

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-2 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.8497/Del/2019
Assessment Year: 2015-16

Capital Educational Society, CH No.206-207, Ansal Satyam, RDC, Rajnagar, Ghaziabad.	Vs	ITO(E), Ward, Ghaziabad.
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PAN: AAAAC6240M

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Vijay Kumar Kataria, Sr. DR
Date of Hearing	:	26.07.2021
Date of Pronouncement	:	26.07.2021

ORDER

This appeal filed by the assessee is directed against the ex parte order dated 28th August, 2019 of the CIT(A), Ghaziabad, relating to assessment year 2015-16.

2. None appeared on behalf of the assessee despite issue of notice through RPAD. Therefore, this appeal is being decided on the basis of material available on record and after hearing the ld. DR

3. Although a number of grounds have been raised by the assessee, these all relate to the ex parte order of the CIT(A) in dismissing the appeal in limine by not condoning the delay.

4. Facts of the case, in brief, are that the assessee is a society registered with the Registrar of Societies, Uttar Pradesh. The CIT, Ghaziabad has granted registration u/s 12AA of the IT Act, vide his order dated 3rd June, 2009. The assessee filed return of income on 29th September, 2015 declaring the total income at nil. The case was selected for scrutiny through CASS and statutory notice u/s 143(2) was issued on 26th July, 2016 fixing the date of hearing for 4th August, 2016 which was duly served on the assessee. Subsequently, notice u/s 142(1) along with detailed questionnaire was also issued to the assessee. In response to the same, the assessee filed requisite details from time to time. During the course of assessment proceedings, the AO noted that the assessee society is engaged in running of educational institutions. It had filed the copy of audit report u/s 12AA(b) of the Act as prescribed in the case of charitable or religious trusts or institutions along with balance sheet, income and expenditure account, etc. During the course of assessment proceedings, the AO noted from the income & expenditure account that the assessee has disclosed total receipt of Rs.2,45,02,194/- against which it has claimed expenditure of Rs.2,09,92,923/- which includes depreciation of Rs.30,64,515/-. He, therefore, asked the assessee to explain as to why depreciation of Rs.30,64,515/- should not be disallowed as per the provisions of section 11(6) of the Act and short application of Rs.24,42,536/- should not be taxed. Since the assessee agreed to pay tax on the short application of Rs.24,42,536/- provided no

penalty proceedings should be initiated, the AO disallowed depreciation of Rs.30,64,515/-.

5. Since the assessee, according to the Id.CIT(A) filed the appeal which is delayed by more than five months and the arguments advanced by the Id. Counsel was not according to the satisfaction of the CIT(A), the Id.CIT(A) dismissed the appeal filed by the assessee treating the same as nonest.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. I have heard the Id. DR and perused the record. It is an admitted fact that the AO passed the order on 18th December, 2017 and the assessee has filed the appeal before the CIT(A) on 26th June, 2018 and, therefore, according to the CIT(A), there was a delay of more than five months in filing of the appeal before the CIT(A). On being asked by the CIT(A) to explain the reason for delay, the assessee had given its reply stating that the assessee was under bona fide belief that no penalty would be imposed by the AO and, therefore, it did not prefer the appeal against substantive order. I find, the Id.CIT(A) rejected the above submission of the assessee on the ground that condonation of delay is not a matter of right and the appellant, in the instant case, failed to show reasons for delay on last day of limitation and the assessee has to explain the delay of each day. I find, the Honøble Supreme Court in the case of Collector Land Acquisition vs. Mst. Katiji & Ors

reported in 1982 2 SCC 107, has held that when substantial justice and technical considerations are pitted against each other, 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. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. I find, the Honøble Supreme Court while condoning the delay in filing of an appeal by the assessee has laid down the following broad guidelines to be kept in mind by the appellate authorities:-

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 pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, 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 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.
8. In view of the above decision of the Honøble Supreme Court and considering the liberal approach taken by the courts while granting condonation of delay in

deserving cases, I deem it proper to restore the issue to the file of the CIT(A) with a direction to condone the delay and decide the appeal on merit after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the CIT(A) and explain its case, failing which the Id.CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Pronounced in the open court at the time of hearing itself i.e, 26.07.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 26th July, 2021

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi