

आयकर अपीलीय अधिकरण न्यायपीठ,पणजी में।  
IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI

(Through virtual Court- at Raipur)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 349/PAN/2017

निर्धारण वर्ष / Assessment Year : 2012-2013

The Raibag Taluka Primary Co-operative  
Agriculture & Rural Development Bank Limited  
Raibag, Tal. Raibag,  
Dist. Belgavi.  
PAN : AAAAT4138K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-2(2), Belgavi

.....प्रत्यर्थी / Respondent

Assessee by : Shri Shivanand Halbhavi, AR

Revenue by : Shri Sourabh Nayak, Sr. DR

सुनवाई की तारीख / Date of Hearing : 22.02.2022

घोषणा की तारीख / Date of Pronouncement : 31.03.2022

## **आदेश / ORDER**

### **PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order of the CIT(Appeals), Gulbarga, dated 19.10.2017, which in turn arises from the order passed by the A.O u/s.143(3) of the Income Tax Act, 1961 ( for short 'the Act') dated 31.07.2014 for assessment year 2012-13. Before us the assessee has assailed the impugned order on the following grounds of appeal:

“1. The learned Assessing Officer (AO) has erred in not considering the exemption available to Primary Co.-Op Agricultural & Rural Development Bank (PCARD BANKS) u/s.80P of the I.T. Act. The Ld. AO has made a non-taxable entity in to a taxable entity without verifying the legality aspect. The learned CIT (Appeals), Gulbarga has mentioned that none represented. However, the adjournment letter dated 04.09.2017 is not considered and also the submissions sent through Registered Post have not been properly studied before passing order. The facts have not been considered.

2. While arriving at the taxable income at Rs.7,23,120/- the A.O has not considered the loss of Rs.22,03,517/- declared by the assessee in the return of income. The order suffers from the mistake apparent from records. The learned CIT(A) has erred in not considering the loss return submitted by the assessee.

3. The AO has made addition to the tune of Rs.7,23,120/- towards interest payable to Karnataka State Co-operative Apex Bank of Rs.7,03,120/- and Rs.20,000/- towards audit fees payable. However, these payments have been made before submitting the return of income. The evidences have not been taken on record deliberately. The learned CIT(A) has erred in not considering the facts and circumstances as per records available.

4. The AO is also not correct in initiating penal proceedings u/s.271(1)(c) of the Act, 1961.

Any other grounds which may be taken up with kind permission.”

2. Briefly stated, the assessee which is an agricultural co-operative bank providing credit facilities to its members had filed its return of income for the assessment year 2012-13 on 29.09.2012, declaring a total income of Rs. Nil (after setting off the b/forward losses). The return of income filed by the assessee society was initially processed as such u/s. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act. Assessment was thereafter framed by the Assessing Officer vide his order passed u/s.143(3) of the Act, dated 31.07.2014, wherein after making certain additions /disallowances, viz. (i) interest payable to KSCA & Revenue Department Bank : Rs.7,03,114/-; (ii) normal interest payable to KSCA & Revenue Department Bank : Rs.622/-; and (iii) audit fees payable : Rs.20,000/-, the income of the assessee was determined at Rs.7,23,120/-.

3. Aggrieved, the assessee preferred an appeal before the CIT(Appeals), which involving some delay was accompanied with an application seeking condoning of the same. However, the assessee despite having been put to notice about the hearing of the appeal failed to participate in the proceedings before the CIT(Appeals) on various dates, viz. 21.08.2017, 06.09.2017 and 04.10.2017. Observing, that the application seeking condoning of the same was not proper, and that the assessee had also failed to prosecute the appeal before him, the CIT(Appeals) drawing support from the order of the ITAT, Delhi in the case of CIT Vs. Multiplan

India (P) Ltd. (1991) 38 ITD 320 ( Delhi) dismissed the appeal on account of non-prosecution of the same. At the same time, it was summarily observed by the CIT(Appeals) that the material available on record did not suffice to allow any relief to the assessee.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. At the time of hearing of appeal, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that the CIT(Appeals) instead of disposing off the appeal on merits, had gravely erred in law by summarily dismissing the same. It was further submitted by the Ld. AR that the CIT (Appeals) without pointing out and confronting the shortcoming in the assessee's application seeking condoning of the delay involved in filing of the appeal before him had most arbitrarily drawn adverse inferences and summarily dismissed the same. Also the Ld. AR raised his contentions as regards the non-sustainability of the additions/disallowances made by the Assessing Officer.

5. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

6. We have heard the Ld. Authorized Representatives of both the parties, perused the material available on record and considered the orders of the lower authorities. Admittedly, the appeal filed by the assessee before the CIT(Appeals) involved certain delay, for condoning of which an

application was filed before him. However, the CIT(Appeals) holding a conviction that the application filed by the assessee seeking condoning of the delay involved in filing of the appeal before him was not in order, thus, without confronting the shortcoming in the application, or, calling upon the assessee to meet out the deficiency emerging there from summarily dismissed the same. In our considered view, the manner in which the assessee's application seeking condoning of the delay involved in filing of the appeal had been summarily dismissed by the CIT(Appeals) does not instill any confidence. Adverting to the dismissal of assessee's appeal, for the reason of non-prosecution of the same, in our considered view is also not as per the mandate of law. Once an appeal is preferred before the CIT(A), then, he is obligated to dispose off the same on merits and cannot summarily dismiss it on account of non-prosecution by the assessee. As per Sec.251(1)(a) and (b) and "Explanation" to Sec. 251(2) of the Act, the CIT(A) remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him and is not vested with any power to summarily dismiss the appeal for non-prosecution. Our aforesaid view is supported by the order of the ITAT, Mumbai in the case of Hibiscus Communications Pvt. Ltd. Vs. ACIT, ITA No.896/Mum/2019 dated 21.01.2020, wherein it had been held that once an appeal is preferred before the CIT(A), then, it is obligatory on his part to dispose off the same on merits. Also reliance is placed on the judgment of the Hon'ble

Jurisdictional High Court of Bombay in the case of CIT Vs. Prem Kumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom). In the aforementioned case the Hon<sup>ble</sup> High Court had observed as under :

*"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires ITA No.896/Mum/2019 A.Y. 2014-15 4 Hibiscus Communications Pvt. Ltd. Vs. ACIT-15(2)(1) the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."*

Considering the facts involved in the case before us in the backdrop of the aforesaid position of law, we are unable to persuade ourselves to subscribe to the dismissal of the appeal by the CIT (Appeals) for non-prosecution. We, thus, backed by our aforesaid deliberations set-aside the matter to the file of the CIT(Appeals) with a direction to dispose off the same on merits.

Needless to say, the CIT (Appeals) shall afford a reasonable opportunity of being heard to the assessee in the course of the set-aside proceedings and, after considering its application seeking condoning of the delay involved in filing of the appeal before him, dispose off the same by way of a speaking order.

7. In the result, the appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in Open Court on 31<sup>st</sup> day of March, 2022.

Sd/-  
**JAMLAPPA D BATTULL**  
**ACCOUNTANT MEMBER**

Sd/-  
**RAVISH SOOD**  
**JUDICIAL MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 31<sup>st</sup> March, 2022

\*SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Gulbarga
4. The Pr. CIT, Belgavi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
पणजी / DR, ITAT, Panaji.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	22.02.2022	Sr.PS/PS
2	Draft placed before author	22.02.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		