

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**ITA No. 92/Agra/2019
& S.A. No. 04/Agra/2019)
(ASSESSMENT YEAR-2015-16)**

Krishi Utpadan mandi Samiti, Etawah. PAN:AAALK0637M (Appellant)	Vs.	DCIT-CPC, Bangalore (Local ITO-Exemption- Agra). (Respondent)
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Appellant by	Shri Sushil Maheshwari, AR.
Assessee by	Shri Sunil Bajpai, CIT. DR.

Date of Hearing	19.07.2019
Date of Pronouncement	31.07.2019

ORDER

Per Dr. M. L. Meena, A.M.:

This appeal preferred by the assessee against the order of Id. Commissioner of Income Tax (Appeals)-2, Agra in short ‘the Id. CIT(A)’ dated 18.01.2019, for A.Y. 2015-16 wherein raising the following grounds:

“1. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order which is unlawful, unjustified and against the principles of natural justice.

2. *The Ld. Commissioner of Income Tax (Appeal)s has erred in law and on facts in not admitting the appeal filed before him.*

3. *The Ld. Commissioner of Income Tax (Appeal) has erred in law and facts in deciding the appeal ex-parte without giving opportunity of hearing to the appellant.*

4. *The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in not deciding the grounds of appeal filed before him and giving relief sought by the appellant, the details of which are as under:*

1. *Exemption u/s 10(26AAB) of Income Tax Act, 1961*

2. *Exemption u/s 11, 12 & 13 of Income Tax Act, 1961*

5. *The appellant craves leave to add around, alter or withdraw any round of appeal or raise a new ground of appeal during the prudence of appeal.”*

2. The assessee society is formed under the Uttar Pradesh Krishi Adhiniyam, 1964 and registered u/s 11 of the 12AA of the Act. The assessee society has claimed deduction u/s 11 of the Act in its return of income for A.Y. 2015-16, declaring a returned income ‘nil’ where in the processing its income was computed by CPC at Rs.1,53,96,247/- u/s 143(1) of the Act as a result of computerized processing of the appellant’s return of income.

3. The Id. CIT(A) observed that the order of computation of income of the assessee under appeal was delivered to it by post and can be accessed at assessee’s portal. As per provisions of section 282 of the act, these orders can be served

electronically and unlike the traditional means delivery of such orders, that eventuality, the date of service of order is not different from its date of generation. He noted that since the order dated 21.10.2016 and the appeal before him was filed on 16.04.2018 it was evident that the appeal has been filed within the 18 months after the delivery of the impugned order where no reasons has been given by the appellant's society for the delay in filing of appeal at column no. 15 of Form no. 35 and merely stating that the order was served on 09.04.2018 is too naïve to be believed specially of income tax compliances including filing of returns of income etc., necessarily made through the portal of the assessee. Accordingly, he found that appellant had no sufficient cause for not presenting this appeal within the stipulated period is expired about the 17 months and above so, the delay was not condoned and appeal was dismissed in limine.

4. The Id. AR of the assessee has reiterated the submissions made before the Id. CIT(A) and filed a Paper Book running into 169 pages in support of the contentions raised.

5. The Id. Counsel argued that due to oversight mistake while filing the return of income tax, the exemption was claimed u/s 11 instead of claiming exemption u/s 10(26AAB) of the Act; that [schedule -1 details of amounts accumulated / set apart within the meaning of section 11(2) of the Income Tax Return was not correctly

filled and that schedule -1] statement showing the funds as he on the last day of previous year was not correctly filed. Due to which consequently resulted in addition of Rs.1,53,96,247/- and a demand of Rs.61,77,833,- by CPC vide intimation in PB-page 2,3,4 dated 21.10.2016.

6. The Id. Counsel for the assessee submitted that the Id. CIT(A) dismissed appeal by reckoning the delay from date of intimation and not from the date of receipt by the appellant appeal. The relevant part of the submission is reproduced as under:

“In this respect that it is submitted that the income tax consultant of the appellant Samiti is appointed by the Mandi Parishad (Head Office of appellant Mandi Samiti) on yearly basis for the audit of books of accounts and preparation and filing of income-tax return. These income tax consultants update their personal credentials on the income-tax e-filing website, for which all the intimations and other correspondence made by income tax department reaches their personal email addresses or email address of their staff. The said email address is not accessible by the appellant Samiti and the intimation order even if send by the department was not provided by then income tax counsel of the appellant Samiti.

Furthermore, the Mandi Secretary and other accounting staff who usually takes care of income tax matter, also hold transferable job and at times they are unaware of the contact

details of earlier tax consultant of the Samiti. It may also be noted that Mandi Samiti is located in remote areas, where at times there is no electricity for the entire day. Due to this basic requirement of infrastructure, the appellant Samiti is still keeping its books of accounts on manual basis and its employees are not technologically updated and hence, no personal email address of the appellant Samiti was maintained by it.

Therefore, due to the aforesaid reasons, the appellant Samiti was unaware of the intimation order u/s 143(1)(a) of Income-tax Act and the demand raised by Income- tax department. Their attention was drawn towards the said matter by the newly appointed income-tax counsel only when they informed that huge demand was outstanding for the year under consideration. Since the intimation order was not available with the appellant Samiti, request for intimation was placed online. The said intimation was received by the appellant Samiti on 09.04.2018 and appeal was filed on 16.04.2018 without any further delay.

Further, it is submitted that the appellant Samiti is a government undertaking body and from aforementioned facts it is clear that the said delay in the service of order was not occasioned deliberately, or on account of culpable negligence, or on account of mala fide intention. The appellant Samiti had no intention to jeopardize the interest of the revenue by delaying the service of notice of Order/Demand. It is therefore prayed that your honour may kindly consider the circumstances

of the case and condone the delay in filing appeal before Ld. Commissioner of Income-tax (Appeals).

In this respect it is further submitted that the legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to or substantial justice to parties by disposing of matters on 'merits'. The law of limitation is thus founded on public policy. It is enshrined in the maxim 'interest reipublicae up sit finislitium' (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. Further, the expression "sufficient cause" under Section 5 of the Limitation Act employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice -that being the life-purpose for the existence of the institution of Courts."

7. The ld. AR placed reliance on the following decisions, in support of his contentions.

1. *'Collector Land Acquisition vs.-Mst. Katiji & Others reported in 1987 AIR 1353 (SC).*
2. *'Anil Kumar Verma vs. ITO', order dated 29.11.2013 ITAT, Bench-A, (Del).*
3. *'Shri Devendra Kumar Verma vs. ITO' in ITA 614/Del/2013.*

8. Per contra, Id. DR placed reliance on the Authorities below and contended that the deduction can be claimed in the return of income and in the case of the assessee. No such deduction was claimed u/s 10(26AAB) and therefore, in the absence of claiming any deduction, the AO has no power to allow such claim under the statute.

9. Heard, both the parties, perused the record and the material facts of the case.

10. From perusal of provisions of section 10(26AAB) , applicability of legal principles of law to the facts of the case, we find that subordinate authorities requires to factually verify the claim of the society u/s 10(26AAB) from its return of income whether does it qualify for such deduction under the statutes. If yes, it would be allowed to the assessee.

11. We have considered the orders of the Tribunals relied upon by the assessee in the cases of the Utpadan Mandi Samiti on similar issue and we are of the considered view that in the interest of justice the case of the assessee needs to be examined afresh, at the stage of the AO and therefore, the matter is restored back to the file of the AO to inquire into the facts of the case to his satisfaction in view of the documentary evidence furnished by the assessee as per paper book before us, after affording due and adequate opportunity of being heard to the assessee

society. Needless to say assessee shall cooperate in the proceedings before the AO.

All pleas available under the law shall remain so available to the assessee.

12. In the result, for statistical purposes the appeal of the assessee is treated as allowed. Consequently the Stay Application is dismissed as infructuous.

Order pronounced in the open court on 31/07/2019.

Sd/-
(Laliet Kumar)
JUDICIAL MEMBER

Sd/-
(Dr. M.L. Meena)
ACCOUNTANT MEMBER

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sr. PRIVATE SECRETARY
ITAT, AGRA.