

आयकर अपीलिय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आसं.5469/दिल्ली/2024 (नि.व. 2020-21)
ITA No.5469/DEL/2024 (A.Y.2020-21)

Manasbal Trust,
B-60/61, C/o Bajaj Auto Ltd.,
Naraina Industrial Area, Phase-III,
New Delhi 110028

PAN: AAATM-0682-Q

..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Director of Income Tax, CPC
Post Bag No.2, Electricity Post Office,
Bengaluru, Karnataka 560500

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by

: Ms. Vasanti Patel, Advocate and
Shri Mahender Goel, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by

: Shri Sanjay Kumar, Sr. DR

सुनवाई की तिथि/ Date of hearing

: 14/01/2025

घोषणा की तिथि/ Date of pronouncement:

: 09/04/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 20.07.2022, for assessment year 2020-21.

2. This appeal is time barred by 788 days. The assessee has filed an affidavit citing reasons for delay in filing of appeal. The relevant extract of the affidavit giving reasons causing delay in filing of appeal are reproduced herein below:-

"1. The Appellant Trust had filed the Return of Income for the above year on 30.09.2020, declaring Total income at Rs. Nil. The assessment for the above year was

completed as per Intimation/Order under Section 143(1) of the Act dated 30.11.2021 and income was assessed at Rs. 10,47,069/-, resulting into demand of Rs. 1,59,140/- The Appellant filed an appeal against the said Intimation Order.

2. The Appellant Trust is regularly assessed to tax in the status of A.O.P./Charitable Trust and has regularly filed Form No.10B whenever required and the Return of Income in ITR - 7 in earlier years, as also in subsequent years, within prescribed time without any default. Statement giving details of the Return of Income for last three preceding Assessment Years and subsequent Assessment Year is enclosed and marked as Annexure "1".

3.(i) The Appellant Trust had not filed the Form 10B in respect of the above year as the total income of the Trust (Rs. 47,069/-) without giving the effect to the provisions of Section 11 and Section 12 of the Act, did not exceed the basic exemption limit not chargeable to income-tax as explained herein after.

(ii) During the Financial Year ended 31st March, 2020, the Appellant Trust had earned Interest Income of Rs. 47,069/- and had applied the same to the charitable objects of the Trust by granting donations for charitable activities at Rs. 45,000/-. The Appellant Trust had also received a sum of Rs. 10,00,000/- as donation towards the Corpus of the Trust, as per the specific direction of the concerned Doner, (Letter enclosed as Annexure "2"). Considering the said donation as a capital receipt, the Appellant had Total Income of Rs.47,069/- only which is below the exemption limit even without considering the provisions of Section 11 of the Act. Accordingly, the provisions of Section 12A(b) read with Rule 17B were considered to be not applicable and the Audit Report under Section 12A(b) i.e. Form No. 10B was not obtained and was not furnished though the accounts of the Appellant Trust were duly audited by a firm of practicing Chartered Accountants.

4. The CPC has resorted to denial of benefits of Section 11 of the Act without affording any opportunity of being heard to the Appellant. No show cause notice or a communication under Section 143(1)(a) of the Act was issued nor any explanation was sought from the Appellant. The Commissioner of Income Tax (Appeals) - NFAC, dismissed the appeal of the Appellant vide Appellate Order dated 20th July, 2022.

5. The CBDT has subsequently issued a Circular No. 16/2022 requiring assesseees to approach the CIT(Exemption)/PCIT (Exemption) for condonation of delay in filing the Audit Report in Form No. 10-B. Accordingly, the Appellant had filed a Petition for Condonation of Delay on 13/07/2022 Subsequently, in response to the application for Condonation of Delay filed by the Appellant, a letter asking for details and documentary evidences was received from the CIT (Exemptions) on 3rd August, 2022. The response to the letter was furnished by the Appellant on 16th August, 2022. However, since the submission of the said response, no further communication has been received by the Appellant till date.

6. It may kindly be noted that initially the appeal was not filed against the Appellate Order as the above referred Petition was pending before CIT(E). The appeal against the Appellate Order under Section 250 of the Act, was, technically required to be filed on or before 18.09.2022. Thus, there is a delay of 787 days in filing the above appeal. However, as explained above, the Appellant was aggrieved by the above referred Intimation.

The Appellant was pursuing the Petition filed with the Pr. CIT(Exemption), New Delhi in line with the Circular of the CBDT referred to above. The Appellant did believe that the said Petition will be disposed of favourably and the delay in filing Form 10-B will get condoned. However, no further communication has been received by the Appellant.

7. In view of the above, the Appellant has been advised to prefer an appeal against the above referred Appellate Order under Section 250 of the Act, out of abundant precaution and prudence to protect the interest of the Appellant. Hence, the Appellant is compelled to prefer an appeal against the Appellate Order.

Hence, the Appellant instructed its Authorized Representatives M/s. AM] & CO, Chartered Accountants, Mumbai to prepare an appeal petition challenging the above referred Intimation under Section 250 of the Act. Thus, the present appeal is being filed now.

8. Since the delay in filing the appeal is neither deliberate nor intentional, the Appellant prays that a lenient view may kindly be taken in the matter and the small/technical delay in filing the appeal may kindly be condoned and the appeal may kindly be heard on merits of the case. It is submitted that the Appellant has a very good case on merit:

This Affidavit is being affirmed by me in support of the prayer for condonation of delay in filing the appeal referred to above."

3. Ms. Vasanti Patel, appearing on behalf of the assessee submits that the delay in filing of appeal is caused for the reason that that assessee was pursuing application dated 13.07.2022 for condonation of delay in filing of audit report in Form No.10B before CIT/PCIT Exemptions. Since no order was received by the assessee even after more than 700 days, the assessee filed present appeal against the order of CIT(A). The delay in filing of appeal is not intentional or for want of action on part of the assessee. The assessee/appellant had taken all possible steps to pursue the application for condonation of delay filed before the CIT(E). Despite that till date no order has been received on said application.

4. Shri Sanjay Kumar representing the department vehemently opposed inordinate delay of 788 days in filing of appeal before the Tribunal. The Id. DR prayed for dismissing appeal of the assessee in *limine* on the ground of limitation.

5. The Hon'ble Apex Court in an unequivocal manner has repeatedly held that acceptance of reason explaining delay should be the rule and refusal an exception. By taking a pedantic and hyper technical view, the explanation furnished should not be rejected, causing loss and irreparable injury to the party against whom the lis terminates. The expression "sufficient cause" should be liberally construed so as to sub-serve the ends of justice.

5.1 The Hon'ble Apex Court in the case of *Collector Land Acquisition vs. Mst. Katiji & Ors. 167 ITR 471* has held that liberal approach should be adopted while dealing with an application praying for condonation of delay. Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. Pedantic and hyper technical approach should not be adopted while dealing with an application for condonation of delay.

5.2 The Hon'ble Apex Court in the case of *Ram Nath Sao @ Ram Nath Sahu & Others vs Gobardhan Sao and Others (2002) 3 SCC 195/AIR 2002 SC 1201* has held that the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act or Order 22 Rule 9 of Civil Procedure Code or any other similar provision should receive a liberal construction so as to advance substantial justice. The courts should not proceed with the tendency of finding fault with cause shown and reject the petition by a slipshod order in over jubilation of disposal derive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of *bonafide* can be imputed to the defaulting party.

5.3. In light of facts of the case and the law expounded by Hon'ble Apex Court in dealing with petition for condonation, I am of considered view that the assessee has been able to show 'sufficient cause' for delay in filing of present appeal. Hence, delay of 788 days in filing of appeal is condoned and appeal of assessee is admitted for adjudication on merits.

6. On merits of the issue in appeal, the Id. Counsel submits that the assessee in appeal has assailed denial of deduction/exemption on corpus donations u/s. 11(1)(d) of the Income Tax Act, 1961(hereinafter referred to as 'the Act') amounting to Rs. 10,00,000/- He submitted that the assessee is a trust registered u/s. 12A of the Act, hence, is entitled to claim deduction/exemption u/s. 11(1)(d) of the Act in respect of contribution received towards corpus of the trust. She submitted that non filing/delay in filing of audit report in Form 10B is a procedural defect and cannot be an impediment in claiming the exemption. She submits that the CPC while processing return of income without issuing any notice has denied the benefit of exemption u/s. 11(1)(d) of the Act in respect of corpus donations. She submitted that the issue is squarely covered by various decisions of the Tribunal and the Hon'ble Jurisdictional High Court. In support of her contentions, the Id. Counsel has placed reliance on following decisions:-

“(i) Smt. Basanti Devi & Shri Chakhan Lal Garg Education Trust, ITA No. 927/2009-Delhi HC;

(ii) Shree Saraswati Education Sansthan- (2023) ITD 668 (AHD);

(iii) Gemmological Institute of India, ITA No. 3783, 3784/Mum/2023 & ITA No. 4055/Mum/2024; and

(iv) Income Tax Officer v. Serum Institute of India Research Foundation (2018) 169 ITD 271 (Pune)/(2018) 195 TTJ 820 (Pune).”

7. Per contra, Shri Sanjay Kumar representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

The Id. DR submits that in the absence of Form 10B, the CIT(A) has rightly rejected assessee's claim of deduction u/s. 11 of the Act.

8. Both sides heard, orders of the authorities below examined. The solitary reasons for denial of exemption u/s. 11 of the Act in respect of corpus donations is delay in filing of Form 10B. The assessee was required to file Form 10B within specified time along with the return of income. However, Form 10B was filed by the assessee on 13.07.2022, the assessee has filed an application for condonation of delay for belated filing of Form 10B before the CIT(E). The said application of the assessee is stated to be still pending before the Competent Authority. Taking into consideration entire facts of the case and material available on record, I deem it appropriate to restore this issue back to the AO for limited purpose to verify the nature of donations received by the assessee de hors, the delay in filing of Form 10B. Though, the assessee was required to file Form 10B along with return of income, the assessee has now furnished Form 10B. Filing of Form 10B is a procedural requirement which the assessee has complied with though belatedly. If the donations are towards corpus, the assessee be allowed benefit of exemption u/s. 11 of the Act, in accordance with law.

9. In the result, impugned order is set aside and appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on Wednesday the 09th day April, 2025.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 09.04.2025

NV/-

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI