IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 289/Del/2017
Assessment Year: 2009-10

M/s Jaycees Public School, C/o M/s RRA TaxIndia, D-28, South Extension, Part-I, New Delhi – 110 049 (PAN: AAAAJ2776K)	vs.	Income Tax Officer, Rudrapur
(ASSESSEE)		**(RESPONDENT)**

Assessee by: Sh. Ashwani Taneja, & Sh. Shantanu Jain, Advocates
Revenue by: Ms. Ashna Paul, Sr. DR

ORDER

This appeal is filed by assessee against the Order dated 12.5.2015 passed by the Ld. CIT(A), Haldwani relating to Assessment Year 2009-10.

2. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing, Ld. Counsel of the Assessee has draw my attention towards the Application for condonation of delay of 549 days filed by the assessee and reiterated the contentions raised in the Application for condonation of delay and he requested that the delay of

549 days is not intentional. In view of above, he requested that delay of 549 days may be condoned and the Assessee's Appeal may be admitted and may be heard on merits.

4. On the other hand, Ld. DR strongly opposed the request of the Ld. Counsel of the Assessee for condoning the huge delay of 549 days.

5. I have heard both the parties and perused the records. We find that this Appeal was filed on 18.01.2017 which was barred by 549 days. The Registry has issued the Defect Notice and raised the defect vide Serial No. 11 stating therein that "*Appeal is prima facie time barred by 549 days.*" In response to above said Defect Notice, Assessee's AR has filed a letter dated 14.11.2017 regarding removal of defect for condonation of delay of 549 days which was placed on record. For the sake of clarity, I am reproducing the contents of the Application for condonation of delay as under:-

> *"Sub: -Prayer for condonation of delay in filing of appeal in the case of M/s Jaycees Public School for AY 2009-10 in ITA No. 289/Del/2017 u/s. 147/143(30 of the Income Tax Act, 1961.*
>
> *It is most respectfully submitted that the assessee filed its return declaring Nil income on 29.09.2009 for A Y 2009-10 after claiming exemption uls 10(23C)(vi) of the Income Tax Act, 1961 and assessment in the above said case got completed u/s 147/143(3) at the total income of Rs. 35,48,711/- vide order dated 11.03.2014. The assessee filed an appeal before Ld.*

CIT(A), Haldwani and vide order dated 12.05.2015, Ld. CIT(A) granted part relief to the assessee and sustained the disallowance on account of deduction uls 11/12 amounting to Rs. 18,01,756/- and on account of depreciation on building amounting to Rs. 13,17,751/-

The assessee filed an appeal before Hon'ble Tribunal on 18.01.2017 for A Y 2009- 10 against the order of Ld. CIT(A), Haldwani, fixed before Hon'ble "SMC" Bench for hearing on 14.11.2017 i.e. today, which is delayed by 549 days and the reasons for which are as under: -

1. That on the receipt of the Ld. CIT(A)'s order dated 12.05.2015 for A Y 2009-10 Sh. Surjit Singh, the Secretary of M/s Jaycees Public School, was under the bonafide belief that since the assessee has filed an appeal on 27.08.2012 before A Hon'ble Tribunal, New Delhi against the withdrawal of registration uls 12AA which was pending for a long time and was expected to be decided soon by the Hon'ble Tribunal and therefore there is no requirement to file an appeal against the order of Ld. CIT(A) for AY 2009-10 as the outcome of 12AA appeal would have direct positive effect on this appeal.

2. That on the receipt of the Ld. CIT(A)'s order dated 06.09.2016 for AY 2011-12 on 21.11.2016, Sh. Surjit Singh met Dr. Rakesh Gupta, Advocate, as the appeal

against the withdrawal of 12AA was still pending before the Hon'ble Tribunal. During the meeting he *was advised that it is in the interest of assessee that the appeal should be filed against the order of Ld. CIT(A) for A Y 2009-10 despite there being direct effect of the outcome of the 12AA appeal and the belief of Sh. Surjit Singh is not in the best interest of the assessee society.*

3. That in view of these facts, assessee took immediate action to file an appeal against the order pertaining to AY 2009-10 and 2011-12 and therefore the delay of 549 days occurred in filing of appeal.

Thus, there is a good and sufficient reason for the delay and therefore, it is humbly prayed that the delay may please be condoned.

Reliance is placed on the decision in the case of M/s Sheena Exports in ITA 6001/Del/l2013, Date of order 15-10-2014. (ITAT, Delhi)

Reliance is further placed on the judgment of Collector, Land Acquisition vs Mst. Katiji & Others 167 ITR 471 (SC).

We shall be obliged."

6. After going through the contentions raised by the assessee in the Application for Condonation of delay of 549 days, I am of the considered view that assessee has not given any plausible reasons for condoning the huge delay of 549 days in the said Application. Assessee has also not filed any evidence as per the averments made by the assessee in the Application for condonation of delay. Keeping in view of the facts and circumstances of the present case, I am unable to condone the huge delay of 549 days in filing the present Appeal.

Hence, the Appeal filed by the Assessee is dismissed being time barred.

7. In the result, the appeal filed by the Assessee stands dismissed.

Order pronounced in the Open Court on 15/11/2017.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Date 15/11/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches