**IN THE INCOME TAX APPELLATE TRIBUNAL**
**LUCKNOW 'B' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**
**AND**
**SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.412/LKW/2024
A.Y. 2013-14

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| Charak Health Care & Rural Development Society 54, Shastri Nagar, Lucknow-226001 | vs. | The CPC, Bangalore /DCIT/ACIT (Central Circle)-2, Income Tax Office, Lucknow |
| **PAN: AAEFC9409P** | | |
| (Appellant) | | (Respondent) |

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| Assessee by: | Sh. Suyash Agarwal, Adv |
| Revenue by: | Sh. Vachaspati Tripathi, CIT DR |
| Date of hearing: | 05.01.2026 |
| Date of pronouncement: | 27.02.2026 |

## O R D E R

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed by the assessee against the orders of the ld. CIT(A)-3, Lucknow under section 250 of the Income Tax Act, 1961 on 16.05.2024, wherein the ld. CIT(A) has dismissed the appeal assessee against the orders of the Assessing Officer under section 143(1) that passed for the A.Y. 2013-14 on 15.06.2020. The grounds of appeal are as under:-

> *"1. 1 Because the order passed by Ld. CIT(A) is contrary to facts & law and circumstances of the case.*
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> *2. Because the Ld. CIT(A) has erred in law and facts while rejecting the application for condonation of delay in filing First Appeal. The action of the Ld. CIT(A) is violative of the principles of natural justice and without considering the peculiar facts of the case and grievous loss caused to the Appellant on account of technical errors.*
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> *3. Because the Ld. CIT(A) has erred in computing the period of delay in filing First Appeal without considering the intense adverse conditions due to spread of Covid-19.*
>
> *4. Because the Ld. CIT(A) has erred in rejecting the First Appeal and confirming addition of Rs. 3,82,80,430/-made in the intimation u/s 143(1) of the Act on technical grounds.*

*5. Because the Ld. CIT(A) has erred in rejecting the appeal of the assessee as the expenses claimed by institution of Rs. 3,82,80,430/- has wrongly denied by the Ld. CIT(A) and without considering the submission/reply filed by assessee and without going on merits of the case, dismissed the appeal of the assessee.*

*6. Because the Ld. CIT(A) has erred in rejecting the appeal of the assessee without giving sufficient opportunity of time to the assessee.*

*7. Any other ground of appeal raised at the time of hearing of appeal in accordance with the law."*

2. The facts of the case are that in this case, the return of income was filed on 30.09.2013. The assessee did not file the audit report online till 30.09.2013 therefore, the benefits of section 12AA was not provided and the income of the assessee was assessed at Rs. 3,82,80,430/-. The order under section 143(1) was passed on 30.03.2015 therefore, as per the ld. CIT(A), the appeal was required to be filed within 30 days from the receipt of the order. Going through Form No. 35, he noted that the assessee claimed that the order had been served upon him on 3.11.2021. Therefore, the appeal was required to be filed on or before 3.12.2021 but it had been filed on 5.05.2022, which in the opinion of the ld. CIT(A) was beyond time. It was submitted that the assessee only came to know that its return had not been accepted when the refund of subsequent years was adjusted towards the liability of the relevant year, as it had not received any order in physical mode. It only came to know that the demand of Rs. 1,53,41,780/- had been created, when such demand was adjusted against refund of the assessee of subsequent years from February, 2019 to November, 2021. Thereafter, upon receiving legal advice on the subject, the assessee had decided to file an appeal. In the appeal that was filed, it was submitted that the assessee was a charitable institution registered under section 12A vide Registration No. 575 dated 1.04.2008, the gross receipts for the year were Rs. 3,97,82,451/- against which the amount applied for charitable purposes was Rs. Rs. 3,82,80,430/-, which was more than 85% of the receipts and Rs. 15,02,021/- was accumulated or set apart as per the provision of section 11(1A). The accounts had been audited and the audit report in Form 10B had been obtained from the auditor on 25.07.2013. Till A.Y. 2012-13, furnishing of

audit report was manual and only from 2013-14, it became online. Since, it was a maiden year of filing of audit report online, as per the proviso to Rule 12(2) and due to oversight, the auditor did not file the report online. However, the return of income alongwith the requisite documents was submitted on 30.09.2013 to the Income Tax Department manually. The CPC, AO without considering the peculiar facts of the case and the related law, assessed the total income at Rs. 3,82,80,430/- by disallowing the application towards charitable purposes and raised a demand of Rs. 1,53,41,780/- alongwith interest under section 234A, 234B and 234C. The assessee did not receive any order of its return not having been accepted in a physical mode and it was unaware of this fact. It only came to know about this when its refunds of subsequent years began to be adjusted towards liability. Meanwhile, during such pendency of appeal, a search and seizure operation was conducted on Charak group of cases due to which the case of the assessee was also centralized in Central Circle-2, Lucknow, though there was no search warrant or any incriminating material found against the assessee. For this reason, no proceedings were initiated against the assessee either under section 153A or under section 153C. The assessee submitted the details of its charitable activities to the ld. CIT(A) and pointed out that it was already registered under section 12A vide Registration No. 575 w.e.f. 1.04.2008 in the old regime and this had been renewed in the new regime vide URA No. AAEFC9409EE20211 dated 5.04.2022 for the A.Ys. 2021-22 to 2026-27. Since, the assessee was not aware about the need to file the audit report online, as it was not informed by the auditor about the same, it had filed it manually. Because of this fact, it could not even rectify the same within the time specified under section 139(4) of the Act. However, the assessee had filed an application for delay condonation and filed the audit report in Form No. 10B on 30.08.2022 vide Acknowledgment No. 459721360310822 when the functionality became available. Though the intimation was not available with the assessee, but it appeared that its income had been computed at Rs. 3,82,80,430/- and it was submitted that the action of the CPC was wholly erroneous as even if the exemption was not allowed to the assessee, then only the surplus of income

over expenditure could be brought to tax in its hands and there was no reason to disallow its entire expenses under section 143(1). It placed reliance on the judgments of the Hon'ble Delhi High Court in Petroleum Sports Promotion (2014) 44 taxman.com 322 (Delhi); Sh. Vaishnav Polytechnic College Governed by VSK Market Tech Educational Society (2020) 122 taxman.com 287 (Indore Trib) in both of which the Courts and Tribunal had held that the expenditure could not be denied and in the absence of registration under section 12A, the income had to be assessed as per the provisions of the Income Tax Act, allowing the deductions that were allowable in law. It was further submitted that credit for tax deducted had not been allowed to it which was required to be allowed.

3. Subsequently, the assessee furnished another explanation in which it pointed out that the expenses made out of its gross receipts related towards the construction of hospital building, which had already been verified during the Income Tax Settlement Commission proceedings of Dr. Gautam Kumar Singh and the other expenditure was relating to day to day charitable activities of the institution, in respect of which nothing adverse had been found during search proceedings in Charak group on 19.01.2019. Therefore, its expenditure was liable to be allowed. It also filed an affidavit pointing out the reasons for delay and submitting that since it had never received the intimation under section 143(1), it had requested the AO for providing the reason and basis of adjustments of its refunds. The AO had generated a tax computation sheet vide DIN No. 20142013100144289 31T which was received manually on 3.11.2021. Accordingly, that was considered to be the date of service of notice of demand. Thereafter, due to the prevailing Covid, the institution was engaged in extending medical facilities in compliance of Government norms and therefore, delay occurred in filing of the appeal and the said appeal was filed on 5.05.2022.

4. The ld. CIT(A) considered the submissions pointed out. He held that the appeal filed on 5.05.2022 was beyond the statutory time limit provided for filing the appeal. He quoted from the provisions of section 249 of the Income Tax Act and held that the same could only be admitted if the CIT(A) was satisfied that the

assessee had sufficient cause for not presenting the appeal within the statutory period of 30 days. However, after considering the fact that the order under section 143(1) was passed on 30.03.2015, he held that the reasons put forward by the assessee were an afterthought and could not be held to be reasonable cause. He referred to the judgments of the Hon'ble Supreme Court in the case of Perumon Bhagvathy Devaswom, Perinadu Village vs. Bhargavi Amma (Dead) By LRs & Ors., (2008) 8 SCC 321 where the Hon'ble Supreme Court had defined sufficient cause and held that when the delay was on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the assessee of the appellant, it ought not to be considered as sufficient cause. He also relied upon various other decisions which held that even if the term, "sufficient cause" had to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of party concerned. He further pointed out that the Division Bench of the Hon'ble Bombay High Court in the case of Ornate Traders P. Ltd. vs. ITO, Mumbai had stated that while section 5 of the Limitation Act was to be interpretated liberally, it could not be interpreted so liberally that it was without any justification, since condonation of delay in a mechanical or routine manner would jeopardize the legislative intent behind the section. The ld. CIT(A) also considered the judgments of the Hon'ble Supreme Court in Shiv Das vs. Union of India and others AIR 2007 SC 1330, University of Delhi vs. Union of India in CA No. 29488 of 2019 and the order of the Hon'ble Madras High Court in Kathi Rawan Pipes Pvt. Ltd. vs. CESTAT (2007) 5 STR (9) in all of which cases, the various Courts had held that people must be mindful of law and should not be granted the benefit of doubt unless they were able to file a reasonable explanation for a delay. After considering all these judgments, the ld. CIT(A) held that this was clearly a case of laches and the result of deliberate inaction on the part of the assessee and because of this delay, he held that the appeal filed by the assessee was not maintainable.

5. The assessee is aggrieved at this order passed by the ld. CIT(A) and has accordingly come in appeal before us. Sh. Suyash Agarwal, Advocate (hereinafter referred to as the AR) appearing on behalf of the assessee pointed out that the

intimation under section 143(1) was issued on 30.03.2015 but the appeal had been filed on 5.05.2022, because this intimation had never been served upon the assessee. It was submitted that, as had been pointed out before the ld. CIT(A), the assessee was unaware of any such intimation order having been passed as the same had not been served upon it physically. It was only when its refunds began to be adjusted against pending demand, that it contacted the ld. AO to find out the reason for the same and was then informed about the existence of the demand, by way of generation of a tax and computation sheet by the AO which was served on the assessee on 3.11.2021. It was submitted that for this reason, the appeal had been filed against the tax and computation sheet rather than the 143(1) order which was not available with the assessee. Since the said tax computation sheet had been handed over to the assessee on 3.11.2021, the same should be considered as date of service of demand notice upon the assessee and its period of limitation should be counted from that date. It was submitted that the assessee did not stand to benefit in any way from delaying the appeal against the intimation dated 30.03.2015, as the intimation under section 143(1) was incorrect in every way. Not only had the assessee filed the audit report by the appointed date, albeit manually, it was also entitled to be assessed on the surplus of income over expenditure even if the claim of exemption under section 12A was not allowed. There was simply no basis for the AO to disallow the entire expenditure and too in a proceeding under section 143(1) because this was against the scheme of the Act in itself. It was therefore, prayed that had the assessee been aware about this order, it would have definitely filed an appeal and obtained substantial, if not complete relief on the issue. The very fact that it could not file the appeal demonstrated that it was unaware about the order. The ld. AR further submitted that the computation sheet had been received by the assessee at the time of the Covid pandemic. The Hon'ble Supreme Court dated 23.03.2020 in *Suo Moto* Writ Petition (Civil) No. 3 of 2020 had already excluded the period from 15.03.2020 till 14.03.2021, for being counted towards computing the period of limitation. Thus, it was only the period between this date and the date of filing that could be

considered as period of delay and it was submitted that even here the assessee had justified reasons for the delay because it was a Health Care institution that was busy catering to the final wave of the Covid Pandemic that occurred in early 2022. Accordingly, it was prayed that there were sufficient causes for the delay and therefore, the ld. CIT(A) should have considered them and not rejected the appeals of the assessee out of hand. He, therefore, prayed that the matter may be restored back to the file of the ld. CIT(A) for a decision on the merits of the case.

6. On the other hand, Sh. Vachaspati Tripathi, CIT DR (hereinafter referred to as the Ld. CIT DR) opposed the plea of the ld. AR. He submitted that the assessee's claims of not having received the intimation could not be taken at face value. The fact of non-service had to be demonstrated and also the reasons for non-service had to be made out. In the absence of such evidence, the claim was unsubstantiated. He noted that 2013-14 was not the only year in which the assessee had filed a return, subsequently, returns had been filed in 2014-15 and 2017-18 in which intimations had been issued. However, the assessee was silent about whether or not it had received those intimations. The ld. CIT DR pointed out that the assessee's affidavit was not substantiated by evidence. Its' claims that he did not receive the order till 2020 was beyond the realms of possibility. Furthermore, he argued that all the dates for exclusion of limitation by way of covid as ordered by the Hon'ble Supreme Court had already been taken into account and the appeal was still delayed. Therefore, he submitted that the explanation provided by the assessee was not bonafide, because it was not substantiated, but only a bald claim. There was no sufficient reason for the delay and that the delay should not be condoned as a matter of generosity but the assessee must be held to account for the same as held by the Hon'ble Supreme Court in the case of Thirunagalingam vs. Lingeswaran & Anr. in SLP (C) No. 175757 of 2023. In the said case, the Hon'ble Supreme Court had held that the Courts below had a duty to ascertain the bonafides of the explanation and only condone the delay for sufficient cause. It was pointed out that since these had not been established, the delay should not be condoned.

7. Responding to the same, Sh. Suyash Agarwal, pointed out that by its orders the Hon'ble Supreme Court had already excluded the period from 15.03.2020 to 14.03.2021 for the computation of the limitation period. Therefore, the period of limitation had to be computed from that date. It was submitted that when the same was taken into account, there was not more than a two-month delay. It was submitted that the trust was registered under section 12A as a charitable institution and no irregularity had been found in its function even though a search had been conducted with relation to the group to which it belonged. In the circumstances, to reject the appeal of the assessee on technical grounds would cause a grave miscarriage of justice to both the assessee and the cause to which it was registered as a trust.

8. We have duly considered the facts and circumstances of the case. We are in agreement with the ld. AR that there existed sufficient circumstances for the delay in the filing of the appeal and that the assessee did not stand to benefit in any way from delaying the said appeal because, having been registered under section 12A, and having filed the audit report on time, albeit manually, it had a reasonable expectation that the exemption that had been denied to it by the CPC, Bengaluru could be restored to it in appellate proceedings. Furthermore, as pointed out by the assessee in its representation before the ld. CIT(A), Courts had held that even where the benefit of exemption was taken away from the assessee, the disallowance could not extend to the entire expenditure incurred by the assessee but only the surplus declared by the assessee could be brought to tax in accordance with the provisions of the Income Tax Act. Had the assessee been aware of such things, there was no reason for it to delay its appeal and for this reason, we are inclined to agree with the ld. AR when he states that the reason for the delay was ignorance of the fact of the passing of the said intimation order. We further note that had the assessee been served with a copy of the intimation order, it would be aware of the demand against it and did not need to contact the AO to obtain the details of the tax against it. This fact would seem to confirm the fact of non-service. We cannot agree with the ld. CIT DR that it is for the assessee to demonstrate the

fact of non-service. It is for the Department to demonstrate that the order has been served upon the assessee in order to refute any claim by the assessee that it was not served upon it. The Department has also not brought any evidence before us to refute the contentions of the assessee that the order was not served upon it. Accordingly, it is only the date of communication of demand which can be taken as the starting point of computing the period allowed for filing of the appeal. We further note that the Hon'ble Supreme Court in *Suo Moto* Writ Petition (Civil) No. 3 of 2020 had already excluded the period from 15.03.2020 till 14.03.2021 for computing any limitation in view of the prevailing Covid Pandemic and the difficulties caused to the public at large at the time on this account. Therefore, this period can surely not be regarded as a delay in terms of the said order. With regard to the delay that subsequently followed, we are of the view that even though the said period has not been excluded by the Hon'ble Supreme Court, the fact that the third wave of the Covid pandemic i.e. Omicron wave was ravaging the country at that time and would have pre-occupied the health care institutions cannot be lost sight off and therefore, we agree with the ld. AR when he submits that there were reasonable and sufficient cause for the delay in the filing of the appeal. We are further guided by the decision of the Hon'ble Supreme Court in the case of Collector of Land Acquisition Vs. MST. Katiji & Ors (1987)167 ITR 471 (SC) wherein the Hon'ble Supreme Court has held that ordinarily a litigant does not stand to benefit by lodging an appeal late and refusing to condone a delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. The Hon'ble Court has also held that the maxim, "every day's delay must be explained", does not mean that the pedantic approach should be made. The doctrine has to be applied in a rational common sense and pragmatic manner. Furthermore, 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 a vested right in injustice been done because of

non-deliberate delay. There is no presumption that a delay is occasioned deliberately or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to a delay, in fact he runs a serious risk. The Hon'ble Allahabad High Court has also held in the case of Smt. Govinda Devi vs. CIT (304) ITR 340 (All) that no party gains any advantage by causing delay. If the party approaching the authority or Court beyond the prescribed limitation does not indicate any motive or any advantage, the authority or the Court must condone the delay and proceed to decide the matter on merit. Therefore, in view of these judicial pronouncements and after considering the facts of the case, we feel that it is in the interest of justice that the case of the assessee be heard on its merits. Accordingly, we direct the ld. CIT(A) to condone the delay and to take up the case of the assessee for hearing on its merits and thereafter pass a order in accordance with law. As the matter restored to the file of the ld. CIT(A), the appeal of the assessee is held to be allowed for statistical purposes.

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

Order pronounced on 27.02.2026 in the Open Court.

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| ***Sd/-*** | ***Sd/-*** |
| **[SUDHANSHU SRIVASTAVA]** | **[NIKHIL CHOUDHARY]** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

DATED: 27/02/2026
Sh

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.