IN THE INCOME TAX APPELLATE TRIBUNAL CHANDIGARH BENCH 'B'

BEFORE SHRI H.L. KARWA, V.P. AND SHRI MEHAR SINGH, AM

ITA No. 257, 258, 1094 & 1095/Chd/2011
A.Ys 2007-08, 2008-09

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| M/s Punjab Heritage and Tourism Promotion Board<br>Plot No. 3, Sector 38-A<br>Chandigarh<br>AAATP 6562 G<br>(Appellant) | V | I.T.O.<br>Ward 4(3)<br>Chandigarh<br><br>(Respondent) |

Appellant By : Shri A.K. Jindal
Respondent By: Shri Manjeet Singh

Date of hearing: 07.08.2012
Date of pronouncement: 22.08.2012

**ORDER**

**Per Bench**

**ITA No. 257/Chd/2011**

This appeal filed by the appellant has been directed against the order dated 30.6.2008/2.7.2008 passed by the ld. CIT-II u/s 250(6) of the Act ((in short 'the Act').

2 In this appeal the assessee has raised following grounds:

"1 That on the facts and in the circumstances of the case and in law, ld. CIT in F No. CIT-II/CHG/Tech/2008-09/1361 dated 2.7.2008 has erred in passing that order in contravention of the provisions of section 12AA of the Income-tax Act, 1961 to the extent of allowing registration w.e.f A.Y 2009-10 instead of A.Y 2007-08.

2 That on the facts and circumstances of the case and the propositions of law, ld. CIT is not justified in granting registration u/s 12AA of the Act to the appellant Board w.e.f. A.Y 2009-10 instead of A.Y 2007-08.

3 That on the facts and circumstances of the case and the propositions of law, ld. CIT was not justified in granting registration w.e.f. A.Y 2009-10 though no order refusing

registration was passed on application dated 18.12.2006 till limitation date of 30.6.2007. The ld. CIT has erred in ignoring the fact that the proceedings which continued beyond prescribed period of 6 months allow deemed registration to the assessee."

**3. ITA No. 258/CHD/2011**

In this appeal the assessee has raised the following grounds of appeal:

"1 That on the facts and in the circumstances of the case and in law, the order dated 4.12.2009 passed by ld. CIT is bad in law and needs to be quashed.

2. That on the facts and circumstances of the case and the propositions of law, the grant of registration by ld. CIT in his original order w.e.f A.Y 2009-10 instead of A.Y 2007-08 is a mistake apparent from record and the respondent has erred in not allowing the application moved by the appellant u/s 154 of the Act.

3. That on the facts and circumstances of the case and the propositions of law, ld. CIT has erred in not allowing the application of the appellant, moved u/s 154 of the Act, wherein the appellant requested for amendment of original order for grant of registration w.e.f. A.Y 2007-08 as against originally granted w.e.f. A.Y 2009-10.

4. That on the facts and circumstances of the case and the propositions of law, ld. CIT has erred in not issuing any show cause for rejection of application of appellant moved u/s 154 of the Act and thereby passing an order without allowing the appellant an opportunity to be heard and this action is against the principles of natural justice.

5. That on the facts and circumstances of the case and the propositions of law, ld. CIT has erred in not treating the application of the appellant filed on 1.12.2009 u/s 154 of the Act, as allowed as no order on that application was served on the appellant till 30.6.2010 and hence the application has to be treated as deemed allowed."

**4. ITA No. 1094/CHD/2011 for the A.Y 2007-08**

In this appeal the assessee has raised the following grounds:

"1 That the ld. CIT(A) has erred in law as well as on facts of the case in upholding the addition to the tune of Rs. 1,54,47,570.00 on account of interest on FDR and disallowance of expenditure incurred on 400$^{th}$ year Martyrdom which is illegal, arbitrary and unjustified.

2. That the Assessing Officer has erred in law by not allowing deduction u/s 11 of the Income-tax Act, 1961 on account of interest earned on FDR to the tune of Rs. 1,49,01,570.00. The appellant has applied for Registration u/s 12AA on 18.12.2006 the order for granting/refusing registration should have been passed on/before 30.6.2007. In the absence of any such orders passed within the stipulated time, the appellant will be deemed to be registered u/s 12AA with effect from A.Y 2007-08 and was eligible for exemption u/s 11 and the interest was not taxable.

3. That the addition made on account of disallowance of 400th Year Martyrdom Expenses to the tune of Rs. 5,46,000.00 is illegal, arbitrary and unjustified."

**5 ITA No. 1095/CHD/2011 for the A.Y 2008-09**

In this appeal the assessee has raised the following grounds:

"1 That the ld. CIT(A) has erred in law as well as on facts of the case in upholding the addition to the tune of Rs. 4,62,40,874.00 on account of interest on FDR and Saving Bank Account Interest which is illegal, arbitrary and unjustified.

2. That the Assessing Officer has erred in law by not allowing deduction u/s 11 of the Income-tax Act, 1961 on account of interest earned on FDR/Saving Bank Account Interest to the tune of Rs. 4,62,40,874.00. The appellant has applied for Registration u/s 12AA on 18.12.2006, the order for granting/refusing registration should have been passed on/before 30.6.2007. In the absence of any such orders passed within the stipulated time, the appellant will be deemed to be registered u/s 12AA with effect from A.Y 2007-08 and was eligible for exemption u/s 11 during the A.Y 2008-09 and the interest was not taxable."

6. The assessee filed an application dated 14.3.2011 u/s 253(5) of the Act, for condonation of delay in filing the appeal against the order dated 2.7.2008 of the ld. CIT. The assessee filed appeal before the Bench, on 15.3.2011, against the order dated 2.7.2008, which was served on the appellant, on 7.7.2008. There is a delay of 921 days, as mentioned by the appellant, in the application for condonation of delay. The assessee stated in the application for condonation of delay that there is sufficient cause for not presenting the appeal in time as contemplated u/s 253(3) of the Act.

7. The ld. 'AR' for the assessee narrated the brief factual history of the case and stated that the delay of 921 days occurred as the appellant could not immediately understood the period of grant of registration u//s 12AA of the Act. The ld. 'AR' for the assessee argued that such non-understanding constitutes sufficient cause u/s 253(5) of the Act. The ld. 'AR' for the assessee stated that application u/s 154 of the Act, was filed, before the ld. CIT. The ld. 'AR' for the assessee also argued that rectification application dated 30.11.2009, pertains to the issue of granting registration u/s 12AA of the Act w.e.f. A.Y 2009-10 and not from A.Y 2007-08. The said rectification application was rejected by the ld. CIT vide order dated 4.12.2009. The ld. AR for the assessee referred to the facts as narrated in the said application for condonation of delay and placed reliance on the following decisions:

1 Suresh Shet V. ACIT, 6 ITR (Trib) 30 (Bang)
2 Dr. (Mrs) Sudha S. Trivedi V. ITO, 125 TTJ (Mum) 42
3 Subhash Malik V. CIT, 325 ITR 243
4 People Education & Economic Development Society (PEEDS) V. ITO, 100 ITD 87 (Chennai)(TM)

8. On the other hand, the ld. DR for the revenue vehemently contended that there is no existence of sufficient cause for condonation of inordinate delay, in filing the appeal after a delay of 921 days. It was contended that the ld. CIT has passed valid order u/s12AA of the Act, in consonance with the relevant provisions of the Act and the facts of the case. He pleaded that delay of 921 days, in filing the appeal is purely attributable to the negligence, complete inaction and indifferent attitude of the assessee, to pursue the remedy for an appeal under the Act. He was of the opinion that such inordinate delay of 921 days in filing an appeal deserves to be dismissed in view of time latches and not-existence of 'sufficient cause'.

9 We have carefully perused the rival submissions, facts of the case, the said application for condonation of delay and the case laws relied upon by the parties. We deem it fit to reproduce the contents of the said application, for the purpose of proper appreciation of the existence or otherwise the sufficient cause for such a delay.

> "Sub: Application u/s 253(5) of Income-tax Act, 1961 praying for condonation of delay in filing of the appeal in the case of Punjab Heritage and Tourism Promotion Board V. CIT-II in ITA No,. 257/CHD/2011
>
> Hon'ble Bench,
>
> The appellant cited as subject above has filed an appeal before the **Hon'ble Bench on 15.3.2011**. This appeal is against the **order dated 2.7.2008** of the respondent served on the appellant **on 7.7.2008**. There is delay of 921 days in filing of the present appeal. However, on facts of the case and situation, there is sufficient cause for not presenting the appeal in time and therefore, the present application/prayer for condonation of delay in filing of appeal may be allowed u/s 253(5) of the Act.
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> **Facts of the Case**
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> 1. The appellant is Board created as a Trust by State Government of Punjab.
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> 2 The appellant applied for registration u/s 12AA of the Act vide application filed with respondent on 18.12.2006. The respondent issued a letter dated 22.6.2007 through which it objected to the dissolution clause in the trust deed of the appellant. However, no order granting or refusing registration was passed till 30.6.2007. The proceedings were continued even thereafter and the appellant duly participated and cooperated in the continued proceedings. During the course of these continued proceedings, the appellant filed draft amended dissolution clause, thereafter final amended dissolution clause, followed by amended trust deed and thereafter notified deed. After this the respondent directed the appellant to file amended trust deed along with Form No. 10A. This was duly done by the appellant.
>
> 3. Finally vide order dated 2.7.2008, registration was granted. But the same was granted w.e.f. A.Y 2009-10.
>
> 4. Since the registration had already been granted, the appellant could not immediately understood and appreciate the issue of difference of year of grant of registration w.e.f. A.Y 2009-10 as against allowable w.e.f. A.Y 2007-08.
>
> On the above facts, the application of the appellant for condonation of delay in filing of the present appeal deserves to be allowed and the appeal of the appellant may be admitted. For this, the appellant submits as under:
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> 1. That the appellant was advised by professionals that the grant of registration w.e.f. A.Y 2009-10 instead of A.Y 2007-08 is a mistake apparent from record rectifiable u/s 154 of the Act and application thereon was also filed on 1.12.2009. However order on that application was served only on

7.2.2011. Thereafter the appellant has filed the appeal within 60 days of service of order u/s 154. This was sufficient cause for not presenting the present appeal in time.

2 That on the facts, circumstances and legal position of the case, the application of the appellant for condonation of delay in filing of appeal deserves to be allowed.

It is therefore, respectfully prayed that, in the interest of justice, the above mentioned prayer of the appellant towards condonation of delay in filing of appeal and thereby admittance of appeal by invoking provisions of section 253(5) of the Act be allowed.

Thanking you,

Yours faithfully,

For PUNJAB HERITAGE & TOURISM PROMOTION BOARD "

10 (i) A bare perusal of the facts of the case reveals that the appellant applied for registration u/s 12A of the Act, in Form No. 10A, dated 18.12.2006. The ld. CIT issued a letter darted 22.6.2007 to the trustee of the appellant on the issue of registration u/s 12A of the Act and the contents of the said letter are reproduced hereunder:

"Subject: Application for registration u/s 12A(a) of the Income-tax Act, 1961 - Regarding

Please refer to your application for registration u/s 12A(a) of the Income-tax Act, 1961 filed with office on 18.12.2006.

2. A perusal of the deed of declaration of the Board reveals that clause 26 dealing with the "Dissolution" is in violation of Section 11 of the Income-tax Act, 1961. **Therefore, your application for registration u/s 12AA of the Income-tax Act, 1961 may not be considered favourably. It can only be considered on amendment of this clause and receipt of amended Rules and Regulations."**

(ii) The ld. CIT categorically pointed out to the assessee-appellant that a perusal of the deed of declaration of the Board reveals that Clause 26 dealing with the "Dissolution" is in violation of Section 11 of the Act. Therefore, the application for registration u/s 12A of the Act can not be considered favourably. It can be considered on amendment of this clause and receipt of amendment of Rules and Regulations. Thus, it is evident that the ld. CIT has brought to the

notice of the appellant, the fate of application made by the assessee u/s 12A of the Act. In view of this specific communication emanating from the office of ld. CIT(A), addressed to the appellant about the conditional consideration of the said application, on submissions of the requisite documents along with clear indication by the ld. CIT that such application cannot be considered favourably, is an eloquent manifestation of the administrative intent of the ld. CIT. Therefore, contention of the appellant that no order granting or refusing registration was passed by the ld. CIT till 30.6.2007, is not wholly reflecting true state of affairs, in the light of specific communication dated 22.6.2007 addressed to the Trustee by the ld. CIT. The appellant participated and cooperated in the subsequent proceedings. The appellant filed a letter dated 1.1.2008 received in the office of the ld. CIT dated 3.1.2008 enclosing a copy of the minutes of the meeting of the appellant as in evident from letter at page 3 of the paper book. The appellant vide letter dated 19.3.2008, filed amended coy of bye-laws as is evident from letter at page 4 of the paper book. Further, in continuation of letter dated 19.3.2008 the appellant filed notified copy of bye-laws of PHTB, as is evident from letter addressed to the ld. CIT as per page 5 of the paper book. The appellant filed another application for registration u/s 12A(a) of the Act at page 6 of the paper book and the same is reproduced hereunder:

> "Subject: Application for registration u/s 12A(a) of Income-tax Act, 1961.
>
> Sir,
>
> This is with reference to letter No. CIT/Chd-II/Tech/12A/194/1298 dated 22.6.2007 regarding the subject cited.
>
> Vide this letter, the only objection raised was regarding the dissolution clause in the bye-laws of the Trust. Meetings were held by our authorized representatives with you and necessary amendments were carried out in the

> dissolution clause, as desired by you. After amendments, a draft copy was also submitted to you.
>
> Amended draft copy duly signed and approved from the Principal Secretary Tourism vide Memo. No.10/17/27-TA/738 has been received from Government of Punjab in the Department of Tourism. This copy has been furnished to your office. As the only objection raised already stand been removed, it is requested that Registration u/s 12A be granted to us.
>
> In case any additional information is required at our end, you may write to us and we will be more than happy to provide the requisite information. "

(iii) The provisions of section 253(5) of the ACT are reproduced hereunder:-

> "253(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), **if it is satisfied that there was sufficient cause for not presenting it within that period."**

11 In this context it is pertinent to ascertain the meaning of expression 'sufficient cause' appearing in section 253(5) of the Act, as reproduced above. The proposition in the matter is well settled. The Hon'ble Delhi High Court in the case of Sudhir Kumar Anand V. Dr.Vijay Kumar Anand and others AIR 2012 Delhi 97 has held as under:

> "Limitation Act (36 of 1963) S.5 – Condonation of delay – "Sufficient cause" – Suit for declaration, partition and possession filed relying upon probate case filed earlier –After dismissal of probate case for non prosecution, plaintiff lost interest in matter – No valid explanation gives as to why no steps were taken for its restoration – Mere statement that relevant file was lost in some office or some confusion about Advocates appearing in matter, can not be treated as sufficient cause –Delay not condoned."

12 (i) The words "sufficient cause" for not making the application within the period of limitation no doubt is to be applied in a reasonable manner but depending upon the facts and circumstances of each case. Party has to give satisfactory explanation. Unless sufficient cause is explained for condonation of delay, prayer may not be granted. In addition to this, the Court must take into account the conduct of the party and its bona fide. The Court has to see whether substantial

justice would be done by condoning the delay. **It cannot be overlooked that on expirty of the period of limitation prescribed for seeking legal remedy rights accrue in favour of other side.**

(ii) Similarly the Hon'ble Supreme Court, in case of Balwinder Singh V. Jagdish Singh & Others, V (2010) SLT 790: (AIR 2010 S.C 3043) held as under –

> "We may state that even if the 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles "should be adhered to and applied appropriately depending on the facts and circumstances of a given case, Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to, take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the end of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronounce then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent, person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant.

(iii) In the case of Ramlal and others v. Rewa Coalfields Ltd., [AIR1962 SC 361] this Court took the view:

> "7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 13 Mad 269. It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient

> cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration."

(iv) The Hon'ble Supreme Court in the judgment Union Of India and others V. Nripen Sarma reported in AIR 2011 S.C 1237 held –

> "We have gone through the contents of the petition. The delay occurred because of the respondents took their own sweet time to reach the conclusion whether the judgment should be appealed or not. It is not that they were prevented by any reason which is beyond their control to take such a decision in time. Even otherwise, on merits of the case also it does not appear to have any tenable ground of appeal. In the circumstances, we do not see any merits in this petition."

13. The case relied upon by the assessee are not applicable to the facts of the present case as discussed herein above.

(i) In Suresh Shet V, ACIT (supra) – In this case delay in filing the appeal was condoned on specific facts. The delay on account of high hopes of the assessee in rectification proceedings resulted in delay in filing the appeal. Failure on the part of the assessee to file appeal was not on account of wilful omission or commission on the part of the assessee. The assessee was constrained by the force of circumstances to keep away from regular business activities which has caused among other things, the delay in filing the appeal. In this case while making addition on account of on-money for Assessment Year 1997-98, the Assessing Officer had granted deduction by way of expenses to the extent of Rs. 18,36,602/-. Thus the net amount of addition for the Assessment Year 1997-98 was Rs. 27,54,903/-. The ld. CIT(A) has confirmed the addition of Rs. 45,91,505/- for the impugned Assessment Year, the Assessing Officer favourably acted upon the rectification

petition filed by the assessee and excluded the amount of Rs. 27,53,903/- from the assessable income for the Assessment Year 1997-98. In the same scenario the assessee has further moved a rectification petition before the assessing authority in respect of impugned Assessment Year 1998-99 to give deduction by way or expenses to the extent of Rs. 18,36,602/- which was granted in the original ex-parte assessment. This rectification application was dismissed by the Assessing Officer. This order of rectification was upheld by the ld. CIT(A). The matter was taken to the Tribunal as well. Meanwhile the assessee filed an appeal against the order of ld. CIT(A) on the quantum proceeding itself. The said quantum appeal was dismissed. The assessee filed appeal before the Tribunal. It is in this context that the Tribunal condoned the delay in filing the appeal as the assessee had high hopes of success in the petition filed u/s 154 of the Act. The fact situation in the present case is clearly different and distinguishable as in the present case even the application for rectification u/s 154 was filed by the letter dated 30.11.2009 against the order u/s 12AA of the Act passed on 30.6.2008/2.7.2008 contrary to the provisions of section 253(3) of the Act wherein 60 days time has been prescribed for filing of appeal from the date of receipt of the order sought to be in appealed against. A bare perusal of the order dated 4.12.2009 passed by the CIT u/s 154 reveals that there was hardly any hope in success in the matter. The ld. CIT granted registration u/s 12AA of the Act, A.Y 2009-10, in terms of relevant provisions of Section 12A(2) of the Act which reads as under:

> "where application has been made on or after first day of June 2007 the provisions of section 11 & 12 shall apply in relation to the income of such person or institution from Assessment Year immediately following Financial Year in which such application is

made. The provisions were inserted by the Finance Act, 2007 w.e.f. 1.6.2007."

The assessee made original application on 18.12.2006 which was further substituted by another application in form No. 10 dated 15.4.2008, as is evident from relevant record in the case. In view of such a fact situation, the appellant construed that provisions of section 12A(2) of the Act are not applicable, to its case, as the application was filed originally for registration u/s 12A on 18.12.2006. However, the ld. CIT granted registration u/s 12AA of the Act in terms if new application filed for registration, on 15.4.2008. Therefore, the issue is highly debatable and the assessee cannot reasonably entertain high hope of succeeding in rectificatory proceedings. Having regard to the fact situation of the present case, it can be clearly said that the decision relied on by the assessee is not application to the fact situation of the case.

(ii) Dr. (Mrs) Sudha S. Trivedi V. ITO (Supra) – We have carefully considered the fact situation of the case relied upon and found that the same is not applicable to the facts of the present case, in view of the different factual matrix of the case. In the case relied upon by the assessee, the contention of appellant for filing the appeal was allowed, in view of the existence of sufficient cause, as the appellant was advised by her counsel to file rectification application. The assessee had bonafide belief that relief would be allowed in the rectification proceedings. The fact situation of the case is different and distinguishable as discussed in detail in the preceding paragraphs. Therefore, the decision cited and relied upon by the appellant is not applicable to the facts of the present case. The appellant has not adduced any evidence that the appellant was wrongly advised by the counsel.

(iii) Subhash Malik V. CIT (supra) – The assessee placed reliance on the decision in the case of Subhash Malik V. CIT (supra) wherein it was stated that the assessee exercised due diligence and was not lethargic in filing the appeal against the order dated 25.9.2002. Record of the case shows that the assessee had taken the matter with this counsel and the proceedings taken for rectification of CIT(A)'s order on his advice took a long time which resulted the delay in filing the appeal. It is under such circumstances the delay was condoned. The fact situation of the present case are entirely different and distinguishable and, hence, the case relied upon is not applicable to the facts of the present case. Sequence of events of the case relied upon proves the factum that the appellant exercised due diligence and acted promptly. Sequence of events are as under:

| | | |
|---|---|---|
| i | ld. CIT(A) order dated 25 Sept 2002 received on | 18.11.2002 |
| ii | Petition u/s 154 filed in office of ld. CIT(A) on | 23..12.2002 |
| iii | Petition fixed for hearing, represented and heard by ld. CIT(A) on | 17.1.2003 |
| iv | After concluding the hearing the ld. CIT(A) did not deliver the judgment, after pursuing the matter was refixed on | 26.9.2003 |
| v | ld. CIT(A) decided the matter u/s 154 which was heard on 17th Jan., 2003 by order dated | 20.10.2003 |
| vi | Appellate order served on | 25.11.2003 |
| vii | 2nd appeal before Tribunal filed on | 28.11.2003 |

In view of the above, the case cited by the appellant is not applicable to the present case.

(iv) The appellant further placed reliance in the case of People Education & Economic Development Society (PEEDS) V. ITO (Supra). The fact situation of the case are entirely different and distinguishable as discussed above. In view of this, the decision relied upon by the assessee is not applicable to the facts of the present case.

14. A bare perusal of the relevant submissions made by the appellant and available records the following details, in the matter, are as under:

| | | |
|---|---|---|
| i | Order u/s 12AA of the Act passed by the ld. CIT | 30.6.2008 /2.7.2008 |
| ii | Appeal against above order was filed by the appellant on | 14.3.2011 |
| iii | Delay in filing the appeal against the order of CIT u/s 12AA of the Act | 921 days |
| iv | Rectification application u/s 154 of the Act filed by the assessee | 30.11.2009 |
| v | Order u/s 154 of the Act rejecting the application for rectification passed | 4.12.2009 |
| vi | Order u/s 154 was dispatched to the assessee by post on | 7.12.2009 |
| vii | Appeal against the order of CIT rejecting rectification application | 14.3.2011 |

v) From the above factual details, it is evident that the ld. CIT, passed the order u/s 12AA of the Act granting registration, to the appellant w.e.f. A.Y 2009-10, vide order dated 30.6.2008/2.7.2008. The appellant filed appeal before the Tribunal against this order, on 14.3.2011. The assessee also filed an appeal, on 14.3.2011, against the order dated 4.12.2009 passed by the ld. CIT rejecting the application for rectification u/s 154 of the Act. Thus, interestingly the appellant filed appeal before the Tribunal, against the order dated 30.6.2008/2.7.2008, passed by the ld. CIT u/s 12AA of the Act and against the order dated 4.12.2009, whereby application u/s 154 of the Act was rejected on the same date i.e. 14.3.2011. The reason for such inordinate delay, for filing the appeal against the impugned order passed by the ld. CIT u/s 12AA is attributed to the non-understanding of the appellant of the difference of year of grant of registration w.e.f. A.Y 2009-10 as against allowable w.e.f. A.Y 2007-08. However, the exact text of the reason assigned by the appellant, for condonation of delay, in the said application as per clause 4 read "**since registration had already been granted the appellant could not immediately**

**understand and appreciate the issue of difference of year of grant of registration w.e.f A.Y 2009-10 as against allowable w.e.f. A.Y 2007-08."** The assessee-appellant is situated in Chandigarh and the Tribunal is also located in Chandigarh. The appellant is a Punjab Government concern and is administered by competent persons and guided by Chartered Accountants, in its tax matters. It is inconceivable that the appellant took 921 days, to understand the simple fact that registration was granted w.e.f. A.Y 2009-10 by the ld. CIT u/s 12AA of the Act. In fact the assessee has not brought out any cause much less the sufficient cause in the impugned application for condonation of delay. The cause for delay, in filing the appeal is not plausible, in view of the fact that the appellant is a Government concern and situated at Chandigarh. The appellant has not taken any step to demonstrate due diligence and even reasonable care in the matter, in pursuing the matter, as contemplated under the Act. Such complete inaction and negligence, on the part of the appellant, cannot be construed as a 'sufficient cause', for condonation of delay. The condonation of delay for non-filing of appeal is to be considered in the light of the facts of the case and existence of sufficient cause or reasonable cause. In the absence of any reason, delay cannot be condoned and where there was actual negligence and inaction which led to in inordinate delay, the delay cannot be condoned as held in DCIT V. Jaya Publications (2009) 309 ITR (AT) 245 (Chennai).

15. In the present case, the assessee has failed to explain the cause of delay, in filing the appeal. Therefore, it is evident that the appellant has adopted callous approach and demonstrated utter indifference in the matter. In such a fact situation, sufficient cause as contemplated u/s 253(5) of the Act does not exist. The assessee has failed to

explain the reason, for the delay in filling the appeal, on the last date of limitation period and consequently thereafter for each day, delay remains unexplained.

16. The fact situation of the present case is also not covered even under the liberal approach in such matters. It is well settled proposition of law that period for filing the appeal cannot be extended simply because the appeal is hard and condonation of delay is sought merely on benevolence and not on the existence of sufficient cause. In the present case, there is complete negligence, on the part of the appellant and also complete absence of due diligence, to pursue the matter in question. It cannot be said that the case of the appellant falls under the category, where a situation is beyond the control of any appellant, as discussed earlier. Delay in filing the appeal, in this case, in the light of facts of the case, remains inexplicable and incomprehensible. The appellant has failed to show 'sufficient cause' for not filing the appeal, on the last day of limitation and explained the delay made thereafter day by day, till the actual date of filing of appeal. In other words, the whole of the delay must be explained, as held in Ram Lal V. Rewa Coal Filed Ltd. AIR 1962 (SC) 36. It is also not the case where wrong advice has been tendered the ld. counsel of the appellant as no evidence has been filed in this regard. It is pertinent to mention here that delay is not attributed by the appellant, in the said application for condonation of delay, to the wrong advice by the counsel, as is evident from the text of the said application reproduced above. In view of above legal and factual discussions, we are of the considered opinion that there is no 'sufficient cause' for condonation of delay. Consequently, the impugned application for condonation of delay of appellant is dismissed.

**ITAs No. 1094 and 1095/CHD/2011**

17 In view of the above findings given in ITA No. 257/CHD/2011, whereby application for condonation of delay, in filing appeal, has been rejected by the Bench, for the detailed reasons given in the matter, these appeals of the appellant, in ITAs No. 1094 and 1095/CHD/2011 for Assessment Years 2007-08 & 2008-09 are also dismissed. These appeals are dismissed, as the Assessing Officer and the ld. CIT has passed their respective orders, treating the appellant as non registered u/s 12AA of the Act, for the Assessment Years, under reference. As the application for condonation of delay, in filing the appeal against the impugned order u/s 12AA has been rejected by the Bench, such appeals are also dismissed.

**ITA No. 258/CHD/2011**

18 The assessee has filed an appeal against the order dated 4.12.2009 passed by the CIT u/s 154 of the Act. It would be pertinent to reproduce the contents of the said order passed by the CIT:-

> "ORDER U/S 154 OF THE INCOME-TAX ACT, 1961
>
> The assessee, Punjab Heritage and Tourism Promotion Board, Sector 38, Chandigarh vide its letter dated 30.11.2009 has stated that order u/s 12AA of Income-tax Act, 1961 passed by this office on 30.6.2008 granting registration to it w.e.f. the A.Y 2009-10 is not correct. Registration was required to be allowed to it from the A.Y 2007-08.
>
> The assessee's submission was considered in the light of the facts of the case and the provisions of law applicable. The assessee society filed an application with this office on 18.12.2006 in the prescribed proforma requesting for grant of registration u/s 12A of the Income-tax Act, 1961 enclosing therewith a copy of bye-laws and "Income and Expenditure" statement. On perusal of "clause 26" of the bye-laws, it was noticed, that the 'dissolution' clause was inconsistent and improper and was not in accordance with the provisions of the Societies Registration Act, 1860. The application of the assessee was thus filed on 22.6.2007 informing the society that its case can be considered only on amendment of this clause and receipt of amended Rules and Regulations.
>
> A fresh application alongwith a copy of amended 'dissolution' clause was filed by the assessee on 15.4.2008. As the fresh application was filed by the assessee during the Financial Year 2008-09, an order u/s 12AA of Income-tax Act, 1961 was passed by the undersigned on 30.6.2008 granting registration to the society from the A.Y 2009-10 as per the provisions of section 12A(2) of Income-tax Act, 1961. In the Act, there is no provision for

granting registration retrospectively. As there was filing of fresh & correct application on 15.4.2008 i.e. F.Y 2008-09, the assessee was entitled for registration from A.Y 2009-10 only and registration u/s 12AA of the Income-tax Act, 1961 was rightly granted to it from the A.Y 2009-10 as per provisions of section 12A(2) of Income-tax Act. There is no mistake apparent from record. The assessee's application for rectification of the above said order is thus rejected.

Sd/-
Commissioner of Income-Tax-II
Chandigarh "

18 (i) A bare perusal of the factual matrix of the case reveals that the assessee filed an application, dated 18.12.2006, for grant of registration u/s 12A of the Act. The CIT, informed the assessee-appellant, vide letter dated 22.6.2007 that the impugned application of the appellant cannot be considered favourably. It can only be considered by an amendment to clause 26 of the deed of declaration of the Board dealing with "dissolution", being contrary to the provisions of section 11 of the Act. The assessee-appellant inter-alia filed fresh application for registration, u/s 12AA of the Act, on 15.4.2008, along with amended 'dissolution' clause. Accordingly the CIT granted registration u/s 12AA of the Act from A.Y 2009-10 and not from A.Y 2007-08, as claimed by the appellant in terms of provisions of section 12A(2) of the Act. The CIT rejected the rectification application vide order dated 4.12.2009, on the ground that having regard to the fact situation of the case, there is no mistake apparent from record. Against such registration of the impugned application, the assessee is in appeal before the Bench.

18 (ii) A bare perusal of the provisions of section 154 of the Act clearly reveals that mistake apparent from record must be obvious and patent mistake and not something which can be established by a long drawn process of reasoning, on points on which there may be conceivably two opinions. A decision on merit on a debatable issue does not constitute mistake apparent from record u/s 154 of the Act. This legal proposition has been declared by the Hon'ble Apex Court, in T.S. Balaram ITO V. Volkart Brothers and others (1971) 82 ITR 50

(SC). Apparent mistake of fact or law can be rectified u/s 154 of the Act. The provisions of section 154 of the Act cannot be interpreted to re-hear a case, decided on merit, for the purpose of reversal of the decision taken in the light of legal and factual matrix of the case. The assessee or the revenue is not entitled to seek review and reversal of the issues decided, in the order, on merit, in the guise of rectification application u/s 154 of the Act. In the present case there does not exist rectifiable mistake in the impugned order of the CIT. Therefore, in the absence of existence of foundational facts, in the present case, the provisions of section 154 of the Act cannot be invoked. Thus, having regard to the legal and factual matrix of the present case and relevant records, we are of the considered opinion that the rectification application of the appellant has been rightly rejected by the CIT, as the issue has been considered and decided by the CIT, in consonance with the fact situation and the provisions of section 12A(2) of the Act r.w. second proviso to Section 12A(1)and its sub-clause (aa). A drastic amendment has been made curbing the power of condonation for registration covering the past years by addition of a proviso and sub-clause (aa) to Section 12A(1)(ii) and substitution clause (b) in the proviso w.e.f. 1.6.2007 by the Finance Act, 2007. Any application filed on or after 1.6.2007 is entitled to registration only for the F.Y during which registration is filed. Further, we do not find any merit in the appeal filed by the assessee, as the CIT has granted registration u/s 12AA of the Act w.e.f. A.Y 2009-10, having regard to the fresh application dated 14.4.2008, filed by the appellant. The issue involved in the rectification application filed by the assessee, before the ld. CIT(A) is highly debatable much less the mistake apparent from record. Further, we have already dismissed the condonation of delay application of the assessee in appeal No. 257/CHD/2011, for the reasons stated earlier in this order. In view of this, the appeal of the assessee is dismissed.

19 In the result, all the four appeals of the assessee are dismissed.

Order Pronounced on 22.08.2012

| | |
|---|---|
| Sd/- | Sd/- |
| **(H. L. KARWA)** | **(MEHAR SINGH)** |
| **VICE PRESIDENT** | **ACCOUNANT MEMBER** |

Chandigarh, the 22.08.2012

SURESH

*Copy to:*
The Appellant/The Respondent/The CIT/The CIT(A)/The DR

**ITA No. 258/CHD/2011**

18 The assessee has filed an appeal against the order dated 4.12.2009 passed by the CIT u/s 154 of the Act. It would be pertinent to reproduce the contents of the said order passed by the CIT:-

> "ORDER U/S 154 OF THE INCOME-TAX ACT, 1961
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> The assessee, Punjab Heritage and Tourism Promotion Board, Sector 38, Chandigarh vide its letter dated 30.11.2009 has stated that order u/s 12AA of Income-tax Act, 1961 passed by this office on 30.6.2008 granting registration to it w.e.f. the A.Y 2009-10 is not correct. Registration was required to be allowed to it from the A.Y 2007-08.
>
> The assessee's submission was considered in the light of the facts of the case and the provisions of law applicable. The assessee society filed an application with this office on 18.12.2006 in the prescribed proforma requesting for grant of registration u/s 12A of the Income-tax Act, 1961 enclosing therewith a copy of bye-laws and "Income and Expenditure" statement. On perusal of "clause 26" of the bye-laws, it was noticed, that the 'dissolution' clause was inconsistent and improper and was not in accordance with the provisions of the Societies Registration Act, 1860. The application of the assessee was thus filed on 22.6.2007 informing the society that its case can be considered only on amendment of this clause and receipt of amended Rules and Regulations.
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> A fresh application alongwith a copy of amended 'dissolution' clause was filed by the assessee on 15.4.2008. As the fresh application was filed by the assessee during the Financial Year 2008-09, an order u/s 12AA of Income-tax Act, 1961 was passed by the undersigned on 30.6.2008 granting registration to the society from the A.Y 2009-10 as per the provisions of section 12A(2) of Income-tax Act, 1961. In the Act, there is no provision for granting registration retrospectively. As there was filing of fresh & correct application on 15.4.2008 i.e. F.Y 2008-09, the assessee was entitled for registration from A.Y 2009-10 only and registration u/s 12AA of the Income-tax Act, 1961 was rightly granted to it from the A.Y 2009-10 as per provisions of section 12A(2) of Income-tax Act. There is no mistake apparent from record. The assessee's application for rectification of the above said order is thus rejected.
>
> Sd/-
> Commissioner of Income-Tax-II

Chandigarh "

18 (i) A bare perusal of the factual matrix of the case reveals that the assessee filed an application, dated 18.12.2006, for grant of registration u/s 12A of the Act. The CIT, informed the assessee-appellant, vide letter dated 22.6.2007 that the impugned application of the appellant cannot be considered favourably. It can only be considered by an amendment to clause 26 of the deed of declaration of the Board dealing with "dissolution", being contrary to the provisions of section 11 of the Act. The assessee-appellant inter-alia filed fresh application for registration, u/s 12AA of the Act, on 15.4.2008, along with amended 'dissolution' clause. Accordingly the CIT granted registration u/s 12AA of the Act from A.Y 2009-10 and not from A.Y 2007-08, as claimed by the appellant in terms of provisions of section 12A(2) of the Act. The CIT rejected the rectification application vide order dated 4.12.2009, on the ground that having regard to the fact situation of the case, there is no mistake apparent from record. Against such registration of the impugned application, the assessee is in appeal before the Bench.

18 (ii) A bare perusal of the provisions of section 154 of the Act clearly reveals that mistake apparent from record must be obvious and patent mistake and not something which can be established by a long drawn process of reasoning, on points on which there may be conceivably two opinions. A decision on merit on a debatable issue does not mistake apparent from record u/s 154 of the Act. This legal proposition has been declared by the Hon'ble Apex Court, in T.S. Balaram ITO V. Volkart Brothers and others (1971) 82 ITR 50 (SC). Apparent mistake of fact or law can be rectified u/s 154 of the Act. The provisions of section 154 of the Act cannot be interpreted to re-hear a

case, decided on merit, for the purpose of reversal of the decision taken in the light of legal and factual matrix of the case. The assessee or the revenue is not entitled to seek review and reversal of the issues decided in any order on merit in the guise of rectification application u/s 154 of the Act. In the present case there does not exist rectification mistake in the impugned order of the CIT. Therefore, in the absence of existence of foundational facts, in the present case, the provisions of section 154 of the Act cannot be invoked. Therefore, having regard to the legal and factual matrix of the present case and relevant records, the rectification application of the assessee-appellant has been rightly rejected by the CIT, as the issue has been considered and decided by the CIT, in consonance with the fact situation and the provisions of section 12A(2) of the Act. Further we do not find any merit in the appeal filed by the assessee, as the CIT has granted registration u/s 12AA of the Act, having regard to the fresh application dated 14.4.2008, filed by the appellant, w.e.f A.Y 2009-10. The issue involved in the rectification application filed by the assessee before the ld. CIT(A) is highly debatable much less the mistake apparent from record. Further, we have already dismissed the condonation of delay application of the assessee in appeal No. 257/CHD/2011, for the reasons given above. In view of this the appeal of the assessee is dismissed.