

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2063/M/2021  
Assessment Year: 2011-12**

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| M/s. Shree Mangal Shrushti Co-op. Hsg. Soc. Ltd.,<br>S.P. Gujar Marg,<br>Mulund (East),<br>Mumbai-400062<br><b>PAN: AADAS1949N</b> | Vs. | ITO, Ward-29(3)(4),<br>Room No.308, C-10,<br>Pratyakshakar Bhawan,<br>BKC,<br>Bandra (E),<br>Mumbai – 400 051 |
| (Appellant)  |     | (Respondent)  |

**Present for:**

Assessee by : Shri Dharan Gandhi, A.R.  
Revenue by : Shri Anil Gupta, D.R.

Date of Hearing : 26 . 09 . 2022  
Date of Pronouncement : 20 . 10 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. Shree Mangal Shrushti Co-op. Hsg. Soc. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 24.09.2021 passed by passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2011-12 on the grounds inter alia that :-

*“1. The Ld. CIT(A) erred in confirming the action of Ld. AO (CPC) of disallowing deduction u/s 80P vide intimation u/s 143(1).*

*2. The Ld. CIT(A) erred in not condoning the delay in filing the appeal and not considering the merits of the case.*

**3. The Ld Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming action of AO not allowing the deduction u/s 80P(2)(d) of Rs.1,25,471/-.**

**4. The Ld Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in”**

2. Briefly stated facts necessary for adjudication of the controversy at hand are: assessee being a co-operative housing society registered under Maharashtra Co-operative Society Act, 1960, filed the return of income at Nil. Assessing Officer (AO) disallowed the claim of deduction made by the assessee under section 80P(2)(d) and 80P(2)(c) of the Income Tax Act, 1961 (for short ‘the Act’). Assessee’s return of income was processed under section 143(1) of the Act by disallowing the deduction claimed by the assessee. Thereafter, the assessee moved an application under section 154 of the Act which was also dismissed.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the same on the sole ground that there is an inordinate delay of 1997 days without entering into the merits of the case. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Assessee by filing an application sought to condone the delay in filing the appeal against the order passed by the AO under

section 154 of the Act on the ground inter alia that the assessee has filed rectification application under section 154 of the Act on 16.08.2013 which was stated to be rejected on 01.10.2013; that order of rejection of rectification application of the assessee was never intimated to the assessee and as such appeal could not be filed; that assessee came to know about the order of rejection of rectification application only on 13.03.2019 vide letter dated 12.02.2019 from ITO-29(3)(4) and letter from Bharat Co-operative Bank Ltd. dated 01.03.2019 received on 13.03.2019; that delay was inadvertent and unintentional and for bonafide reasons.

6. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

7. I am of the considered view that apart from a bald statement by the Revenue that order of rejection of rectification application under section 154 of the Act was emailed to the assessee well in time, no evidence has been brought on record. It is also not brought on record by the Ld. D.R. that return was filed beyond the time limit. But the at the same time it is also admitted fact that at that point of time, filing of return was not necessary. I am of the further considered view that when assessee came to know about the order of rectification application only on 13.03.2019 and thereafter filed the appeal before the Ld. CIT(A) on 19.04.2019 it is a sufficient cause to condone the delay which is neither intentional nor malafide rather when the factum of passing of the rectification

order has not come to the notice of the assessee it was beyond his control to file the appeal within time.

8. In case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) the Hon'ble Supreme Court has held, "it is on contention of delay that when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non deliberate delay."

9. In view of what has been discussed above, I am of the considered view that Ld. CIT(A) has erred in not condoning the delay. Hence, the delay is condoned. At the same time, it is undisputed fact that Ld. CIT(A) has not decided the appeal on merits. In these circumstances, to decide the issue once for all the case is remitted back to the Ld. CIT(A) to decide afresh after providing opportunity of hearing to the assessee in the light of the order passed by co-ordinate Bench of the Tribunal in case of The Sarvodaya Co-operative Credit Society Ltd. vs. ITO in ITA No.292/M/2022 for A.Y. 2017-18 order dated 21.06.2022.

10. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 20.10.2022.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated:20.10.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.