

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, BANGALORE**

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

ITA No. 83/Bang/2025
Assessment Year: 2017-18

M/s Avida Educational Trust, Sy. No.8/4, Kannur Village, Bidarahalli Hobli, Bengaluru – 562 149.  <b>PAN – AAFTA 0376 A</b>	Vs.	The Income Tax Officer, Ward - 3(2)(1), Bengaluru.  .
APPELLANT		RESPONDENT

Assessee by	:	Shri Siddesh Gaddi, CA
Revenue by	:	Smt. Neha Sahay, JCIT (DR)

Date of hearing	:	21.04.2025
Date of Pronouncement	:	08.05.2025

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the Addl/JCIT(A)-2, Chennai dated 25/11/2024 in DIN No. ITBA/APL /S/250/2024-25/1070617266(1) for the assessment year 2017-18.

2. The interconnected issue raised by the assessee is that the Ld. CIT-A erred in not allowing the condonation of delay and due to which the issue on merit as well as legal grounds not decided.

3. The relevant facts in brief are that the assessee, a trust, is engaged in imparting education. However, the assessee is not registered under section 12AA or under section 10(23C) of the Act for the year under consideration.

4. The assessee originally filed return of income for the year under consideration as on 31-10-2017 in which shown gross receipt or income at Rs. 84,33,208/- out of which an amount of Rs. 83,20,992/- and of Rs. 1,12,216/- (aggregate Rs. 84,33,208/-) claimed to be applied towards charitable purposes on revenue account and capital account respectively. Thereby the assessee claimed entire receipt as exemption under the provision of section 11 of the Act.

5. The return was processed u/s 143(1) of the Act vide intimation dated 25-03-2019, wherein the claim of exemption under section 11 of the Act was disallowed for the reason that the audit report in Form 10B as required under section 12A(1)(b) r.w.r. 17B of the Act was not filed along with the return of income filed under section 139 of the Act or before filing of the return. Accordingly, the income of the assessee was assessed at Rs. 84,33,208/- and in consequence a demand of Rs. 31,30,250/- was raised.

6. Being aggrieved, the assessee preferred an appeal before the learned CIT-A on 27-01-2022 which was delayed by 1009 days.

7. The assessee in the delay condonation application contended that the delay in filing of appeal arises due to change in consultant which resulted in certain miscommunication. It was claimed that the facts

regarding non filing of appeal was came to be known by the assessee only after receipt of demand recovery notice dated 17-01-2022 and after receiving recovery notice immediately filed appeal. The assessee further takes shelter of the order passed by the Hon'ble Supreme Court dated 23-03-2020 and thereafter on 15-03-2021 in civil writ petition no. 3 of 2020 in respect of period of limitation in the context of COVID breakout where limitation period was extended till February 2022 + 90 for the all the legal proceeding. Accordingly, the assessee argued that if the initial delay due to the stated reason is condoned then considering the Hon'ble Supreme Court order, the appeal filed was within the time limit. The assessee for condonation of delay placed on reliance on various case laws and accordingly contended that judicial authority should take liberal approach in condoning the delay.

8. The assessee on merit contended it is a trust, engaged in imparting education but not registered under section 12AA or 10(23C) of the Act therefore liable to taxed as an AOP and accordingly was required to file ITR-5 however the consultant inadvertently wrongly filed the ITR-7 and claimed the deduction u/s 11 of the Act. The mistake came to know when the demand notice issued u/s 156 of the Act and on realization of mistake, the income was computed as AOP after deducting expenses from the receipt and accordingly the tax liability was paid along with interest. The assessee argued the CPC while disallowing the wrong claim of exemption under section 11 of the Act treated the entire receipt as income without deducting the expenses. The assessee further argued that learned CIT(A) being an appellate authority can accept the new claim without filing of revised return of income. Therefore, the

assessee prayed to the learned CIT(A) to accept the income as per revised computation.

9. The Ld. CIT-A however, not accepted the reason for delay in filing the appeal by holding that reason stated by the assessee is general and not associated with any reasonable and sufficient cause.

10. The Ld. CIT-A also noted that the due date to file appeal was much before the COVID period which broke out in early 2020 therefore the decision of Hon'ble Apex Court for period of limitation will not be applicable to the case of the assessee.

10.1 The Ld. CIT-A also was of the view that the delay cannot be condone on negligence as the assessee has filed the ITR for A.Y. 2019-20 and 2020-21 on dated 14-11-2019 and 04-02-2022 respectively whereas 25-04-2019 was the date of filing of appeal for the A.Y. 2017-18 which was not considered. The Ld. CIT-A thus in view of the above rejects the appeal of the assessee without going into the merit of the case.

11. Being aggrieved by the order of the Ld. CIT-A, the assessee is in appeal before us.

12. The Ld. AR before us submitted that the major part of the delay in filing the appeal is attributable to Covid-19. Likewise, the income of the assessee has been assessed at the gross amount without allowing the deduction of the corresponding expenses which is against the provisions of law. According to the Id. AR the assessee has a strong case

on merit and therefore the appeal of the assessee should not be dismissed without going into the merit of the case but on technical grounds. It was prayed by the Ld. AR that the delay in filing the appeal before the learned CIT-A should be condoned and the appeal of the assessee should be set aside to the file of the AO for fresh adjudication on merit as per law.

13. On the other hand, the Ld. DR submitted that the delay in filing the appeal is significant enough and therefore the same should not be condoned. Without prejudice to the above, the learned DR submitted that if the delay is condoned, then the appeal of the assessee should be set aside to the file of the learned CIT-A for fresh adjudication on merit as per the provisions of law. The Ld. DR vehemently supported the order of the authorities below.

14. We have heard the rival contentions and perused the materials available on record. The issue which arises before us is whether the Id. CIT(A) was justified in not condoning the delay of 1009 days in filing the appeal, thereby refusing to adjudicate the case on merits considering the facts and circumstances and the judicial principle that procedural technicalities should not override substantial justice. In this regard, first we find it necessary to refer to the relevant provisions of section 249(3) of the Act which reads as below:

***Form of appeal and limitation.***

**249.** (1) .....

(2) .....

(2A) .....

*(3) The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.*

*(4) .....*

14.1 The provision of section 249(3) of the Act provides that the CIT(A) may admit an appeal after the expiry of the prescribed period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

14.2 Furthermore, the term "sufficient cause" must be liberally construed to advance substantial justice. The Hon'ble Supreme Court in Collector, Land Acquisition v. Mst. Katiji & Ors. [(1987) 167 ITR 471 (SC)] held that a liberal approach should be adopted in condoning delay, especially when substantial justice and technical considerations are pitted against each other.

14.3 We also note that the tax demand arising in the case is significant. Refusal to condone delay would result in depriving the assessee of a rightful opportunity to contest the demand on legitimate grounds. It is a cardinal principle of law that substantive rights should not be defeated on mere technicalities, especially when there is no prejudice caused to the Revenue. Accordingly, we are of the view that the entire issue needs to be revisited at the level of the AO as per the provisions of law.

14.4 Therefore, considering the facts in totality and in the interest of justice and fair play we are of the considered opinion that delay before the Id. CIT-A deserves to be condoned and the appeal should be set

aside the to file of the AO for de novo adjudication on the merit as per the law. The assessee is also directed to provide all the necessary details and extend full cooperation during the proceedings. Thus, the grounds of appeal of the assessee are hereby allowed for statistical purposes.

15. In the result the appeal of the assessee is hereby allowed for statistical purposes.

Order pronounced in court on 8<sup>th</sup> day of May, 2025

**Sd/-**

**(KESHAV DUBEY)**

Judicial Member

**Sd/-**

**(WASEEM AHMED)**

Accountant Member

Bangalore

Dated, 8<sup>th</sup> May, 2025

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore