IN THE INCOME TAX APPELLATE TRIBUNAL,
''SMC'' BENCH, AHMEDABAD

BEFORE SHRIWASEEM AHMED, ACCOUNTANT MEMBER

ITA Nos.243&244/AHD/2019

Asstt. Years: 2013-14 & 2014-15

Shiksha Foundation B/2, Sahana Apartment, KirtiKunj Society, Nr. Swaminarayan College, B/h Clifto Tower, Kankaria Road, Ahmedabad PAN: AALTS6277Q	Vs.	DCIT CPC, Bangalore
(Applicant)		(Respondent)

Assessee by :	Shri Divyang Shah A.R.
Revenue by :	Shri Purushottam Kumar, Sr. D.R

□□□□□□□□□□□ /Date of Hearing : 28/12/2022

□□□□□□□□□□□/Date of Pronouncement: 18/01/2023

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The captioned appeals have been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-9, Ahmedabad dated 10/12/2018 arising in the matter of assessment order passed under s.143(1)of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2013-14 & 2014-15.

2. The assessee has raised following grounds of appeal:

"1. Whether, on facts and circumstances of the case and in law, Ld. Assessing officer has erred in making adjustment of Rs. 182,025/- u/s. 143(1) of the act.

2. Whether, on facts and circumstances of the case and in law, Ld. Assessing officer has erred in disallowing expenditure of Rs. 182,025/- without having any basis for such disallowance?

3. Whether, on facts and circumstances of the case and in law, Ld. Assessing officer has erred by not applying slab rate of tax, available to AOP, on Income of charitable trust?

4. Whether, on facts and in circumstances of the case and in law, Ld. Assessing officer has erred by not allowing basic exemption of Rs.200,000/- available to Charitable Trust as Association of person?

5. Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) has erred in not condoning delay in filing first appeal?

Further, appellant craves leave to add, amend, alter or withdraw all or any ground of appeal."

3. The only effective issue raised by the assessee is that the learned CITAerred in confirming the adjustment made by the AO under the provisions of section 143(1) of the Act without allowing the basic exemption of Rs. 2 lakhs.

4. In the present case, the assessee is a trust engaged in imparting education. The return was processed under section 143(1) of the Act. The assessee has filed the return of income treating itself as an association of person (trust)and claimed the basic exemption of Rs. 1,82,025/- only. It was observed by the AO that the assessee is not registered under section 12AA of the Act. Thus, the AO treated the assessee as a private discretionary trust and applied the rate of taxation at the maximum marginal rate. The AO has also disallowed the exemption claimed by the assessee and added back to the total income of it.

5. The assessee has filed the appeal before Ld. CIT(A) with the delay of 561 days. The assessee submitted before the Ld. CIT(A) that the appellant trust is now registered under section 12AA of the Act as on 30-07-2018 and so the second proviso to section 12A(2) of the Act will be applicable to it and the benefit of section 11 and 12 shall also be granted for earlier years in dispute.

6. For the delay in filing the appeal, the assessee submitted that it was advised by the chartered accountant to "wait and watch" like many other assesseeare facing the same issue. But when the department started recovery of the demand, then another chartered Accountant advised the assessee to file the appeal before the Ld. CIT(A).

7. However, the ld. CIT(A) has denied the condonation of delay as the reason submitted by the assessee was not plausible and upheld the decision of AO.

8. Being aggrieved by the order of the learned CIT–A, the assessee is in appeal before us.

9. The ld. AR before us contended that the appeal before the learned CIT-A was not filed within the prescribed time by the assessee on the advice of the professional. As such, the delay is not attributable on the negligent/casual approach of the assessee. The learned AR further contended that the assessee on merit has a strong case to succeed. Thus, the delay in filing the appeal by the assessee should be condoned and the issue should be decided on merit.

10. On the other hand,the Ld. DR before us vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record.From the preceding discussion, we note that there was a delay in filing the appeal before the learned CIT(A) for 561 days.This delay was not condoned by the learned CIT(A) on the reasoning that there was negligent and casual behavior of the assessee in pursuing the income tax litigationwhereasit was contended by the learned AR that the assessee was advised by the chartered accountant to wait and watch like the other assessee who were also facing the same problems. The assessee to this effect has also filed the affidavit of the chartered accountant as observed by the learned CIT(A) in his order. The observation of the learned CIT(A) reads as under:

> " Further, as the appellant is being represented by a qualified chartered accountant who filed an affidavit also who is expected to know the procedure in such matters"

12. From the above observation of the learned CIT(A), it is transpired that the assessee has acted and reacted on the advice of the chartered accountant who is a professional person for tax matters. This fact has nowhere been doubted by the

learned CIT(A) in his order. Now the controversy arises to resolve whether the assessee acting on behalf of the professional advice can be held guilty for defiance of any provision of law. The answer certainly goes in favour of the assessee. It is for the reason that the assessee,who was under the bona fide belief upon the advice of the professional, did not prefer any appeal before the learned CIT(A). However, at the same time the assessee upon the initiation of the recovery by the Department immediately approached to another consultant who advised to file the appeal before the learned CIT(A). All these necessary facts are arising from the submissions made by the assessee before the learned CIT(A). The relevant portion of the submission before the learned CIT(A) is reproduced as under:

"In this regards, we would like to submit that appellant was relying on advice & service of its auditor was also handling its income tax matters (including income tax return & related follow up with it). Thus, resolving the demand raised through intimation u/s. 143(1) of the act was the responsibility of our auditor (i.e. SajidMahmadsidikBoghra). First our auditor tried to resolve the demand through possible means. But when he cannot get the said demand nullified, he choose the other option of 'Wait & watch'. As other professional (who were facing similar problem) have also choose this option "wait & watch", even appellant has agreed with this action of auditor. But, when option of "wait & watch", even appellant has agreed with this action of auditor. But, when department have started to recover above stated demand thenafter, appellant was advised by other professional (i.e. CA Divyang Shah) to file appeal in this regards.

Due to said advice of other professional (i.e. CA Divyang Shah), appeal against the above stated demand is filed, vide Appeal no. CIT(A) Ahmedabad-9/10448/2017-18, wherein there is delay of 561 days in filing such appeal."

12.1 The above submissions of the assessee has not been disputed by the learned CIT(A)in his order. The learned CIT(A) in his order has made the remark that the consultant being the chartered accountant is expected to know the procedure in such matters as reproduced above. The above finding of the learned CIT(A) justifies the stand of the assessee that it was the mistake of the consultant and not the assessee. Assessee just followed the advice of the expert. Thus, the assessee should not be facing any hardship on account of the advice of the 3rd party,who was the expert of the subject. In such facts and circumstances, we also note that the Hon'ble Madras High Courtin the case of Hosanna Ministries Vs. ITO reported in 80

taxmann.com 173 has condoned the delay which was attributable to the advice of the consultant being a chartered accountant.

13. Proceeding further, we note that the assessee was not registered under section 12A of the Act for the year under consideration but it got registered in the later year as on 30 July 2018. The second proviso to section 12A(2) of the Act provides as under:

"[31][Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:"

14. Admittedly, the assessment proceedings are pending before the ITAT and therefore it appears to us that the assessee is eligible for the benefit granted under section 11 of the Act for the year under consideration. We are making such observation for the reason to highlight the fact that it appears to us that the assessee has got meritorious case and therefore,the case of the assessee should not be rejected on account of technical lapses. We also note that the Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165 has held as under:

18. The position is, therefore, that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is as a result of assessee's own mistake or otherwise, the CIT has the power to correct such an assessment under section 264(1) of the Act. If the CIT refuses to give relief to the assessee, in such circumstances, he would be acting de hors the powers under the Act and the provisions of the Act and, therefore is duty-bound to give relief to an assessee, where due, in accordance with the provisions of the Act.

19. In the present case, the respondent-CIT has nowhere stated that the petitioner is not entitled to the relief under section 10(10C) of the Act. In fact, the said position is undisputed. The Assessing Officer himself had passed an order under section 154 of the Act, granting such relief. In the circumstances, even the order under section 264 of the Act made on 29-3-2004, cannot be sustained.

20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay ChandulalSatia v. N.O. Parekh, CIT [Spl. Civil Application No. 622

of 1981 dated 20-81981], has laid down the approach that the authorities must adopt in such matters in the following terms:

> "The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and BabutmalRaichandOswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."

15. From the above it is revealed that the income of the assessee should not be over assessed even there is a mistake of the assessee. As such the legitimate deduction for which the assessee is entitled should be allowed while determining the taxable income.

16. We also note that the Hon'ble Gujarat High Court in the case of Vareli textile industry versus CIT reported in 154 Taxman 33 wherein it was held as under:

> It is equally well-settled that where a cause is consciously abandoned (as in the present case) the party seeking condonation has to show by cogent evidence sufficient cause in support of its claim of condonation. The onus is greater. One of the propositions of settled legal position is to ensure that a meritorious case is not thrown out on the ground of limitation. Therefore, it is necessary to examine, at least prima facie, whether the assessee has or has not a case on merits.

16.1 In view of the above, and after considering the facts in entirety, we note that the judgements referred by the learned CIT(A) in his order are distinguishable from the facts of the present case. Therefore,no reference can be made to them while deciding the issue for the condonation of delay in filing the appeal by the assessee before the learned CIT(A). To our understanding, the learned CIT(A)should have condoned the delay in filing the appeal by the assessee by deciding the issue on merit. As such, the case of the assessee deserves to be condoned and to be decided on merit.

17. Before parting, we also note that the demand was raised upon the assessee in the intimation generated under section 143(1) of the Act which was challenged before the learned CIT-A who did not condone the delay in filing the appeal by the assessee. As such, we note that none of the authorities below has looked into the merit of the

case, therefore in the interest of justice and fair play, we are setting aside this issue to the file of the AO for fresh adjudication as per the provisions of law. Hence the ground of appeal filed by the assessee is allowed for the statistical purposes.

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

Coming to ITA 244/Ahd/2019 A.Y. 2014-15

19. The identical issue involved in the case has already been dealt with by us in ITA No. 243/Ahd/2019 for A.Y. 2013-14 and in the absence of any changed circumstances, the same shall apply mutatis mutandis. Hence, the appeal preferred by the assessee is allowed for statistical purposes.

20. In the combined result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Court on 18/01/2023 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 18/01/2023

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2. यथ/ The Respondent.
3. □□□□□□□□□□□□□ □□ / Concerned CIT
4. आयकरआय□ (□□□□) / The CIT(A)
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