

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI 'C' BENCH
BEFORE SHRI I.C. SUDHIR , JM & SHRI A.N. PAHUJA, AM

ITA No.2697/Del./2012 Assessment year :NA		
General Williams Masonic Polyclinic & Dispensary Management Association, Freemasons Hall, Janpath, New Delhi	V/s.	DIT(Exemptions) Plot No.15, 3 rd Floor, Aaykar Bhawan, Laxmi Nagar Distt. Centre Delhi-92
[PAN :AAATG 5413 F]		
(Appellant)		(Respondent)

Appellant by	Shri K.V.S. Gupta, AR
Respondent by	Shri Satpal Singh, DR

Date of hearing	02-08-2012
Date of pronouncement	07-09-2012

ORDER

A.N.Pahuja:- This appeal filed on 01.06.2012 by the assessee against an order dated 01.09.2011 of the Id. DIT(Exemptions), Delhi, raises the following grounds:-

1. *"The action of the learned DIT(E) in not granting approval u/s 80-G of the Income-tax Act, 1961, is illegal, arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*
2. *The action of the learned DIT(E) rejecting grant of approval u/s 80-G of the Income-tax Act, 1961 by referring to object of general public utility and not considering the applicability object of medical relief is illegal, arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*
3. *The action of the learned DIT(E) in not granting approval u/s 80-G of the Income-tax Act, 1961 without giving proper opportunity under rule 11AA(5) proviso thereof of the Income Tax Rules is illegal, arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

4. *The appellant reserves the right to add/alter/amend or withdraw any ground of appeal.”*

2. At the out set, we find that appeal is delayed by 203 days, due date of filing the appeal being 11th November, 2011, the impugned order dated 1.9.2011 having received by the assessee on 12th September, 2011 while the appeal was filed only on 1.6.2012 . In their request for condonation of delay, it is mentioned that the assessee society was represented by non professionals in I.T. matters and not by income tax experts and consequently, no appeal was filed against the aforesaid order; rather the assessee moved a fresh application on 1.11.2011 which was pending disposal with the DIT(E). Subsequently, the assessee engaged S/Shri KVS Gupta Advocate & Ajay Goyal, CA in May, 2012 and accordingly, society was advised to prefer appeal before the ITAT against the said order. Since the society was not aware of the legal provisions regarding filing of appeal, the appeal could not be filed within time stipulated under law. In these circumstances, the Id. AR on behalf of the assessee pleaded that delay of 203 days in filing the appeal may be condoned. Inter alia, the Id. AR relied upon the decision in Improvement Trust vs. Ujagar Singh(SC);N Balakrishnan vs. M .Krishnamurthy,AIR 1998SC3222; Shakuntla Devi Jai vs.Kuntal Kumari & others,AIR 1969SC575;CIT vs. Darshan Securities P Ltd., in Appeal(Civil) no.7904/2009 dated 30.11.2009 ; Govind Ballabh Pant Himalaya Paryavaran Evam Vikas Sansthan vs. DIT(E) in ITA no.1210/Del./2007 and Motilal Padmapat Sugar Mills Co. Ltd. vs. State of UP & Others,118 ITR326(SC).

3. On the other hand, the Id. DR vehemently opposed the request for condonation of delay in filing the appeal.

4. We have heard both the parties and gone through the facts of the case as also reasons adduced in the affidavit of Hony Secretary of the society. The issue before us is as to whether or not there was sufficient cause for delay in filing the appeal. In this case, the assessee pleaded that they were not aware of provisions of law. Hon'ble Apex Court in Motilal Padmapat Sugar Mills

Co. Ltd.(supra) held that that there is no presumption that every person knows the law. In the case of State of West Bengal vs. Administrator, Howrah Municipality AIR 1972 SC 749, the Hon'ble Supreme Court while considering the scope of expression 'sufficient cause' for condonation of delay have held that the said expression should receive a liberal construction so as to advance the substantial justice when no negligence or inaction or want of bona fide is imputable to the party. In the case of Vedabai alias Vijayantabai Babulao Patil vs. Shantaram Baburao Patil & Ors., it was held by the Hon'ble Apex Court that while exercising discretion under s. 5 of the Limitation Act, 1963, to condone delay for sufficient cause in not filing the appeal within the period prescribed, Courts should adopt a pragmatic approach. In the facts and circumstances of the case, we are of the opinion that the reasons given in the affidavit by the Hony Secretary of the assessee society reflect sufficient cause for condonation of delay. It has been consistently held by the Hon'ble Apex court that in the matter of condonation of delay, a liberal and pragmatic view should be taken. The reasons given by the assessee for the delay appear to be sufficient cause and, accordingly, the delay is liable to be condoned. The law of limitation is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. In the case of Collector, Land Acquisition v. Mst. Katiji reported in [1987] [167 ITR 471](#), Hon'ble Supreme Court held as follows:

"The Legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that:

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, commonsense and pragmatic manner.
4. 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 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 the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

4.1 In *N. Balakrishnan v. M. Krishnamurthy* reported in [1998] 7 SCC 123, the Hon'ble Apex court explained the scope of limitation and condonation of delay, observing as under (headnote):

"The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy."

4.2 In *Shankarrao v. Chandrasenkunwar* reported in [1987] Supp SCC 338, the Hon'ble Supreme Court took the view that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. In *O.P. Kathpalia v. Lakhmir Singh* reported in AIR 1984 SC 1744, the Hon'ble Supreme Court held that if the refusal to condone the delay results in grave

miscarriage of justice, it would be a ground to condone the delay. In State of Haryana v. Chandra Mani reported in AIR 1996 SC 1623, Hon'ble Supreme Court considered a large number of its earlier judgments including Binod Bihari Singh v. Union of India reported in [1993] 1 SCC 572, Shakambari and Co. v. Union of India reported in [1993] Suppl 1 SCC 487, Warlu v. Gangotribai reported in [1995] Suppl 1 SCC 37, Ramlal v. Rewa Coalfields Ltd., reported in AIR 1962 SC 361, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi [1979] [118 ITR 507](#); AIR 1979 SC 1666; [1979] 49 Comp Cas 463, Mata Din v. A. Narayanan, AIR 1970 SC 1953, and held that expression "each day's delay must be explained", does not mean that a pedantic approach should be made and it must be applied in a rational commonsense pragmatic manner.

4.3 In view of the foregoing and especially in the light of observations of the Hon'ble Apex Court in O.P. Kathpalia v. Lakhmir Singh reported in AIR 1984 SC 1744, that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay, we are of the opinion that the reasons given by the assessee for the delay in filing the appeal, reflect sufficient cause and, accordingly, the delay of 203 days is condoned.

5. Coming now to merits of the appeal, facts in brief, as per relevant orders are that assessee filed an application in form no.10G before the DIT(Exemptions) on 20.3.2011, seeking approval u/s 80G(5)(vi) of the Act. In pursuance to this application, DIT(E) asked the assessee to furnish a number of documents as mentioned in the impugned order. On perusal of details submitted by the assessee society, the DIT(E) noticed that the society derived income from two units i.e. Bawa Masonic Polyclinic and Noida Centre under various heads like Orthopedic Receipt, echo receipt, registration fee, dental care, eye unit, x-ray, x-ray fixer sale, pathological laboratory, ECG unit, ultra sound, physiotherapy, ENT Admn. Charges, amounting to ₹1.96 crores in the AY 2009-2010 and ₹1.64 crores 2010-2011. Beside, the assessee reflected other incomes of ₹30.37 lakhs in the AY 2010-2011 and ₹56.98 lakhs in the AY 2009-2010 under

different heads. In the light of these facts, DIT(E) was of the opinion that though the assessee was registered u/s 12A of the Act as a charitable dispensary and health centre, the nature of activities and the amount of fee revealed that medical treatment was not given to the general public free of cost but medical facilities were available on payment basis through its health centre. Accordingly, while holding that activities of the assessee being commercial activities in the garb of medical relief, were hit by proviso to section 2(15) of the Act, inserted by Finance Act, 2008 w.e.f 1.4.2009, the Id. DIT(E) declined approval u/s 80G(5)(vi) of the Act.

6. The assessee society is now in appeal before us against the aforesaid findings of the Id. CIT(A). The Id. AR on behalf of the assessee while carrying us through the objects of the trust contended that the assessee had been allowed approval u/s 80-G(5)(vi) of the Income-tax Act, 1961 until 31.03.2011, last approval being dated 17.4.2008 for the period 1.4.2008 to 31.03.2011. Since the Id. DITE) did not allow the assessee sufficient opportunity before denying the approval nor considered the CBDT circular no.11/2008 dated 19th December, 2008,, accordingly, it was pleaded that matter may be restored to the file of DIT(E) for reconsideration. The Id. DR did not oppose these submissions of the Id. AR.

7. We have heard both the parties and gone through the facts of the case. Indisputably, the aforesaid society is registered u/s 12A of the Act vide order dated 18.7.1973 and the Id. DIT(E) has not cancelled the said registration nor issued any showcause notice in that direction. The society has been allowed approval u/s 80-G(5)(vi) of the Income-tax Act, 1961 until 31.03.2011, last approval being dated 17.4.2008 for the period 1.4.2008 to 31.03.2011. The objects of the society in the memorandum (as amended up to 27.9.2006) read as under:-

- a) *“To establish a charitable dispensary, clinic and medical care centre for the needy and the poor under the auspices of the Masonic Fraternity of New Delhi and the Regional Grand Lodge of Northern India;*
- b) *To issue appeals and applications for money and funds in furtherance of the said objects and to accept gifts, donations and subscriptions of cash and securities and of any property either movable or immovable;*
- c) *To invest and deal with funds and moneys of the association;*
- d) *To acquire, purchase or otherwise own or take on lease or hire in the Union Territory of Delhi, temporarily or permanently, any movable or immovable property, necessary or convenient, for the furtherance of the objects of the Association;*
- e) *To sell, mortgage, lease, exchange and otherwise transfer or dispose off all or any property, movable or immovable of the Association;*
- f) *To construct, maintain, alter, improve or develop any building or works necessary or convenient for the purpose of the association. To undertake and accept the management of any endowment or trust fund or donation;*
- g) *To do all such things and to perform all such acts as may be necessary or proper for the achievement of any or all the above objects.*
- h) *Without prejudice to the existing objects, the Association may engage in, run, maintain, sponsor, provide funds, subscribe or donate for any other charitable projects and public and Masonic services including schools, journals, libraries, college, institutes for higher learning, sciences and Masonic learning, social subjects, and for excellence in social and physical disciplines and day care centres, old age homes or house for destitutes.*
- i) *The association is and shall be authorized to carry these objects all by itself or by joining hands with such other persons, Trusts, Societies, Laboratories, Research Centres or Masonic Bodies considered helpful in achieving all or any of these objects.”*

8. As is apparent from the aforesaid objects, society has been created for providing medical relief to the needy and poor. The Id. AR contended before us that 1st proviso to amended provisions of section 2(15) of the Act inserted by Finance Act, 2008 w.e.f., 01.04.2009 was not applicable in their case, the object of the society being to provide medical relief. In this connection the Id. AR referred to the aforesaid circular dated 19th December, 2008 and decision dated 6th April, 2009 of the Mumbai Bench in the case of Kaushalya Medical Foundation in ITA no.423/Mum./2004. There is nothing to suggest that the Id. DIT(E) allowed

any opportunity to the assessee before denying the approval nor any showcause notice, invoking the aforesaid 1st proviso to amended provisions of section 2(15) of the Act inserted by Finance Act, 2008 w.e.f., 01.04.2009, seems to have been issued. In these circumstances, we find sufficient merit in the contentions of the Id. AR and accordingly, consider it fair and appropriate to vacate the findings of Id. DIT(E) and restore the matter to his file for readjudication in accordance with law, keeping in view the aforesaid CBDT circular and various decisions, including those referred to above, after allowing sufficient opportunity to the assessee.. Needless to say that while redeciding the issues, the Id. DIT(E) shall pass a speaking order, bringing out clearly as to whether or not the case of the assessee falls within the 1st proviso to amended provisions of section 2(15) of the Act. With these observations, ground nos.1 to 3 in the appeal are disposed of.

9. No additional ground having been raised before us in terms of residuary ground no.4 in the appeal, accordingly this ground is dismissed.

10. No other plea or argument was raised before us.

11.. In result, appeal is allowed but for statistical purposes.

Order pronounced in open Court

Sd/-
(I.C. SUDHIR)
(Judicial Member)
NS

Sd/-
(A.N. PAHUJA)
(Accountant Member)

Copy of the Order forwarded to:-

- 1 Assessee Society
2. DIT(Exemptions) Plot No.15,3rd Floor, Aaykar Bhawan,
Laxmi Nagar Distt. Centre Delhi-92
3. DR, ITAT,'C' Bench, New Delhi
4. Guard File.

BY ORDER,

Deputy/Asstt.Registrar
ITAT, Delhi