आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री रमेश सी0 शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 541/JP/2019
निर्धारण वर्ष/Assessment Year : 2017-18

Rajasthan Technical University Rawatbhata Road, Akelgarh, Kota-324010.	बनाम Vs.	The CIT, Exemption, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAALR 0232 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Miss. Dakshayani Pandey (Adv.)&
Shri Rajiv Pandey (C.A.)
राजस्व की ओर से/ Revenue by : Shri Amrish Bedi (CIT)

सुनवाई की तारीख/ Date of Hearing : 06/08/2020
उदघोषणा की तारीख/Date of Pronouncement: 11/08/2020

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 06.11.2017 of ld. CIT(E), Jaipur passed U/s 12AA(1)(b) of the Income Tax Act whereby the ld. CIT(E) granted registration U/s 12A w.e.f. 01.04.2017 as against the registration sought by the assessee with retrospective effect from 31.12.2005. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference.

2. There is delay of 442 days in filing the present appeal the assessee has filed an application for condonation of delay. The ld. AR of the assessee has submitted that the assessee-university has been established under Rajasthan Technical University Act, 2006 by the Government of Rajasthan however, the assessee-university was incorporated w.e.f. 31.12.2005. She has further submitted that the assessee was illegible for exemption U/s 10(23C)(iiiab) of the Income Tax Act. But after notification by CBDT with reference to rule 2BBB dated 12.12.2014 and with reference to decision of Hon'ble Supreme Court in case of **Visvesvaraya Technological University vs. ACIT** 384 ITR 37 it was advised that for abundant caution, the University should apply for registration U/s 12AA of the IT Act with effect from its date of incorporation i.e. 31.12.2005. Accordingly, the assessee submitted an application in form 10A for registration U/s 12A on 26.05.2017 and sought registration with retrospective from 31.12.2005. The ld. CIT(E) has granted registration w.e.f. 01.04.2017 i.e. 1st day of the financial year in which the application was submitted. The ld. AR has submitted that the assessee is having a good case on merits as the assessee was earlier eligible for exemption U/s 10(23C)(iiiab) of the Income Tax Act and only because of amendment in law and the

judgment of the Hon'ble Supreme Court, the assessee has applied for registration U/s 12AA of the Act. The delay in filing the appeal is on account of non realization of impact for the period for which the registration was not granted. The assessee, therefore, seeking registration U/s 12A of the Act w.e.f. 31.12.2005 since its inception hence, this application for condonation of delay is filed. The reason for delay are bonafide accordingly, the ld. AR is pleaded that the delay in filing the appeal may be condoned and the appeal of the assessee may be decided on merits.

3. On the other hand, ld. DR vehemently opposed to the condonation of delay and submitted that after the registration granted by the ld. CIT(E) there is no grievance of the assessee and the present appeal filed by the assessee is nothing but luxury litigation. Even the assessee has not explained any reasonable cause for filing the appeal belatedly.

4. We have considered the rival submissions as well as relevant material on record. The assessee has explained the cause of delay as failure to realize the impact of the registration granted by the ld. CIT(E) prospectively instead of retrospective effect from 31.12.2005. The

relevant part of the realization in the application for the delay as under:-

> *"The delay in filing this appeal is for 1 year and 4 months is on account of non-realization of the impact of the period for which exemption u/s 12A has been given. The university seeks exemption u/s 12A w.e.f. 31.12.2005 i.e. its inception and hence this application for condonation of delay which is bonafide and may please be granted as the University is an educational institution founded the State Legislature and existing solely for education and not for purposes of profit. The application of delay in filing appeal deserves to be condoned and it is humbly prayed the same may please be condoned."*

Except the vague explanation of non realization the assessee has not explained any cause of delay which has prevented the assessee for filing the present appeal within the period of limitation. The assessee is not an illiterate ordinary person but the assessee is a university which is managed by well educated high ranking official. The assessee is also taking the services of the tax experts. Even in support of the application for condonation of delay no affidavit is filed on behalf of the assessee. There is no dispute that while condoning the delay the court should take a lenient view in construing the sufficient cause and should been in favour of the such party so that the cause of substantial justice has to be preferred as against technical consideration. However, it is always a question whether the explanation and reason for delay are bonafide or is merely a device cover an ulterior purpose on the part of the litigant or attempt to saw limitation in an under hand way. From the facts and circumstances of the present case it is clear that the assessee applied for registration U/s 12AA of the Act on 26.05.2017 and the ld. CIT(E) while passing the impugned order dated 06.11.2017 granted registration w.e.f. 01.04.2017 as it is provided so U/s 12A/12AA of the Act. The power of the ld. CIT(E) U/s 12A/12AA of the Act is normally restricted to grant registration from 1^{st} day of the financial year in which the application is made except in a case where he is satisfied for the reasons to be recorded in writing that the institution/person in receipt of the income was prevented from making the application before the expiry of one year from the date of creation of the trust or institution as the case may be. In the case in hand the assessee before the ld. CIT(E) has explained in filing of the application for registration in the year 2017 because of amendment in the provisions as well as judgment of Hon'ble Supreme Court and till that date the assessee-university claimed to be eligible for exemption U/s 10(23C)(iiiab) of the Act. Therefore, the assessee has not explained any reason or cause which has prevented the assessee for not filing the application for registration within the prescribed period being one year from the date of creation. Hence, prima facie the order passed by the Commissioner(exemption) is in accordance with the provisions of Section 12A/12AA of the Act and the assessee was having no grievance. Thereafter the assessee has all of sudden decided to file present appeal belatedly. The assessee has not explained as to what circumstance has led to the assessee to took such a long time of more than one and half year to file the appeal. Even the reasons explained by the assessee are very vague and exhibit negligence on the part of the assessee. We do agree with the contention of the ld. DR that this is a luxury litigation and the assessee was not serious about the filing of the appeal. The assessee has not explained from where the assessee has sought advice or what process was undertaken to reach the conclusion that it has to challenge the impugned order. It is settled proposition of law that in the absence of reasonable or sufficient cause the delay cannot be condoned merely an equitable ground. This is an inordinate delay and the assessee has patently failed to explain the reasonable cause for delay but has taken an excuse of none realization of the impact of the impugned order. It is not the sole litigation with the tax authority but the assessee is continuously involved in the litigation as challenged the notice issued by the AO U/s 148 of the Act before the Hon'ble High Court and therefore, the assessee cannot take such excuse of non realizing the impact of the impugned order for such a long time of one and half year. The negligence on the part of the assessee for not taking necessary steps for filing the appeal within the limitation period provided by statute cannot be considered as a reasonable or sufficient cause. Even the assessee is very casual in explaining the reasons in the application of condonation of delay which is not supported by a affidavit. The cause explained by the assessee is much less then the sufficient cause as to why the appeal was not filed within the limitation or immediately after expiry of limitation period. In the absence of any detail as to what steps the assessee took to reach to the decision of challenging the impugned order and filing the present appeal and why the assessee has not filed the present appeal as soon as possible even after expiry of the limitation period. Therefore, the explanation for delay of 442 days in our view is insufficient, unsatisfactory and unreasonable. Therefore, the vague explanation without any particulars or details cannot be accepted as a reasonable cause. Accordingly, the application for condonation of delay is dismissed and consequently the appeal of the assessee is not maintainable being barred by limitation. Since the appeal of the assessee is found to be barred by limitation, therefore, we do not propose to go to the merits of the appeal.

In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 11/08/2020.

Sd/-	Sd/-
(रमेश सी0 शर्मा)	(विजय पाल राव)
(Ramesh. C. Sharma)	(Vijay Pal Rao)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 11/08/2020.
*Santosh.

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Rajasthan Technical University, Kota.
2. प्रत्यर्थी/ The Respondent- CIT, Exemption, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 541/JP/2019}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar