions of law , before the Ld CIT (E) and to cooperate in the fresh proceedings for proper disposal of the registration application . Needless to say the assessee shall be allowed proper opportunity of being heard.

7.As a result the appeal is allowed for statistical purpose.

Order pronounced in the open court on 27.01.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 27/01/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore