**IN THE INCOME TAX APPELLATE TRIBUNAL**
**HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT AND**
**SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**ITA No. 1086/Hyd/2016**
**Assessment Year: 2011-12**

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| Andhra Pragathi Grameena Bank, Kadapa. | vs. | Jt. Commissioner of Income Tax, Range - 2 Tirupati. |
| PAN – AAMFA 8921A (Appellant) | | (Respondent) |

Assessee by : Shri G. Seshachalam
Revenue by : Shri Pathlevath Peerya

Date of hearing : 16-05-2018
Date of pronouncement : 29-06-2018

## ORDER

**PER D. MANMOHAN, VICE PRESIDENT:**

This is an appeal filed at the instance of the assessee, a cooperative society. Penalty levied by the A.O u/s 271(1)(c) of the IT Act @ 150% of the amount sought to be evaded by reason of furnishing of inaccurate particulars, was confirmed by the CIT(A) and thus the assessee preferred an appeal along with an affidavit for condonation of delay of 178 days. In the affidavit filed along with Form-36, the Chairman and Chief Managing Director of the assessee bank deposed as under:

> *"Our appeal against the levy of penalty u/s 271(1)(c) of the IT Act, for the A.Y 2011-12 was filed before the CIT(A), Kurnool on 20.08.2014 and was duly disposed off and a certified copy of the appellate order was also served on us. During the process the said order being examined by various*

*concerned authorities of the bank, it was misplaced somewhere and was untraceable for about six months. We have therefore requested the CIT(A), Kurnool to issue us a copy of the certified copy of the said order for the A.Y 2011-12 vide our letter dated 07.06.2016. we have received a copy of the certified copy of the said order from the CIT(A), Kurnool on 15.07.2016 and we are filing the appeal accordingly.*

*In the meanwhile we were given to understand that the appeal papers are to be signed by out Chief Managing Director of the Bank only duly authorized in this behalf and by nobody else. Earlier we were given to understand that the Regional Manager of the bank, Kurnool who was duly authorized to sign the appeal papers and accordingly we were ready to file the appeal papers with his signatures on behalf of the bank. As we have come to know that we will not be right in filing the appeal papers with the signature of the Regional Manager as stated above even though he was duly authorized. We have therefore decided to file the appeal papers after taking the signature of the Chairman cum Chief Managing Director of the Bank as per our fresh information and hence we are coming forth before you with a request to kindly condone the delay in filing of the appeal int eh interest of justice and fairness.*

*We submit that the delay in filing the appeal is therefore neither willful nor due to any negligence on the part of the assessee / appellant bank and is purely based on happening of events beyond the control of the bank, we earnestly pray the learned members of the ITAT to be generous enough and kindly appreciated our difficulty in this regard an grant us the condonation of delay of 178 days (after deducting 60 days of time allowed for filing the appeal) in filing the appeal as otherwise the appellant bank will be put to irreparable loss".*

This affidavit appears to have been signed on 12.08.2016.

2. Thereafter another affidavit was filed furnishing more reasons for the delay in filing the appeal, wherein it was stated that the General Manager of assessee bank Shri Gopi Krishna was transferred on 06.05.2016 and Chief Manager retired on 31.05.2016 and the central audit of the Head office was also commenced during the same period of

delay and thus the office staff and other officers of the bank could not concentrate on various matters which require concentration and attention in preparing and filing the appeal papers before the ITAT. It was also stated that the Head Office building was newly constructed and took about a month to complete shifting of furniture, office records etc., from the old premises. It was deposed that in respect of the A.Ys 2009-10 and 2012-13 the revenue preferred an appeal against the order of the CIT(A) which was not known to the assessee at the time of filing the original affidavit. It was finally stated that the delay is not caused because of any negligence or deliberate inaction on the part of the bank.

3. It may be noticed here that the first appellate authority, whose order is appealed against, disposed of the appeal, confirming the levy of penalty, on 26.11.2015 and the same was admitted to have been served on the assessee on 18.12.2015. In other words before the end of February the assessee ought to have filed an appeal before the appellate Tribunal since the period of limitation is two months, whereas the assessee contends that the papers were misplaced for about six months. When this fact was noticed by their concerned section was not mentioned anywhere in the affidavit. The fact remains that the assessee requested the CIT(A) Kurnool to issue a certified copy of the order vide letter dated 07.06.2016 and a copy was in turn received on 16.07.2016. Since there was substantial delay, at least from the day of receipt of

certified copy the assessee is duty bound to take prompt action to file an appeal.

4. The case of the assessee bank was that it was under the impression that the Regional Manager of bank has to sign the appeal papers but later on it has come to their knowledge that only Chief Managing Director has to append the signature and hence there was further delay. Here also assessee's counsel could not furnish details as to when it has come to their knowledge that only Chief Managing Director has to sign the appeal papers and why there was further delay.

5. The Ld. Counsel submitted that when there is strong merit in the case, merely on account of technical reason of delay, appeal should not be dismissed as un-admitted and the explanation of the assessee has to be considered in a reasonable manner. The Ld. Counsel relied upon the following judgments in support of his contention that while considering the petition for condonation of delay, a justice oriented approach has to be followed i.e when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred since there is no presumption that delay is occurred deliberately, in as much as litigant does not stand to benefit by resorting to delay.

*a) 167 ITR 471 Collector land acquisition Vs Mst. Katiji.*

*b) State of Nagaland Vs Lipoc and others Criminal Appeal No. 484 of 2005.*

*C) M/s VJIL Consulting Ltd, Vs. ITO (in ITA No. 1309/Hyd/2015).*

6. It was also contended that refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice would be defeated.

7. Ld. Counsel raised an additional ground, challenging the initiation of proceedings u/s 271(1)(c) of the IT Act, on the ground that the A.O has not specified the reasons for initiation of proceedings by not striking of the inappropriate portion in the standard format and thus the assessee is denied an opportunity to respond to the specific charge and as such the penalty proceedings deserve to be quashed. It was also contended that even on merits, under similar set of facts the ITAT, Hyderabad Bench in the assessee's own case for the assessment years 2009-10 & 2012-13 (ITA No. 1050 & 1051/Hyd/2016 dated 10.02.2017) cancelled the levy of penalty by holding that the particulars furnished by the assessee was based on the information taken from the villagers instead of taking the same from the census of 2001 which amounts to mere technical error and it cannot be said that the assessee has committed the error intentionally. Ld. Counsel submits that the above case law point to the fact that the assessee has a strong case on merit in which event merely on technicalities appeal should not dismissed. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt Ltd, 322 ITR 158, to submit that the assessee having furnished details based on the village heads certificates, it cannot be said that it was guilty of furnishing inaccurate particulars.

8. It may be noted here that the Hon'ble Supreme Court observed that the word 'inaccurate particulars' was not defined anywhere in the Act and therefore the court has taken into consideration dictionary meaning of the term and applying same to the facts of the case, it was observed that there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false, in which event, it will not amount to furnishing inaccurate particulars regarding the income of the assessee.

9. Ld. Counsel strongly submitted that there was sufficient cause for the delay in filing the appeal and hence, in the interest of justice, the appeal deserves to be admitted so as to consider the same on merits.

10. On the other hand Ld. DR relied upon by the orders passed by the A.O as well as the CIT(A) to contend that the assessee cannot be said to have strong prima-facie case on merits, since the assessee is habitually declaring incorrect particulars of income even in the past and further pointed out that the same village officers have admitted, upon cross verification by the bank, that the population is more than 10,000 in each of the villages under consideration. In fact in the immediately preceding year the assessee having admitted it as a mistake, in the year under consideration the assessee ought to have filed a revised return before detection by the revenue but no such step was taken by the assessee and thus the tax authorities were justified in holding that the assessee has concealed income by furnishing inaccurate particulars of income.

11. He further submitted that when there is substantial delay of 178 days, it is the duty of the assessee (co-operative society) to take immediate steps to file a proper appeal as soon as it was brought to the notice of the management. In the instant case, the assessee has not mentioned the date when the factum of misplacement had come to the notice of the concerned person. Even assuming that it was realised after six months and immediately steps were taken to obtain a certified copy, at least from the said date the assessee ought to have taken steps to file an appeal but the fact remains that there was further delay of about one month reckoned from the date of obtaining the certified copy of the order. In the instant case, the certified copy was received on 15.07.2016, whereas, the appeal was filed on 12.08.2016. No doubt while considering the explanation given by the assessee courts have to consider as to whether there was "sufficient cause" in the light of the parameters laid down by the Hon'ble Supreme Court (supra) but the fact remains that the assessee has not tendered any explanation which appeals to commonsense, particularly reckoned from the date of obtaining certified copy till the date of filing of appeal. He thus objected to condonation of delay and further submitted that even on merits the tax authorities were justified in levying penalty u/s 271(1)(c) of the IT Act; facts which are under consideration by the ITAT in the assesses own case for the earlier years are distinguishable in view of the changed circumstances i.e the assessee was already aware of the population of each village by the time the assessment proceedings were taken up for year under

consideration and therefore the assessee ought to have atleast filed the revised return before it was detected by the revenue and thus the A.O was justified in levying penalty.

12. We have carefully considered the rival submissions and perused the record. A careful perusal of the first affidavit indicates that the explanation is too vague. It was loosely stated that the papers were misplaced and this fact was noticed only after about six months. It was further stated that certified copy was obtained on 15.07.2016. In the addendum to the affidavit, it was stated that retirement of the one of the officers and transfer of another officer, apart from shifting of office from old premises to new premises, are the factors for the delay in filing of the appeal. Here also the dates of retirement and transfer as well as the date of shifting of the office and also the dates of audit party's visit falls prior to 15.07.2016. When certified copy was obtained on 15.07.2016, the assessee was already aware that there was substantial delay and hence it should have taken a prompt decision to file an appeal.

13. The assessee submits that he was originally of the opinion that an appeal could be filed by the Regional Manager and soon after realising that it should be filed only by the Chief Managing Director, it had taken steps which resulted in delay in filing the appeal.

14. At this stage, we would like to refer to the provisions of Sec. 140 of the IT Act which refers to the 'person competent to file an appeal'. Sec. 140(a) of the IT Act refers to the individuals, sub-clause (b) refers to the HUFs and sub-clause (c) refers to companies. The assessee does not fall under any of the above categories since it is a co-operative society. In fact in the case of any other associations such as co-operatives societies etc., it can be signed by any member of the association or the principal officer thereof or by the person competent to act on his behalf. In fact the assessee filed an appeal before the CIT(A) under the signature of Regional Manager. If that person is not competent to file an appeal, the appeal itself deserves to be treated as invalid. But the facts remains that the Ld. CIT(A) disposed of the appeal. Nowhere it is stated that the assessee was incorporated as a company. Therefore, we do not find any reason as to how the assessee was of the opinion that only the Chief Managing Director has to sign the appeal papers. Even presuming for a moment that the papers were to be signed by him the same could have been obtained without further delay since already more than eight months of time elapsed, from the date of the service of the original order copy. The assessee took more than 25 days even to file an appeal, reckoned from date of receipt of the duplicate copy of the CIT(A) order and there is no proper explanation with regard to the reasons for such delay. No doubt, the assessee relied upon the decision of the Hon'ble Supreme Court in the case of Mst. Katiji (supra) but in the said case the delay was only of four days and the principles laid down therein focused

on many aspects such as the merits of the case etc. In the instant case, the assessee nowhere raised the issue of not getting a proper opportunity of being heard by the A.O or CIT(A) with respect to charges levelled against the bank. The assessment order refers to the fact that the assessee concealed the income in the form of claiming the deduction u/s 36(1)(viii) of the IT Act by claiming that the population of several villages was less than 10,000, whereas the A.O proved that this amounts to furnishing of incorrect particulars since the population, even as per Tahsildar's certificate-and as per census data-is more than 10,000. In para 7 of the assessment order it was clearly stated that in several villages the population is above 10,000 as per 2001 census data and these details were available in the website; Census of India, Central Government Organization. Only when it was put to the assessee-bank, vide reply dated 24.12.2013, it was stated that in four villages the population is less than 10,000 and thereafter filed revised computation of total income after disallowing rural advances of five villages by stating that the claim is not intentional. Assessee contends that voluntary disallowance of few of the rural advances was on the ground of non-acceptance of population by revenue. At page 8 of the assessment order, A.O clearly stated that this **amounts to suppression of income or submission of wrong information** at end of the assessee bank. In other words, the case of the A.O is that it falls under both the categories and accordingly a notice was also issued u/s 271(1)(c) of the IT Act. Therefore, it is the duty of the

assessee to furnish proper explanation to meet both the points.

15. In the penalty order, the A.O observed that the assessment order for the A.Y 2010-11 was passed on 01.03.2013 by which date the assessee was aware of the wrong claim of deduction u/s 36(1)(viii) of the IT Act and thus there was sufficient time for the assessee bank to revise the return of income for the year under consideration, whereas, the assessee filed the revised return only upon detection by the A.O. He further observed that though the assessee claims that it relied upon the information and data collected from the respective village heads but the fact remains that the same village heads have given information to the A.O that the population of villages exceeds 10,000. It was therefore observed that the plea was based upon a wrong information provided by the village head is not tenable. The Ld. Counsel relied upon the order of the ITAT assessee's case for the A.Ys 2009-10 and 2012-13 (supra), whereas in the said case, the Tribunal has no occasion to discuss about the falsity of the claim and the fact that even the village heads have admitted that the population of each village is more than 10,000. More importantly, the fact that the assessee did not rectify the mistake even after accepting the mistake in the earlier years was not the subject matter of consideration in the said order. Thus it could be seen that the assessee cannot claim to have a strong prima-facie case on merits either on the ground of issuance of proper notice or on the ground of bonfide reasons for not

furnishing correct particulars. Thus the decision of Hon'ble Supreme Court (Mst. Katiji) does not help the case of the assessee.

16. At any rate, as has been stated earlier, despite a long gap from the date of receipt of original order, and even from the date of receipt of the second order, no reasons were provided for further delay. The reasons given by the assessee are very vague. When the assessee bank realised that the original order passed by the CIT(A) was not traceable, was nowhere mentioned; it was loosely stated that it was realised after six months. Be that as it may, at least from the date of receipt of the duplicate copy, the assessee could have taken prompt action. But the assessee procrastinated further without any reasonable cause. Under such circumstances, condonation of delay, as a matter of right, would make the provisions of limitation Act otiose and may promote negligence on the part of the parties by taking it for granted that appeals can be filed even after the period of limitation. In our humble opinion, filing of an appeal is a statutory right and once the period of limitation is over the party looses their statutory right for filing an appeal unless it is proved that there is a 'sufficient cause' as against the expression 'reasonable cause'.

17. In the instant case neither 'sufficient casus' nor 'reasonable cause' was proved by assessee. On a conspectus of the matter, we are of the firm view that the delay in filing the appeal is not on account of sufficient cause and therefore the appeal deserves to be dismissed as

unadmitted on the ground that the appeal is filed beyond the period of limitation. In the result the appeal filed by the assessee bank is dismissed as unadmitted.

Pronounced in the open court on 29th June, 2018.

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| **Sd/-** | **Sd/-** |
| **(B. RAMAKOTAIAH)** | **(D. MANMOHAN)** |
| **ACCOUNTANT MEMBER** | **VICE PRESIDENT** |

Hyderabad, Dated: 29th June 2018.

KRK

1 Andhra Pragathi Gramena Bank, No. 65, Near Mariyapuram Church, Mariyapu7ram, Kfadapa – 01.
2 Jt CIT, Range -2, Tirupati
3 CIT(A), Kurnoo.
4 The Pr. CIT, Kurnool.
5 The DR, ITAT Hyderabad
6 Guard File