

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
**Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. Nos. 992, 1033 & 1034/Chny/2022
निर्धारण वर्ष/Assessment Year: 2019-20

CVMV Reddy's Educational & Public
Charitable Trust, No. 43, Ponniamman
Koil Street, Kottur, Chennai 600 085.

Vs. The Assistant Commissioner of
Income Tax,
Exemptions Ward 4,
Chennai.

[PAN:AACTC4539J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 12.01.2023
घोषणा की तारीख /Date of Pronouncement : 24.01.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

The appeal in I.T.A. No. 992/Chny/2022 filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Exemptions), Chennai dated 06.02.2020 under section 12AA(1)(b)(ii) of the Income Tax Act, 1961 ["Act" in short]. The appeal in I.T.A. No. 1034/Chny/2022 is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 17.11.2022 relevant to the assessment year 2019-20

towards quantum addition and the appeal in I.T.A. No. 1033/Chny/2022 is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 15.11.2022 relevant to the assessment year 2019-20 towards levy of penalty under section 270A of the Act.

2. The appeal in I.T.A. No. 992/Chny/2022 is filed with a delay of 962 days in filing the appeal before the Tribunal. The assessee has filed a petition for condonation of delay by stating as under:

“I, J. Ramanathan, son of Mr. Jagannathan, Hindu aged about 69 years having office at No. 43, Ponniamman Koil Street, Kottur, Chennai – 600 085, do hereby solemnly and sincerely affirm and state as follows:

I am the Trustee of the Petitioner/Appellant Trust herein and am well acquainted with the facts pertaining to the belated filing of the captioned appeal before the Appellate Tribunal, thereby competent to swear to this affidavit.

I state that the exparte order passed by the CIT (Exemptions), Chennai dated 6.2.2020 just before the commencement of COVID 19 pandemic (15.03.2020) and I state that filing of the appeal against the exparte order mentioned herein before was completely missed due to COVID 19 lockdown. I state that the assessment appeal and the penalty appeal for the assessment year 2019-20 was handed over to the counsel on record and I state that during the process of finalizing the appeals for filing before the Bench, the necessity for filing as well as mistake committed in not filing the appeal against the registration proceedings was brought to my notice and I state that the registration proceedings had a direct impact on the independent assessment/penalty proceedings.

I state that the appeal against the order refusing registration was filed on 24.11.2022 along with the other two appeals filed on 06.12.2022 in the Registry of the Income Tax Appellate Tribunal and I state that the delay in filing the appeal against the order refusing registration was neither wilful nor deliberate but due to the circumstances beyond my control including the impact of COVID 19 lock down.

What is stated above is TRUE and CORRECT based on my information, belief and knowledge. In such circumstances, the delay of 962 days (effective delay of 176 days) in filing the appeal may be condoned in the interest of justice and further prayed for rendering decision on merits of the case.”

3. The Id. DR has not seriously object to the above submissions of the assessee. In view of the above submissions, we are of the considered opinion that the assessee was prevented by reasonable cause for delay in filing the appeal before the Tribunal. Accordingly, we condone the delay in filing the appeal and admit the appeal for adjudication.

4. Brief facts of the case are that the assessee trust filed an online application in Form 10A for registration under section 12AA of the Act on 12.08.2019. While processing the application, the Id. CIT(E) has noted that certain explanations/clarifications were required to process the application. Accordingly, the assessee trust was requested to furnish its clarifications through e-mail dated 31.12.2019. In that email, the assessee was given 3 opportunities. The assessee was requested to furnish its explanation on 13.01.2020 and it was informed that if there is no compliance, it would be construed that the assessee has taken adjournment and accordingly the case automatically stands adjourned to the next date as on 23.01.2020. It was also informed that

if there is no compliance for the second opportunity, the case would again automatically get adjourned to the third date which in this case was on 03.02.2020. Since the assessee has not taken any of the above three opportunities granted and as the case is getting time barred by limitation and there was no response from the applicant, the Id. CIT(E) rejected the application for grant of registration under section 12AA of the Act.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that having not examined the Form No. 10A with requisite enclosures as per the prescription in the statute for getting tax exemption registration, the rejection for the plea for registration in para 4 of the impugned ex parte order was erroneous. Due to circumstances beyond its control, the assessee trust could not put its appearance before the Id. CIT(E), more particularly, it was pre-Covid-19 pandemic period. Thus, the Id. Counsel for the assessee has prayed that suitable directions may be issued to the Id. CIT(E) to pass order on merits by affording an opportunity of being heard to the assessee to furnish the details as may be required for grant of registration under section 12AA of the Act.

6. On the other hand, the Id. DR has fairly conceded that the matter may be remitted back to the file of the Id. CIT(E).

7. We have heard both the sides, perused the materials available on record and gone through the order of the Id. CIT(E) and noted that automatic adjournments were granted between 31.12.2019 to 03.02.2020. The order passed by the Id. CIT(E) is very cryptic. Along with the application in Form 10A, the assessee-trust has uploaded various order documents. However, what was lacking in the application in Form 10A submitted by the assessee trust for grant of registration under section 12AA of the Act was not discussed in the exparte order of the Id. CIT(E). In view of the above and in order to meet the ends of natural justice, we direct the Id. CIT(E) to reconsider the application Form 10A filed by the trust afresh for grant of registration under section 12AA of the Act by affording an opportunity of being heard to the assessee to furnish its clarification as may be required by the Id. CIT(E). Thus, the appeal filed by the assessee is allowed for statistical purposes.

8. For the assessment year 2019-20, the assessee filed its return of income on 24.08.2019 declaring the total income at ₹. NIL.

Subsequently, the assessee filed the revised return of income on 08.07.2020 declaring the total income at ₹.nil. Thereafter, the case was selected for compulsory scrutiny. During the course of assessment proceedings, notice under section 142(1) of the Act was issued called for the details. In the return of income filed for the assessment year 2019-20, the Assessing Officer has noted that the assessee has shown receipts of ₹.2,60,586/- including the donation received during the relevant assessment year and also shown expenditure of ₹.34,510/-. Further, the assessee has claimed exemption under section 11 of the Act. On scrutiny, the Assessing Officer has observed that the assessee was not granted registration under section 12AA of the Act and therefore, the exemption claimed under section 11 of the Act was not correct. Since the approval under section 12A/12AA of the Act has not been granted, the assessee trust shall be considered as AOP and the income of ₹.2,26,076/- shall be chargeable to tax. Accordingly, the assessment was completed under section 143(3) r.w.s. 143(3A) & 143(3)(3B) of the Act dated 17.02.2021 by assessing the taxable at ₹.2.26,076/-. On appeal, the Id. CIT(A) confirmed the assessment order and dismissed the appeal of the assessee.

9. Subsequently, consequent upon the assessment order under

section 143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 17.02.2021, the Assessing Officer initiated penalty proceedings under section 270A of the Act. After considering the submissions of the assessee against the notice under section 274 r.w.s. 270A of the Act, the Assessing Officer observed that the claiming of exemption under section 11 of the Act is misrepresentation of facts and accordingly, levied penalty of 1,41,074/- being @ 200% of the misreported income of ₹.70,537/-. On appeal, the Id. CIT(A) confirmed the penalty levied under section 270A of the Act.

10. We have heard the rival contentions. Since we have set aside the order of the Id. CIT(E) and directed him to decide the application in Form 10A filed by the assessee trust for grant of registration under section 12AA of the Act afresh, the assessment order passed under section 143(3) r.w.s. 143(3A) & 143(3)(3B) of the Act dated 17.02.2021, and the appellate order passed against the assessment order are set aside, which is, being consequential to the order of the Id. CIT(E) in rejecting the application for grant of registration under section 12AA of the Act. The Assessing Officer is directed to redo the assessment after a decision is taken by the Id. CIT(E) on the application in Form 10A for grant of registration as directed

hereinabove.

11. Since, the quantum addition has not attained its finality, the penalty levied under section 270A of the Act stands deleted. However, the Assessing Officer has the liberty to pass the order under section 270A of the Act, if any, after concluding the assessment order afresh consequent upon the order passed by the Id. CIT(E) under section 12AA of the Act.

12. In the result, the appeal filed by the assessee in I.T.A. Nos. 992 and 1034/Chny/2022 are allowed for statistical purposes and the appeal in I.T.A. No. 1033/Chny/2022 is allowed.

Order pronounced on 24th January, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 24.01.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &
6. गार्ड फाईल/GF.