

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos. 395 & 411/Bang/2025
Assessment Years: 2024-25

Imam Ahmed Raza Educational and Welfare Trust 109 Devi Hosur Village Venkatapur Dist. Haveri 581 110 Karnataka PAN NO : AABTI9990G	Vs.	CIT (Exemptions) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Mr. Mahamad Rafiq Kuradagi, A.R.
Respondent by	:	Smt. Srinandini Das, D.R.

Date of Hearing	:	01.05.2025
Date of Pronouncement	:	05.05.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These appeals at the instance of assessee are directed against the orders of Id. CIT (Exemptions), Bangalore both dated 25.7.2024 vide DIN & Order No. ITBA/EXM/F/EXM45/2024-25/1067010824(1) rejecting the application for approval u/s 80G(5)(iii) of the Income Tax Act, 1961 & vide DIN & Order No. ITBA/EXM/F/EXM45/2024-25/1067008194(1) rejecting the application for registration u/s 12(1)(ac)(iii) of the Income Tax Act, 1961. Since the issue in both these appeals is common, these are clubbed together, heard together and disposed of by this common order for the sake of convenience and brevity.

2. At the outset, there is a delay of 149 days in filing both these appeals before this Tribunal. The Id. A.R. of the assessee also drew

our attention on application for condonation of delay along with the affidavit in original sworn before the notary public on 19.03.2025 which are reproduced below for ease of reference and record:

120

INDIA NON JUDICIAL

Government of Karnataka

Rs. 100

e-Stamp

Certificate No.	: IN-KA82356302660940X
Certificate Issued Date	: 17-Mar-2025 05:10 PM
Account Reference	: NONACC (FI)/ kacrsf108/ VIDYANAGAR/ KA-DW
Unique Doc. Reference	: SUBIN-KAKACRSFL0893277846684506X
Purchased by	: MEHABUBASHA H NADIGER
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: MEHABUBASHA H NADIGER
Second Party	: NOT APPLICABLE
Stamp Duty Paid By	: MEHABUBASHA H NADIGER
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

सत्यमेव जयते

ಸುಬ್ಬು ವಕೀಲರ ಪತ್ತಿನ ಸಹಕಾರಿ
ಕಂಪ (೦) ವಿಧಾನಗರ ಪುಟ್ಟಿ.

Please write or type below this line

AFFIDAVIT FOR CONDONATION OF DELAY IN FILING THE ITAT APPEAL

I, Mehabubasha H Nadiger, President of "Imam Ahamed Raza Educational And Welfare Trust, Venkatapur" (hereinafter referred to as "the Appellant"), having its registered office at #109, Devihosur Village, Devihosur B.O., Venkatapur Taluk & District, Haveri 581110, Karnataka, do hereby solemnly affirm and declare as follows:

M.H. Nadagi

No. of Corrections

NOTARY

STATUTORY ALERT:

- The authenticity of this Stamp certificate should be verified at www.shellex.com using e-Stamp Mobile App of Stock Holding Corporation of India.
- Any discrepancy in the details on this Certificate and as available on the e-Stamp Mobile App renders it invalid.
- The onus of checking the legitimacy is on the users of the certificate.
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NOTARY PUBLIC
PATIL. V. H.
ADVOCATE
HUBLI (KARNATAKA)
Reg. No: 21537
Date: 08-03-2025
to five years
भारत सरकार नोटरी

1. I am the appellant filing this affidavit in support of the appeal against the impugned Notice No. ITBA/EXM/F/EXM45/2024-25/1067008194(1) and Application No. CIT (EXEMPTIONS) BANGALORE/2024-25/12AA/10034, dated 25/07/2024.
2. I regret to inform you that I was unable to file the appeal within the prescribed statutory time limit due to unavoidable circumstances. We had to withdraw the application for registration under Section 12AA of the Income Tax Act, 1961, with the bona fide intention of reapplying with the requisite supporting documents as directed during the hearing. However, while attempting to reapply, we encountered technical issues on the Income Tax portal. Despite multiple attempts, the portal did not facilitate the submission, and no resolution was provided. Consequently, the statutory period for filing the appeal lapsed.
3. As a result, the appeal is **time-barred by 149 days**.
4. We are left with no alternative remedy except to file an appeal before the Hon'ble Appellate Tribunal. The delay in filing the appeal was neither intentional nor due to negligence but was caused solely by circumstances beyond our control.
5. I understand the importance of adhering to statutory deadlines, and I sincerely apologize for the delay in filing the appeal. It was beyond my control, and I assure the Hon'ble Income Tax Appellate Tribunal of my utmost cooperation henceforth.
6. I request the Hon'ble Income Tax Appellate Tribunal to kindly condone the **delay of 149 days** in filing the appeal due to my unavoidable circumstances, and I pledge to fully comply with all further proceedings in this matter.
7. I, the deponent, affirm that the contents of this affidavit are true and correct to the best of my knowledge and belief.

Solemnly affirmed at HAVERI, on this 17th of March, 2025.

M. H. Nadiger

Mehabubasha H Nadiger
(President of Imam Ahmed Raza Educational and Welfare Trust)

M. H. Nadiger
Deponent

Verified

I, Mehabubasha H Nadiger, President of "Imam Ahmed Raza Educational And Welfare Trust," the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief. Nothing material has been concealed therein.

Verified at HAVERI, on this 17th of March, 2025.

Signature

M. H. Nadiger

M. H. Nadiger
o. of Corrections

M. H. Nadiger
NOTARY.



SOLEMNLY AFFIRMED BEFORE ME

M. H. Nadiger
NOTARY.

19 MAR 2025

3. We have perused the details filed by the assessee by way of above affidavit to justify the delay and we are satisfied that there is sufficient cause without any malafide intention on the part of the assessee in filing the appeal belatedly before us. It is to be noted that u/s 253(5) of the Act, the Tribunal may admit the appeal filed beyond the period of limitation where it has established that there exists a sufficient cause on the part of the assessee for not presenting the appeals within the prescribed time. The explanation therefore, becomes relevant to determine whether the same reflect sufficient and reasonable cause on the part of the assessee in not filing this appeal within the prescribed time.

3.1 While considering a similar issue the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(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 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, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration 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 nondeliberate 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 legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

3.2 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of nondeliberate delay. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the application of the assessee for condoning the delay is rejected, it would amount to legalize injustice on technical ground when the Tribunal is capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalizing an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorized by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalize an illegal and unconstitutional order passed by the lower authority.

3.3 Further, in the case of People Education & Economic Development Society Vs/ ITO reported in 100 ITD 87 (TM) (Chen), wherein held that “when substantial justice and technical consultation 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 non-deliberate delay”.

3.4 The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not

filing the appeal. We have to see the cause for the delay. When there was a reasonable cause, the period of delay may not be relevant factor. In fact, the Madras High Court in the case of CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Accordingly, the Madras High Court condoned nearly 21 years of delay in filing the appeal. When compared to 21 years, 149 days cannot be considered to be inordinate or excessive. Furthermore, the Chennai Tribunal by majority opinion in the case of People Education and Economic Development Society (PEEDS) v. ITO (100 ITD 87) (Chennai) (TM) condoned more than six hundred days delay. Therefore, in our opinion, by preferring the substantial justice, the delay of 149 days for the AY 2024-25 for both the appeals have to be condoned and accordingly we condone the delay and admit the appeals for adjudication.

4. Now first, we take assessee's appeal in ITA No.395/Bang/2025 for adjudication. The assessee has raised various grounds of appeal.

5. Before us, the ld. A.R. of the assessee submitted that the assessee had withdrawn the application in Form No.10AB filed before CIT (Exemptions) for approval u/s 80G(5)(iii) of the Income Tax Act, 1961 (in short "The Act") and for this reason the ld. CIT(E) has rejected the application for approval u/s 80G(5) of the Act. Further the ld. AR submitted that since the assessee Trust is facing technical difficulties in filing the fresh application for approval/registration & therefore filed the present appeal before this Tribunal along with a condonation petition for seeking direction to the ld. CIT(E) to resolve the issues.

6. The ld. DR on the other hand submitted that the appeal filed by the assessee is not maintainable as the assessee trust itself withdrew the application filed in form 10AB for approval u/s 80G(5) of the Act before the ld. CIT(E).

7. We have heard both the parties and perused the materials available on record. On going through the order of the ld. CIT(E), we observe that the ld. CIT (Exemptions) has rejected the application of the assessee with the following observations:

“Assessee has withdrawn the application in Form 10AB filed for approval u/s 80G(5)(iii) of the Act. In view of the above, the Form 10AB dated 1.2.2024 for approval u/s 80G(5)(iii) of the Income Tax Act, 1961 is hereby rejected.”

8. Keeping in view of the above, since the assessee trust had itself withdrawn the application for grant of approval u/s 80G(5)(iii) of the Act before the ld. CIT (Exemptions), therefore we are of the opinion that no cause of action arises to the assessee trust to prefer the present appeal before us. Accordingly we held that the present appeal is not maintainable and hence dismissed.

9. Now, we take up assessee's appeal in ITA No.411/Bang/2025 for the AY 2024-25. The assessee has raised various grounds of appeal.

10. At the outset, the ld. A.R. submitted that assessee had withdrawn the application in Form No.10AB filed before CIT (Exemptions) for registration u/s 12(1)(ac)(iii) of the Income Tax Act, 1961 (in short “The Act”) and for this reason the ld. CIT(E) has rejected the application for registration u/s 12(1)(ac)(iii) of the Act. Further the ld. AR submitted that since the assessee Trust is facing technical difficulties in filing the fresh application for

approval/registration & therefore filed the present appeal before this Tribunal along with a condonation petition for seeking direction to the Id. CIT(E) to resolve the issues & accept the fresh application of registration/approval.

10.1 The Id. DR on the other hand submitted that this appeal filed by the assessee is not maintainable as the assessee trust itself withdrew the application filed in form 10AB for registration u/s 12(1)(ac)(iii) of the Act.

11. We have heard both the parties and perused the materials available on record. We observe that the Id. CIT (Exemptions) has dismissed the appeal of the assessee with following observations:

“Assessee has withdrawn the application in Form 10AB filed for approval u/s 12(1)(ac)(iii) of the Act. In view of the above, the Form 10AB dated 3.1.2024 for approval u/s 12(1)(ac)(iii) of the Income Tax Act, 1961 is hereby rejected.”

11.1 Keeping in view of the above, since the assessee trust had itself withdrawn the application for grant of registration u/s 12(1)(ac)(iii) of the Act before the Id. CIT (Exemptions), therefore we are of the opinion that no cause of action arises to the assessee trust to prefer the present appeal before us. Accordingly, we held that the present appeal is not maintainable and hence dismissed.

12. In the result, both these appeals of the assessee are dismissed as not maintainable.

Order pronounced in the open court on 5th May, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 5th May, 2025.
VG/SPS

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**