

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

|                                     |
|-------------------------------------|
| ITA Nos.635 & 636/Bang/2020         |
| Assessment year : 2014-15 & 2015-16 |

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|---|-----|--|
| M/s Hubli Saraku<br>Saganikedarara Sahakari<br>Pattina Sangha Niyamit,<br>No.4, 3 <sup>rd</sup> Floor, D Block,<br>Shindhe Complex, Neelingin<br>Road,<br>New Cotton Mkt,<br>Hubli-580 029.<br><br>PAN – AAAAH 9467 M | Vs. | The Income-tax Officer,<br>Ward-1(3),<br>Hubballi. |
| APPELLANT   |     | RESPONDENT   |

|             |   |                               |
|-------------|---|-------------------------------|
| Assessee by | : | Shri C Sandeep, C.A           |
| Revenue by  | : | Smt. Shilpa N.C, Addl.CIT(DR) |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 11.10.2021 |
| Date of Pronouncement | : | 11.10.2021 |

**ORDER**

***Per Chandra Poojari, Accountant Member***

These two appeals by the assessee are directed against the orders of CIT(A) both dated 28/11/2018, and it relates to assessment year 2014-15 and 2015-16. The

issues in these appeals are common but only changes in the figures which reads as follows :-

“1. That the order of the learned Commissioner of Income Tax, (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law against the facts and circumstances of the case.

2. **Validity of CIT(A) Order**

2.1. That the order of the learned Commissioner of Income-Tax (Appeals) is liable to be quashed and without jurisdiction on the ground that it is passed remanding the case to the assessing officer without adjudicating some of the grounds.

2.2. That the order of the learned Commissioner of Income-Tax (Appeals) is liable to be quashed in adjudicating some issues where were not aggrieved and raised by the appellant in the appeal and therefore, the order is beyond the jurisdiction.

2.3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in enhancing the assessment without providing opportunity to the appellant and therefore, it is violation of principles of natural justice and the order is liable to be quashed.

3. **Disallowance of deduction u/s. 80P(2)(a)(i) of the Act - Interest income from members**

3.1. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in holding that the interest earned from the activity with regular members is allowed as deduction u/s.

**80P(2)(a)(i) of the Act.**

3.2. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in making a distinction between the regular and

*other categories of members even though the same was not part of the assessment proceedings.*

*3.3. That the learned Commissioner of Income-Tax (Appeals) ought to have appreciated that the Karnataka Co-operative Societies Act, 1959 allows the Co-operative Society to admit nominal and associate members and therefore, deduction u/s 80P(2)(a)(1) of the Act be allowed.*

*3.4. That the learned assessing officer erred in law and on facts in not allowing the proportionate income earned from regular members and associate members as deduction u/s 80P(2)(a)(1) of the Act.*

**4. Disallowance of deduction u/s. 80P(2)(a)(i) of the Act - Interest income from investments**

*4.1. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in disputing the allowability of interest from investments as deduction even though the ground was not raised by the appellant.*

*4.2. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in enhancing the assessment without giving an opportunity to the appellant.*

*4.3. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in holding that no information regarding the interest from investments were provided by the appellant even though the same was already on material on record and also discussed in the assessment order*

*4.4. That the learned Commissioner of Income- Tax (Appeals) erred in law and on facts in not allowing the interest income of Rs. 15,79,239/- as deduction u/s 80P(2)(a)(i) of the Act even though the*

*investments were made out of surplus fund and attributable to the business activity of the appellant.*

*4.5. That the learned Commissioner of Income- Tax (Appeals) erred in law and on facts in not allowing the interest income earned from Co-operative Banks as deduction u/s 80P(2)(d) of the Act.*

*4.6. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing expenditure incurred for earning the interest income from the investments.*

*Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.*

*The following are the documents annexed to the appeal papers;*

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|--|---|------------|
| a. Condonation of Delay                    | - | Annexure B |
| b. CIT(A) Order dated 28.11.2018           | - | Annexure C |
| c. Assessment order dated 15.12.2016       | - | Annexure D |
| d. Form 35                                 | - | Annexure E |
| e. Statements of Facts filed before CIT(A) | - | Annexure F |
| f. Grounds of Appeal filed before CIT(A)   | - | Annexure G |

2. At the outset, it is observed that in both these appeals, there was a delay of 534 days in filing the appeal before this Tribunal. The assessee filed application for condonation of delay stating that the CIT(A) has remanded two issues in these cases to the files of the AO while adjudicating the grounds of appeals raised by the assessee. The Ld.AR viz. C.A Shri SR Onkari advised the

assessee that since the issues have been remitted back to the files of AO, the assessee will have another opportunity to present the case. However, they failed to notice that the observations and findings rendered in the order while giving the direction to the AO will have an adverse impact, and hence the CIT(A)'s order was not challenged. But, the order giving effect to the CIT(A) order was passed on 2/3/2020 by the AO. Due to the enhancement of the assessment, the demand exceeded the original demand in assessment order. Based on these events, the assessee and the AR decided to take another opinion on the further course of action and they approached M/s MSSV and company, CAs' who advised the assessee to file appeal before the ITAT against the order of CIT(A) and also an appeal before the CIT(A) against the consequential order dated 2/3/2020 passed by the AO. Due to the above reasons and Covid -19 pandemic situation from March 2020, the appeals being filed belatedly and there was a delay of 534 days delay in filing the appeals before this Tribunal. Further, the assessee supported the argument by explaining the same reason through assessee's authorized representatives by way of an affidavit dated 24/6/2020. The ld.AR further submitted that the issue on merit is in favour of the assessee, but there is a

technical defect in the appeals since the appeals are not filed within the period of limitation. He submitted that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred and other side cannot claim to have vested right for injustice being done because of undeliberate delay. Thus, he has prayed to condone the delay of 534 days in filing the appeals before this Tribunal in both these assessment years.

3. The Id.DR strongly opposed condoning the delay and she submitted that actually there was no enhancement of assessment as compared to the demand in original assessment order and order giving effect to the CIT(A) order. She submitted that there were certain clerical mistakes while taking up the opening figure in computation of taxable income of the assessee that could be corrected by the assessee by filing necessary application before the AO and if that is rectified there is no enhancement. The argument of the assessee is totally misleading and the delay shall not be condoned since there is no reasonable cause in filing the appeals by inordinate delay of 534 days.

4. We have heard both parties and perused the records. In these cases, there was a delay of 534 days in filing these two appeals before this Tribunal. The explanation of the assessee is that the delay was caused on account of misunderstanding the direction of the CIT(A) by assessee's erstwhile CA Shri SR Onkari. To this effect, assessee filed an affidavit from the same CA explaining this. We have carefully gone through the order giving effect to the CIT(A) order dated 2/3 /2020, wherein, in these two assessment orders while taking the opening total income vide original assessment order it was wrongly taken.

5. Actually, while giving effect to the order of the CIT(A), the assessee was granted with the deduction u/s 80P and there was no enhancement of income consequent to the order of CIT(A). The argument of the ld.AR is totally not borne out of the record which is to be rejected. Further, while exercising discretion u/s 5 of the Limitation Act, the Tribunal should adopt a pragmatic approach. There should be distinction between case where the delay is inordinate and case where the delay is of few days. Whereas in the former case, the consideration of prejudice to the other side will be a relevant factor, so

the case calls for a more conscious approach but in the later case, no such consideration may arise and such a case deserves a liberal approach. Hence, no hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in considering the expression “Sufficient Cause” and the principle of “advancing substantial justice” is of prime importance. The law assists those who are vigilant, not those who sleep over their rights. The delay cannot be condoned simply because the assessee’s case calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, it must be proved that the assessee was diligent and was not negligent whatsoever the ‘sufficient cause’ within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The cause for the delay in filing the appeal, which by due care and attention could have avoided, cannot be a ‘sufficient cause’ within the meaning of limitation provisions. Where no negligence nor inaction or want of bonafide can be imputed to the assessee a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must

come with clean hands. In the present case, the assessee as well as his authorized representative Shri S.R Onkari in the Affidavit stated that the order of Id.CIT(A) was misunderstood by them. As such, they have not filed appeal before this Tribunal. Consequently, there was a delay in filing the appeals before this Tribunal. This clearly shows that the delay was due to the negligence and inaction on the part of the assessee, which cannot be considered as good and sufficient reason to condone the delay. The assessee could have very well avoided the delay by exercising due care and attention. In our opinion, the assessee failed to explain the inordinate delay of 534 days in filing the appeal before this Tribunal by explaining any reasonable cause. The delay before this Tribunal is not sufficiently explained and the reason explained by the assessee cannot be considered as bonafide one. The assessee should have properly understood the order of the CIT(A) and pursued the remedies diligently. The argument of the Id.AR is that there was enhancement of demand in the consequent order passed by the AO which is not correct. The assessee is well aware that opening figure taken by AO while passing order giving effect to CIT(A) order is only clerical error, which could be rectified by proceedings u/s 154.

The assessee wants to avail benefit of that mistake to condone the delay and the same cannot be condoned, as there was no reasonable cause in filing these appeals before this Tribunal. Accordingly, we decline to condone the inordinate delay of 534 days in filing appeals before this Tribunal. Further, the assessee attribute the delay on account of Covid – 19. Actually, the CIT(A) passed the order on 28-11-2018 and served to the assessee on 12-12-2018, which is much earlier to the March 2020, where the pandemic covid-19 started. This reason is also invalid which cannot be appreciated. With these observations, we reject the plea of the assessee and dismiss these two appeals as unadmitted.

6. In the result, the appeals filed by the assessee are dismissed.

Order pronounced in court on **11<sup>th</sup> Oct, 2021**.

Sd/-

Sd/-

**(N.A VASUDEVAN)**

Vice President

Bangalore,

Dated, 11<sup>th</sup> Oct, 2021

/ vms /

**( CHANDRA POOJARI)**

Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation  
.....
2. Date on which the typed draft is placed  
before the dictating Member  
.....
3. Date on which the approved draft comes to  
Sr.P.S .....  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back  
to the Sr. P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for  
doing so .....
8. Date on which the file goes to the Bench  
Clerk .....
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endorsement.....
10. Date on which the file goes to the Head  
Clerk .....
11. The date on which the file goes to the  
Assistant Registrar for signature on the  
order .....
12. The date on which the file goes to dispatch  
section for dispatch of the Tribunal Order  
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13. Date of Despatch of Order.  
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