

आयकर अपीलीय अधिकरण, 'सी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A. No. 270/Chny/ 2021

(निर्धारणवर्ष /Assessment Year: 2009-10)

Pallavan Grama Bank, 6, Yercaud Road, Hasthampatti, Salem-636 007.	Vs	The Deputy Commissioner of Income Tax Circle-1 Salem.
PAN: AAAJP 0874D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.R. Srikrishna, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	07.07.2022
घोषणाकीतारीख /Date of Pronouncement	:	13.07.2022

देश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 16.03.2021 and pertains to assessment year 2009-10.

2. At the outset, we find that there is a delay of 73 days in appeal filed by the assessee. During the course of hearing, learned A.R. for the assessee submitted that delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of Hon'ble Supreme Court suo motu Writ Petition No.3 of 2020, if the

period of delay is covered within the period specified in the order of the Apex Court , then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

3. The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in suo motu Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of courts and tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

5. Brief facts of the case are that the assessee is a scheduled Public Sector Bank incorporated under the Regional Rural Bank Act, 1976. The assessee has filed its return of income for the assessment year 2009-10 on 31.03.2010 admitting total income of Rs.15,84,78,240/- and said return has been revised on 09.07.2010 and declared total income of Rs.14,88,97,070/-. The assessment for the impugned assessment year has been completed u/s.143(3) of the Act on 19.10.2011 in the status of co-operative society. The assessee has challenged the assessment order before the Tribunal on the issue of deduction claimed u/s.36(1)(viiia) of the Income Tax Act, 1961. The Tribunal vide its order dated 29.05.2015 in ITA No.622/Mds/2015 set aside the issue to the file of the Assessing Officer and directed the Assessing Officer to reconsider the issue of deduction claimed u/s.36(1)(viiia) of the Act, by taking into account revised return filed by the assessee under provisions of section 139(4) of the Income Tax Act, 1961. The Assessing Officer has taken up proceedings in pursuant to direction of the Tribunal and has completed assessment u/s.143(3) r.w.s. 254 of the Income Tax Act, 1961, on 30.12.2016 and has allowed claim

u/s.36(1)(viiia) of the Act in terms of directions of the Tribunal. However, while completing assessment, the Assessing Officer has treated the assessee as Artificial Juridical Person as against status of co-operative society claimed by the assessee and accepted during the course of original assessment proceedings. The assessee has filed a petition u/s.154 of the Act and contended that scope of order passed by the Assessing Officer u/s.143(3) r.w.s 254 of the Act, is beyond directions of the Tribunal, inasmuch as issue before the Tribunal was computation of deduction u/s.36(1)(viiia), whereas the Assessing Officer has changed status of the assessee from co-operative society to Artificial Juridical Person. The Assessing Officer rejected 154 application filed by the assessee and assessed the assessee in the capacity of Artificial Juridical Person by holding that the assessee is not a co-operative society and thus, it cannot claim status of co-operative society. The assessee challenged order of the Assessing Officer before the learned CIT(A) and contended that the Assessing Officer has travelled beyond directions of the Tribunal and changed status of the assessee from co-operative society to Artificial Juridical Person. The learned

CIT(A), after considering relevant submissions of the assessee and also taken note of various facts held that there is no error in the order passed by the Assessing Officer rejecting 154 application filed by the assessee, because the assessee cannot claim status of co-operative society, because Regional Rural Banks are basically corporate entities, which cannot claim benefit of provisions of section 22 of Regional Rural Banks Act. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

6. The learned A.R. for the assessee submitted that the learned CIT(A) erred in sustaining order of the Assessing Officer in assessing the assessee as Artificial Juridical Person, instead of co-operative society, even though, the Assessing Officer has travelled beyond scope of directions given by the Tribunal in their order dated 29.05.2015.

7. The learned D.R., on the other hand, supporting order of the learned CIT(A) submitted that the assessee cannot claim status of co-operative society, because except provisions of section 80P(4), Regional Rural Banks are corporate entities

which are governed under RRB Regulations and they cannot be considered as co-operative society.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We find that the Assessing Officer has changed residential status of the assessee in the second round of litigation from co-operative society to Artificial Juridical Person on the ground that the assessee is not co-operative society, which is governed by RRB Act. It was explanation of the assessee before the Assessing Officer that the Assessing Officer has travelled beyond scope of his powers, because what was challenged before the Tribunal was denial of deduction claimed u/s.36(1)(viiia) of the Act, by rejecting revised return filed by the assessee u/s.139(4) of the Income Tax Act, 1961. However, there is no dispute with regard to status of the assessee either before the Assessing Officer or before the Tribunal. In fact, in first round of litigation, the Assessing Officer has assessed income of the assessee in the status of co-operative society. Therefore, we are of the considered view that once there is no dispute on the status of

the assessee, either before the Assessing Officer or before the Tribunal, then the Assessing Officer shall restrict scope of verification in set aside proceedings only to those issues which has been challenged before the appellate authority. In this case, although, the issue before the Tribunal was on account of denial of deduction of claimed u/s.36(1)(viia) of the Act, but the Assessing Officer having accepted claim of the assessee towards deduction u/s.36(1)(viia) should not have travelled beyond scope of verification and changed residential status of the assessee from co-operative society to Artificial Juridical Person. In our considered view, action of the Assessing Officer in treating the assessee as Artificial Juridical Person is outside scope of his powers and thus, we direct the Assessing Officer to assess the assessee in the capacity of co-operative society.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 13th July, 2022

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 13th July, 2022

DS

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)

लेखा सदस्य / Accountant Member

आदेशकीप्रतिलिपिअग्रेषित।Copy to:

- Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF.