

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-C”, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.2643/Bang/2019 : Asst.Year 2014-2015

M/s.Ryatara Seva Sahakari Sangha Niyamita 001,Kengeri, Bangalore South, Bangalore – 560 060. PAN : AABAR3122L.	v.	The Income Tax Officer Ward 3(2)(3) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Ravish Rao, CA
Respondent by : Sri.Ganesh R.Ghale,
Standing Counsel for Department

Date of Hearing : 19.11.2020	Date of Pronouncement : 20.11.2020
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ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 05.12.2019. The relevant assessment year is 2014-2015.

2. The brief facts of the case are as follow:

The assessee is a primary cooperative society registered under the Karnataka Co-operative Society Act. The main object of the assessee is providing credit facilities to its members and other allied agricultural activities, such as trading infertilisers and pesticides, seeds, manure, etc. For the assessment year 2014-2015, the return of income was filed declaring 'NIL' income after claiming deduction u/s 80P of the I.T.Act amounting to Rs.33,98,863. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 23.09.2016 by

determining the taxable income at Rs.33,98,863 after disallowing the claim of deduction made u/s 80P of the I.T.Act.

3. The A.O. had kept in abeyance the recovery of tax raised in the assessment order in view of the Department's appeal pending on identical issue before the Hon'ble Apex Court. According to the assessee, since the demand raised was kept in abeyance, an appeal was not filed within the time limit prescribed, because the assessee was under bonafide belief that assessment order would be amended raising the demand and thereafter only an appeal needed to be filed. However, later, when the Assessing Officer threatened with recovery proceedings, an appeal was filed before the first appellate authority with a delay of 738 days. The CIT(A) did not condone the delay of filing the appeal before him. The appeal of the assessee was dismissed *in limine* without adjudicating the issues raised on merits.

4. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal raising the following grounds:-

"1. The impugned order under Appeal is for the A.Y. 2014-15 and the same is opposed to Law and facts of the case for the contentions raised hereunder.

2. The Assessing officer has erred in determining the total income at Rs.33,98,863/-.

3. The Assessing Authority ought to have accepted the fact that the Appellant being a Co-operative society engaged in business of providing loan facilities to its Agricultural members and for allied agricultural activities such as trading in fertilizers and pesticides, seeds, manure, etc., was entitled to the deduction of income derived by carrying on providing credit facilities to its Agricultural members.

4. *The learned AO has erred a law by initiating recovery proceedings on the Appellant although she has said in her order (Refer para 10) "However, for the reason that Honorable High Court decision allowing the section 80P in the case of Co-operative Societies is in operation till the final verdict on the issue of deduction u/s. 80P by the Apex Court, the demand so raised on disallowing the claim made u/s. 80P will not be enforced and shall be kept in abeyance".*
 5. *The learned AO has erred in law by not citing any Supreme Court judgment, which she expected and modified her own order, before proceeding to recovery actions.*
 6. *The First Appellate Authority failed to appreciate the fact that the appeal was delayed because the matter was kept in abeyance by the AO herself and there was no order on the AO, fixing the final liability on the Appellant, based on the Supreme judgment which the AO was expecting.*
 7. *The learned Assessing Officer has erred in Law by levying interest to the tune of Rs. 3,66,520/- under section 234A and 234B of the IT Act*
 8. *For the grounds urged herein above and such other grounds and arguments that may be put forth during the Appellate proceedings this Honorable Court may be pleased to set aside the impugned order as bad in Law."*
5. The learned AR reiterated the submissions made before the Income Tax Authorities.
6. The learned Standing Counsel appearing for the Department submitted that the delay in filing 738 days before the CIT(A) was not properly explained and the first appellate authority has correctly dismissed the appeal *in limine* without condoning the delay. Therefore, it was prayed that the CIT(A)'s order is correct and no interference is called for.
7. I have heard the rival submissions and perused the material on record. The Assessing Officer while denying the

claim of deduction u/s 80P of the I.T.Act, had noted that the Hon'ble jurisdictional High Court of Karnataka had on identical case had decided the issue in favour of the assessee. Further, the A.O. noted that the judgment of the Hon'ble jurisdictional High Court was not accepted and an appeal was pending before the Hon'ble Apex Court. The A.O. also stated that the demand raised on account of disallowance of claim u/s 80P of the I.T.Act shall not be enforced and be kept in abeyance. The relevant finding of the A.O. in this regard reads as follow:-

“8. After taking into account various aspects concerning the legal implications and the verdicts of the Courts, it is of the considered view that the case needs to be handled at par with jurisdictional decision of the Hon'ble High Court of Karnataka and other decisions referred by the assessee. However, it is not out of place to bring forth here that the decision of jurisdictional Hon'ble High Court of Karnataka allowing the deduction claimed u/s 80P has not been considered by the revenue in toto. In other words, revenue has preferred a plea before the Apex Court substantiating the stand that claim of deduction u/s 80P is not to be considered for the various reasons and legality of the aspect. Since the matter is pending before the Apex Court, it may be mentioned here that logical conclusion at this juncture in the instant case cannot be considered at par with judicial decision on the issue under question.

9. Notwithstanding the above owing to pendency of matter before the Hon'ble Supreme Court of India assailed by the revenue on the issue, the claim made by the assessee for deduction u/s 80P is not considered for the A.Y.2014-15.

10. However, for the reason that Hon'ble High Court decision allowing the section 80P in the case of Co- operative Societies is in operation till the final verdict on the issue of deduction u/s 80P by the Apex Court, the demand so raised on disallowing the claim made u/s 80P will not be enforced and shall be kept in abeyance.”

7.1 The assessee did not file an appeal before the first appellate authority within the time limit prescribed, on the

bonafide belief that the demand that has arisen on account of disallowance of claim u/s 80P of the I.T.Act would not be enforced and shall be kept in abeyance until the assessment order was rectified by fixing the final liability based on the Hon'ble Supreme Court judgment. However, when recovery proceedings were initially initiated on 01.02.2017, the assessee approached the Assessing Officer and orally it was informed to the assessee that the demand would not be enforced and the notice was issued in usual course along with other cases. It is submitted by the assessee, later in December 2018, when there was threat of attachment of bank accounts and direction to pay atleast 20% of the total demand, the assessee was forced to file appeal before the CIT(A) on 30.01.2019. I am of the view that there was bonafide reasons on the part of the assessee for not filing the appeal within the prescribed time limit before the CIT(A). The delay in filing the appeal before the CIT(A) was solely on account of the clear statement by the Assessing Officer that the demand raised in the assessment order would be kept in abeyance till the final decision is taken by the Hon'ble Apex Court. The assessee was under bonafide belief that the A.O. would pass an order u/s 154 of the I.T.Act confirming the demand citing the Hon'ble Apex Court judgment before starting recovery action. Therefore, I am of the view that there is 'sufficient cause' for filing appeal belatedly before the CIT(A) and the delay cannot be attributed to any laches on the part of the assessee.

7.2 The Hon'ble Supreme Court in the case of Collector, Land Acquisition v. MST. Katiji and Ors. reported in 167 ITR 471,

had laid down six principles for consideration of the Courts while dealing with petitions for condonation of delay. The principles laid down by the Hon'ble Apex Court are as follow:-

- (i) Ordinarily, a litigant does not stand to benefit by lodging an appeal late;
- (ii) Refusing to condone delay can result in a meritorious matter being thrown 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.
- (iii) '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.
- (iv) When substantial justice and technical consideration 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.
- (v) 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.
- (vi) 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.

7.3 The Hon'ble Apex Court in the case of N.Balakrishnan v. M.Krishmanurthy (1998) 7SCC 123, had held that the primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. It was held by the Hon'ble Court that the rules of limitation are not meant to destroy the rights of parties, but to see that parties do not resort to dilatory tactics, and seek their remedy promptly. It was held by the Hon'ble Apex Court that there is no presumption that delay in approaching the Court is always deliberate, and the words "sufficient cause" u/s 5 of the Limitation Act, 1963, should receive a liberal construction so as to advance substantial justice. It was further held by the Hon'ble Apex Court that when substantial justice and technical consideration 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.

7.4 The Hon'ble Telangana High Court in the case of Thunuguntla Jagan Mohan Rao v. DCIT [(2020) 427 ITR 204 (Telangana)] had held that the assessee, an individual, not well versed in law, cannot be faulted with not filing an appeal on time against the revisional order of the CIT(A) because he was under bonafide believe that an appeal needs to be filed only against consequential / giving effect to the order of the A.O. Therefore, it was concluded by the Hon'ble High Court that

delay in filing appeal against the revisional order u/s 263 of the I.T.Act ought to have been condoned by the ITAT.

7.5 The Co-ordinate Bench of the Delhi Tribunal in the case of Vishu Impex Pvt. Ltd. v. Department of Income Tax in ITA No.2765 and 3703/Del/2011 dated 31.12.2015, had held that wrong advice by a Chartered Accountant is a reasonable and bonafide reason for the delay in filing the appeal and delay of 1297 and 1244 days was condoned. The relevant finding of the Hon'ble Delhi Bench of the Tribunal in the case, cited supra, reads as follow:-

"5. On a careful consideration of the above submissions of the rival parties, we note that in the case of Perfect Scale Company [supra] the ITAT, Mumbai Bench has held as under:

"After considering the submission and perusing the material on record, found that the assessee was bonafide in not filing the appeals in time Copy of the affidavit of the Director of the company is placed on record. It has been explained that the company received the order ITA Nos.3228 to 3234/2013 of CIT(A) dated 1-10-2011 and the appeal should have been filed before the Tribunal within 60 days. It is further explained that the appeal matters of the assessee were looking after by Mr. P.K. Tandon Chartered Accountant and on his advice the appeals were not filed However; when the assessee transferred the case to Mr. S.S.Gajja, Chartered Accountant who advised that appeals are to be filed before the Tribunal as the order of the CIT(A) is not as per the provisions law. I noted that due to wrong. advice of the Chartered Accountant, appeals could not be filed in time, therefore, I am of the view that there is a reasonable cause in not filing the appeals in the time. The decision in the case of The Phoenix Mills Ltd (supra), on which reliance has been placed. is in favour of the assessee. In this case the ratio of the decision of the Hon'ble Apex Court in the case of Concord of India Insurance Co. Ltd. Vs. Smt Nirmala Devi and others, reported in (1979) 118 ITR 507(SC), has been considered, wherein it has been held that the mistake of the counsel may in certain circumstances be taken into account in condoning the delay although there is no general

proposition that mistake of counsel by itself is always a sufficient ground. Accordingly, the Hon'ble Apex Court has held that there is a mistake of the counsel end, therefore/ the delay in filing the appeal has been condoned. I further noted that similar finding has been expressed by the Hon'ble Supreme Court in the case of N. Balakrishnan Vs. Krishnamurthy, reported in AIR 1998 SC 3222. The Tribunal has also considered the vision in the case of Mela Ram and sons Vs. ITA Nos.3228 to 3234/2013 CIT, reported in 29 ITR 607 (SC) and accordingly, the delay in filing appeal was condoned. The facts in the present case are also similar as in this case also due to mistake of Chartered Accountant the assessee could not file the appeals in time. In view of the above facts and circumstances of the case and in view of the various decisions mentioned above/ which was considered by the. Tribunal in the case of The Phoenix Mills Ltd (supra), I condone the delay in filing the present appeals before the Tribunal for all the years. Also heard on merit of the case ".

6. In view of the above/ it was held by the Coordinate Bench of the Tribunal that where it was due to wrong advice or the Chartered Accountant that the appeal Was not filed on time, then it was to be held that there was reasonable cause in not filing appeals in time and the same was to be condoned. In the present. case also, the assessee company has clearly stated in the application for condonation of delay and affidavit of the Director that earlier the case was handled by Shri Satish Agarwal, Chartered Accountant and he did not advice to raise legal objection and when Shri R.K. Gupta/ CA appointed 'on 2Z.1.2015 then advised for filing cross objection. Since the delay was caused in this situation, we are inclined to hold that there was a bonafide reason and cause due to which cross objections could not be filed on time and delay was caused which cannot be attributed as willful omission or negligence on the part of the assessee. Therefore, respectfully following the dicta of ITAT, Mumbai in the abovementioned case, the application for condonation of delay in filing the appeals are hereby allowed."

7.6 In view of the aforesaid reasoning and the judicial pronouncements cited supra, I condone the delay of filing the appeal before the CIT(A) and direct the CIT(A) to consider the issue on merits. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 20th day of November, 2020.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th November, 2020. Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-3, Bangalore.
4. The Pr.CIT-3, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore