

## Delay in filing appeal can't be condoned just because assessee is waiting for orders for subsequent AY

**Summary – The Chandigarh ITAT in a recent case of Baddi Barotiwala Nalagarh Development Authority., (the Assessee) held that where registration application under section 12AA was rejected for a year, assessee's plea of waiting for decision of regular appeals for other assessment years would not amount to a sufficient cause for condonation of delay in filing appeal against said rejection order**

### Facts

- The assessee, a special area development authority filed registration application in prescribed form for grant of registration under section 12AA. The Commissioner considering the material on record granted registration under section 12AA to the Assessee Authority for the assessment year 2008-09 only. However, for the assessment year 2009-10 and subsequent assessment years, the Commissioner was of the view that the objects of the Assessee Authority cannot be considered to be charitable purposes because of the amendment in section 2(15), which is effective from assessment year 2009-10 onwards. Therefore, the Commissioner held that for assessment year 2009-10 and subsequent assessment years, the assessee would not qualify for being considered as a charitable organization; hence, it would also not qualify for registration under section 12AA.
- The assessee being aggrieved against the impugned order of the Commissioner filed appeal dated 17-11-2008 before the Tribunal on 17-10-2014. Thus, there was delay of 2192 days (approximately 6 years). The assessee filed an application for condonation of delay.
- The assessment for assessment years 2010-11 and 2011-12 were concluded on 19-3-2013 and 31-1-2014 respectively. These assessment orders were also assailed before the appellate authority.
- It was contended by the assessee that the assessee was acting under advice and the assessee was informed that the cause of action for challenging the impugned order would arise when the appeals against the assessment orders were decided. Therefore, it was submitted that the assessee was under the *bona fide* belief for not filing the appeal before the Tribunal.
- The revenue submitted that when the assessee was aware of the fact that no registration was granted to the assessee for the assessment year 2009-10 and subsequent years, the order should have been challenged before the Tribunal within the period of limitation. Further, the registration order under section 12AA had no connection with the passing of the regular assessments.

### Held

- It is not in dispute that after passing the impugned order, the same was served immediately upon the assessee. According to the impugned order, registration was refused to the assessee under section 12AA for the assessment year 2009-10 and subsequent assessment years. The assessee, however, availed benefit of impugned order till assessment year 2008-09. Therefore, it was within the knowledge of the assessee that no registration under section 12AA have been granted to the assessee for the assessment year 2009-10 and subsequent assessment years.

- The argument of the assessee that the cause of action for challenging the impugned order would arise when the appeals against the respective assessment order were decided is without any substance and is rejected because it is well settled law that the registration under section 12AA to the trust or institution is a condition precedent for granting relief under section 11.
- Since there was no registration granted under section 12AA to the assessee for assessment year 2009-10 and subsequent assessment years, no relief under section 11 could have been granted to the assessee in regular assessments for assessment years 2010-11 and 2011-12 as is claimed by the assessee. The assessee despite service of the impugned order way back in November, 2008 was sleeping over its right to challenge the said order before the Tribunal. When the assessee had been advised that the impugned order could be challenged when regular appeals for subsequent assessment years are decided, would clearly indicate that the assessee was well aware of the consequences of the impugned order. As per the settled law, when no registration is granted under section 12AA to the assessee for assessment year 2009-10 and subsequent assessment years, there was no question of making claim of exemption from income under section 11 for any subsequent assessment years either in the regular assessments or in the consequential appeals filed before the Commissioner (Appeals). Thus, the assessee failed to explain any sufficient cause for not presenting the appeal within the period of limitation before the Tribunal.
- Sufficient cause would mean a cause which is beyond the control of the assessee. Sufficient cause means which prevents the assessee acting under normal circumstances without negligence or inaction or want of *bona fide*. When the assessee was aware of the consequences of the impugned order that its income would not be exempt under section 11 from assessment year 2009-10 onwards, the assessee should not have waited for filing of the appeal in the matter. It is a clear case of negligence or inaction or want of *bona fide*. The conduct of the assessee clearly speak against the assessee itself that the assessee deliberately did not file the appeal within the period of limitation.
- The assessee failed to explain that the delay in filing the appeal was due to sufficient cause. Delay in filing the appeal should not be condoned.
- Appeal of the assessee is time barred and is accordingly dismissed.