

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.399/Bang/2021 : Asst.Year 2014-2015

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| M/s.Karnataka Mahila Hindi Seva<br>Samithi, 178, IV Main Road<br>Chamrajpet<br>Bangalore – 560 018.<br><b>PAN : AAAAK0904A</b> | v. | The Assistant Commissioner<br>of Income-tax (CPC)<br>Bangalore. |
| (Appellant)  |    | (Respondent)  |

Appellant by : Sri.C.Sandeep, CA  
Respondent by : Sri.Sankar Ganesh K, JCIT-DR

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| <b>Date of Hearing : 01.11.2021</b> | <b>Date of<br/>Pronouncement : 01.11.2021</b> |
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 02.08.2021. The relevant assessment year is 2014-2015.

2. The grounds raised read as follows:-

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

*2. That the learned Commissioner of Income Tax (Appeals) erred in law and facts in not condoning the delay in filing the appeal even though there was a sufficient and reasonable cause for filing the appeal.*

*3. That the learned lower authorities erred in law and on facts in denying exemption u/s 10(23C)(iiiab) of the Act on the ground that the audit report was not filed along with the return even though the appellant is not required to file the report.*

4. *That the learned lower authorities erred in law and on facts in computing tax at maximum marginal rate.*

5. *That the learned lower authorities ought to have computed the income under commercial principles.*

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

3. The brief facts of the case are as follows:

The assessee is a society registered under the Charitable Societies Act. For the assessment year 2014-2015, the return of income was filed on 27.09.2014 declaring total income at 'Nil' after claiming exemption u/s 10(23C)(iiiad) of the I.T.Act. According to the assessee, since manual return was not accepted by the Department and it had to file return electronically, due to non-availability of option for claiming exemption u/s 10(23C)(iiiab) of the I.T.Act, exemption u/s 10(23C)(iiiad) of the I.T.Act was claimed.

4. The Central Processing Cell (CPC) issued communication dated 04.06.2015 stating that return will be treated as invalid u/s 139(9) of the I.T.Act for the reason that the audit report has not been filed along with the return of income. The assessee filed a reply to the above notice on 17.06.2015. The CPC issued intimation u/s 143(1) of the I.T.Act on 28.02.2016 demanding a sum of Rs.89,18,544 by disallowing the claim of deduction u/s 10 of I.T.Act. The assessee filed rectification application dated 11.03.2016, but the same was rejected vide

communication dated 12.04.2016 by the Assistant Commissioner of Income-tax (CPC) stating that rectification request cannot be considered by CPC for technical reason and asked the assessee to contact the jurisdictional Assessing Officer as rectification rights are transferred to the jurisdictional A.O. Pursuant to the rejection of rectification application by the CPC, it is claimed that the assessee has filed further rectification application before the concerned jurisdictional A.O. Since there was no disposal of the rectification application by the jurisdictional Assessing Officer, the assessee preferred an appeal to the CIT(A) with a delay of 1066 days. The CIT(A) dismissed the appeal of the assessee *in limine* by not condoning the delay in filing the appeal before him.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR has filed a paper book of 63 pages enclosing therein the order granting exemption u/s 10(22) of the I.T.Act, order u/s 10(23C)(vi), the affidavit of the Chartered Accountant, the financial statement for the year ending 31.03.2014, the rectification application filed before the CPC and the jurisdictional AO, the communication between the AO and assessee etc. The learned AR submitted that the CIT(A) has erred in not condoning the delay in filing the appeal even though there was sufficient and reasonable cause. It was submitted that the assessee was pursuing the rectification application before the jurisdictional AO as per the intimation of the CPC and since the AO had not disposed of the rectification application, the assessee was

advised to file an appeal before the CIT(A). An affidavit of the CA in this context is placed on record. On merits, the learned AR relied on the grounds raised.

6. The learned Departmental Representative strongly supported the order of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. Intimation u/s 143(1) of the I.T.Act demanding Rs.89,18,544 by disallowing the claim u/s 10(23C)(iiiab) of the I.T.Act was received by the assessee on 28.02.2016. The assessee filed rectification application immediately on 11.03.2016. The rectification application of the assessee was rejected by the CPC on 12.04.2016. In the communication it was stated that there was no *prima facie* error in the order and request cannot be considered by the CPC for technical reasons. Further, the assessee was directed to contact the jurisdictional AO as rectification rights was transferred to him. The relevant observation of the Assistant Commissioner of Income Tax (CPC) reads as follow:-

*“On verification, it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore, your application for Rectification under Sec.154 is rejected, for the following reasons (if any)  
Your rectification request could not be considered at cpc for technical reasons. The rectification rights, in your case are being transferred to your Assessing Officer. Kindly contact your assessing officer for the same. The details of the jurisdictional assessing officer are available on the website <http://www.incometaxindiaefiling.gov.in> under “service” know your jurisdictional AO.”*

7.1 Pursuant to the order of the CPC rejecting the rectification application, the assessee approached the jurisdictional AO vide letter dated 20.04.2016 requesting him to rectify the intimation and withdraw the demand. The Secretary of the assessee on advise of the Chartered Accountant, did not file an appeal since the rectification application u/s 154 of the I.T.Act was filed and was expecting the Assessing Officer to pass orders on the same. The assessee received a notice dated 07.01.2019 from the ITO, Ward 2(Exemption) directing the assessee to pay a demand of Rs.89,18,544. In response to the above notice by the ITO (Exemption), the assessee filed letters dated 17.01.2019 and 22.01.2019 requesting for withdrawal of the notices. Further the assessee furnished all the details along with relevant annexures (copy of the communication with the AO is placed on record at page 52 to 57 of the paper book filed by the assessee). Since there was no response from the Assessing Officer, on advise of the Tax Consultant the assessee approached the present CA to prepare an appeal and same was filed before the CIT(A) with the delay of 1066 days. The chronology of events from the date of intimation u/s 143(1) of the I.T.Act up to the date of filing of the appeal before CIT(A) are captured in the table below:-

| Date       | Events and action taken                               | Remarks   |
|------------|---|---|
| 28.02.2016 | Intimation u/s 143(1) was received                    | ---   |
| 11.03.2016 | Application u/s 154 was filed online                  | The assessee has taken action within 11 days.               |
| 12.04.2016 | The application u/s 154 was rejected                  | ---   |
| 20.04.2016 | Application u/s 154 was field with assessing officer. | The assessee has taken some course of action within 3 days. |
| Upto date  | Neither response or rectification                     | ---   |

|            |   |  |
|------------|---|--|
|            | order is received / passed by assessing officer.  |  |
| 07.01.2019 | Recovery notice received  | ---  |
| 17.01.2019 | Assessee filed a reply  | The assessee has responded within 10 days. |
| 22.01.2019 | Assessee filed a reply for follow up  | The assessee was following up.             |
| 28.02.2019 | The appeal was filed since there was no response from the assessing officer for so many days. | ---  |

7.2 Copy of the affidavit of the CA is on record from pages 14 to 17 of the paper book filed by the assessee. On perusal of the same, it is clear that the delay is due to the advise of the CA that appeal is not required to be filed before CIT(A) because the Assessing Officer was expected to pass order on the rectification application filed by the assessee. If the delay in filing the appeal is caused due to the advise of the Tax Consultant, the delay is not on account of any malafide or negligence on the part of the assessee. In this context, we rely on the following judicial pronouncements:-

- (a) Vijay Vishin Meghani v. DCIT 398 ITR 250 (Bom)
- (b) Vinod AGarwal v. PCIT 61 ITR (Trib) 598 (Kol.)

7.3 The Hon'ble Apex Court in the case of Collector, Land Acquisition v. MST.Katiji and Others reported in (1987) 167 ITR 471 (SC) had held that it cannot be presumed that delay is deliberate, because the litigant does not stand to benefit by resulting in delay. The Hon'ble Apex Court had stated that if the delay is condoned, there is no prejudice caused to the other party except that the case will be decided on merits.

7.4 In view of the aforesaid reasoning, we are of the view that there is no deliberate or malafide reason on the part of the assessee in filing the appeal before the CIT(A) belatedly. Therefore, we are of the view that no latches could be attributed to the assessee since it was pursuing a rectification application before the jurisdictional Assessing Officer [identical relief is sought in the rectification application before the jurisdictional AO and the CIT(A)]. For the aforesaid reasons, we condone the delay of filing the appeal before the CIT(A). Since we have condoned the delay, we restore the case to the files of the first appellate authority. The CIT(A) is directed to consider the issue on merits. It is ordered accordingly.

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

Order pronounced on this 01<sup>st</sup> day of November, 2021.

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 01<sup>st</sup> November, 2021.  
Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Bangalore