

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

BEFORESHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos.1044 & 1045/Bang/2022
Assessment Years : 2018-19, 2019- 20

M/s. The Metropolitan Co-operative Housing Society Ltd., No.21, Govind Floor, Vidhana Soudha, Vidhana Veedi, Bengaluru -560 001. PAN : AAAAT 0990 P	Vs.	DCIT, CPC, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sandeep, CA
Revenue by	:	Shri.Ganesh R Gale, Standing Counsel.

Date of hearing	:	12.01.2023
Date of Pronouncement	:	31.01.2023

ORDER

These are two appeals filed by the assessee against the separate order passed by the National Faceless Appeal Centre (NFAC), Delhi, dated 12.12.2021 for Assessment Year 2018-19 and 10.12.2021 for the Assessment Year 2019-20 respectively.

2. Since the issue involved in both the appeals are similar for disallowing the claim of deduction under section 80P(2) of the Income Tax Act, 1961 (hereinafter called 'the Act'), and in respect of

ITA No.1044/Bang/2022, the CIT(A) has not accepted the delay for filing appeal by 410 days. Since the issue of deduction claimed by assessee under section 80P of the Act is similar in both the years, therefore for the sake of convenience we are taking first to appeal relating to ITA No.1044/Bang/2022.

2.1 The grounds of appeal in ITA No.1044/Bang/2022 is as under:-

- “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 and against the facts and circumstances of the case.*
- 2.. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in deciding the appeal ex-parteon the ground that the appellant did not respond to the hearing notices and such finding is perverse as the appellant has sought adjournment.*
- 3. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in not appreciating the fact that the faceless appeal scheme was newly introduced and therefore, the appellant was not aware of the procedure that all the hearing notices will be issued only to the assessee's registered email ID and therefore, could not file all the responses.*
- 4. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts for not condoning the delay in filing the appeal before him on the ground that the appellant has crossly negligent and such a finding of the learned Commissioner of Income Tax (Appeals) is perverse.*
- 5. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in not considering the fact that the appellant responded to the intimation u/s 143(1) of the Act and not grossly negligent without taking any action to the above said intimation.*
- 6. That the learned Commissioner of Income-tax (Appeals) ought to have disposed off the appeal on merits.*

7. That the learned Commissioner of Income-tax (Appeals) ought to have held that the appellant is a Co-operative Society registered under Karnataka State Co-operative Societies Act 1959 and therefore, liable for audit u/s 63 of the said Act consequently Explanation (2) Clause (a)(ii) read with clause (b) of S.139(1) of the Act.

8. That the learned Commissioner of Income-tax (Appeals) ought to have held that the due date for filing the return of income of the appellant is 31.10.2018 and the return of income filed on 4.10.2018 is well within the due date specified u/s 139(1) of the Act and therefore, eligible for deduction u/s 80P(2) of the Act.

9. That the learned Commissioner of Income-tax (Appeals) ought to have held that the disallowance of deduction u/s 80P(2) of the Act for not filing the return of income within the due date will not fall under the purview of S. 143(1) of the Act.

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

2.2 The grounds of appeal in ITA No.1045/Bang/2022 is as under:-

“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 and against the facts and circumstances of the case.

That the learned Commissioner of Income-tax (Appeals) ought to have held that the appellant is a Co-operative Society registered under Karnataka State Co-operative Societies Act 1959 and therefore, liable for audit u/s 63 of the said Act consequently Explanation (2) Clause (a)(ii) read with clause (b) of S.139(1) of the Act.

That the learned Commissioner of Income-tax (Appeals) ought to have held that the due date for filing the return of income of the appellant is 31.10.2019 and the return of income filed on 26.10.2019 is well within the due date specified u/s 139(1) of the Act and therefore, eligible for deduction u/s 80P(2) of the Act.

4.. That the learned Commissioner of Income-tax (Appeals) ought to have held that the disallowance of deduction u/s 80P(2) of the Act for

not filing the return of income within due date will not fall under the purview of S. 143(1) of the Act.

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

3. The brief facts of the case are that the assessee filed return of income on 04.10.2018 showing gross total income of Rs.39,12,528/- and after setting off of loss the gross total income was Rs.26,53,366/-. The assessee claimed deduction under Chapter VI A. The CPC observed that the assessee did not file its return of income within due date as prescribed under section 139(1) of the Act. The assessee filed appeal before the CIT(A) on 12.08.2020 and Covid period was started. The assessee explained the delay for filing appeal before the CIT(A) which has been incorporated in his order at para No. 4.1 . He also observed that the as per Centralised Processing of Return Scheme,2011 the mode of communication and deemed date of service of such communication send by CPC are clearly laid down in Rule 13 of the Scheme, after referring to the rules, Rule 13, the CIT(A) observed that the date of service of these intimations were to be ignored with reference to the date on which they were transmitted to appellant's email account, i.e 31.05.2019. In the present case, and the time limit of 30 days from date of service for filing of appeal as prescribed u/s 249 of the Act is to reckoned as 29/06/2019 as mentioned above, whereas the appeal has been filed only on 12/08/2020. Thus, the delay in involved is

quite inordinate and for this delay more than 410 days in filing the appeal, the appellant had simply attempted to feign ignorance of the process of law under the income-tax proceedings. Even during the current appellant proceedings also, the appellant has not responded even once to any of the notices issued so far and no request for any adjournment has also been filed citing the reasons for such non compliance . The CIT(A) also observed that the assessee is filing return since 2016-17 electronically and the case for AY 20167-17 and 2017-18 the scrutiny assessments u/s 143(3) was done. We further observe that the scrutiny assessments for the assessment year 2017-18 was completed on 29/12/2019, whereas for the impugned assessment year the due date for filing return of income was much prior to scrutiny assessments and the assessee was actively participated in the scrutiny assessments during the same period. The reasons given for delay in filing appeal before the CIT(A) was negligence and deliberate in action on the part of the appellant and issue involved in the preceding years was also the same and the assessee was understanding the legal position and the appropriate course of remedy available under the act was in the knowledge of the assessee.

4. After observing the above, the CIT(A) for want of proper reasonable cause from the assessee side for filing delay in appeal did not condone the delay and dismissed the appeal of the assessee in above terms.

5. Aggrieved from the order of the CIT(A), the assessee filed appeal before the Tribunal on 07.11.2022.

6. At the outset of hearing I observed that the appeal is filed belatedly by 162 days before the Tribunal in this regard the assessee has also filed affidavit on 12.01.2023 explaining the reason for filing appeal before the Tribunal which is as under:

I, Mr. D N Rama Reddy, s/o MrNarayanappa aged about 71 years, do hereby solemnly affirm and state on oath the following:

- 1. That I am the staff of The Metropolitan Co-operative Housing Society limited who has been working with the team which oversees the accounts departments and Income tax Proceedings. The appellant filed appeals before Hon'ble Income-tax Appellate Tribunal, Bangalore, against the orders passed under section 250 of the Income-tax Act, 1961 for the A.Y 2018-19 and AY 2019-20.*
- 2. For AY 2018-19 the order u/s 250 of Income Tax Act, 1961 was passed on 12.12.2021 and for AY 2019-20 the order u/s 250 of the Act was passed on 10.12.2021.*
- 3. The appeal should have been filed on or before 10.02.2022 and 08.02.2022 for AY 201819 and 2019-20 respectively.*
- 4. However, the time limit for filing the appeal is extended till 28.02.2022 as held by Hon'ble Supreme Court in Cognizance for Extension of Limitation (Miscellaneous Application No. 21 of 2022) in SMW(C) No. 3 of 2020 dated 10.01.2022. As per the decision of Hon'ble 21 of 2022) in SMW (C) No.3 of 2020 dated 10.01.2022. As per the decision of Hon'ble Supreme Court the time limit for filing the appeals against the orders which were expired between 15.03.2020 to 28.02.2022 is extended till 29.05.2022. It is further held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purposes of limitation. Therefore, the*

appellant has time to file an appeal for the concerned assessment year till 30.05.2022. Hence; the delay has to be considered from 30.05.2022. In view of the same, there is a delay of 162 days.

5. *It is submitted that during the audit of accounts as per section 63 of The Karnataka Cooperative Societies Act, 1959, the auditors sought for appeal status for various assessment years. During that period, we understood that from the Income tax portal that the hearing notices were being issued to the e-mail id only and not the hard copies to us. We also observed that the CIT(A) order was passed on 12.12.2021 and 10.12.2021 for AY 201819 and AY 2019-20 respectively. When we reviewed our mail inbox the same was found. Based on these events, we consulted the Chartered Accountants, and I was explained that due to the change in appeal proceedings to Faceless Appeal Scheme during 2021, no manual notices will be issued, and no physical hearing will be conducted which was recurring proceedings for earlier years. We also observed that the Income Tax portal was revamped in June 2021, and we could not find these notices whenever we logged in as they were not updated or due to some technical glitches in the portal. Therefore, the CIT(A) orders were not noticed, and appeals couldn't be filed within the time.*

It is prayed that the Hon'ble Income Tax Appellate Tribunal be pleased to condone the delay as there was sufficient and reasonable cause for delay in filing the appeals.

7. We have heard the rival submission of both the parties and after pursuing of the materials placed before us and we are satisfied that the delay in filing the appeal was due to reasonable and sufficient cause and the delay in filing the appeal deserves to be condoned. We accordingly condone the delay in filing the appeal after relying on the judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (198) 167 ITR 471.

8. The learned AR submitted that the CIT(A) has without considering the explanations filed by the assessee for delay in filing appeal before him he dismissed the appeal of the assessee. The CIT(A) has observed that the appeal filed by the assessee was 410 days which is not correct. The Hon'ble Supreme Court has observed that from 15.03.2020 to 29.05.2022 there was a Covid period in operation therefore the limitation Act shall not apply. The appeal was instituted by the assessee on 12.08.2020 when he came to know that he should have filed appeal before the CIT(A) against the order passed by the CPC for not entertaining claim by the assessee. The learned AR reiterated the submissions made before the CIT(A) vide letter dated 12.08.2020 which is an application for seeking condonation of delay which is as under:

The appellant after receipt of notice u/s 143(1) of the Act thought that it was just a mar. notice. The reason for delay is that the appellant was unaware about further course of the action is filing an appeal. An option was available in the Income tax Portal where a response can be filed to the notice u/s. 143(1)(a) of the Act. The appellant had filed a response in receipt of the intimation and was awaiting for the rebuttal from the department. Therefore, the appellant did not intimate the consultants. Since there was no communication from the department end, the appellant approached MSSV & Chartered Accountants for the advise. Then the consultants advised the appellant to Sr appeal before the learned Commissioner of Income Tax (Appeals) immediately. The filing of appeal before the Commissioner of Income Tax (Appeals) is entrusted to MSSV & Chartered Accountants and the appeal is being filed now. Also the same issue is noticed for AY 2019-20 also and the appeal is also being filed for the same.

The appeal had to be filed against the intimation u/s. 143(1) by 30.06.2019.

The appeal is filed on 12.08.2020.

There is a delay of 407 days in filing the appeal.

9. He further requested that the matter may be sent back to the CIT(A) and he undertook that the assessee will appear with the CIT(A) and substantiate his claim for deduction claimed as per section 80P(2) of the Act.

10. The learned DR relied on the order of the lower authorities and he submitted that the CIT(A) has rightly deleted the appeal of the assessee. The Id.DR further submitted that the assessee's approach for explaining the delay before the CIT(A) is very casual manner. The assessee has not explained with the cogent materials before the CIT(A) for delay in filing the appeal. The assessee is filing return of income regularly for the previous assessment years and he attended the scrutiny proceedings before the AO it clearly shows that he was well aware of the income-tax Act for the further proceedings. The response was filed by the assessee on 11/01/2020 whereas the intimation was issued on 31/05/2019, which was served upon the assessee on 05/06/2019. The allegation made by the assessee that the CPC failed to consider the response made through portal is also baseless because the CPC before making any adjustments u/s 143(1) a notice is sent to the assessee after giving due time for responding the notice. After the receipt of response and considering the same, the return is processed and intimation is sent to the assessee. In support of his argument the learned DR relied on the following two judgments:

- i. MajjiSannemma @ Sanyasirao Vs. Reddy Sridevi and Ors.in Civil Appeal No.7696 of 2021

- ii. The Puttur Co-operative Town Bank Ltd., Vs. DIT (Intelligence and Criminal Investigation) in ITA No.14 to 22/Bang/2022

11. On merits of the case, the learned DR relied on the judgment of Co-ordinate Bench of the Tribunal in ITA No.1062/Bang/2022 order dated 03.01.2023 in the case of Syndicate Bank Staff Co-operative Society Ltd., Vs. DCIT, CPC. He also submitted a notification issued by the CBDT for extension of due date for filing **return of income from 30.09.2018 to 15.10.2018 vide notification dated 24.09.2018 and it was further extended 31.10.2018 for those assessee's whose requires to submit audit report.** He further submitted that books of accounts of the assessee was not audited by the Chartered Accountant. He further submitted that in the income-tax return filed by the assessee he has not given any information about the audit. Therefore, the assessee will not get benefit of extended due date. He was supposed to file return of income upto 31.08.2018. He also refer to section 80AC and submitted that it is mandatory to file return within due date as per section 139(1) for claiming deduction under chapter VI A of the I. T. Act. The ld. DR also relied on the judgment of Hon'ble High Court of Calcutta in the case of *Suolificio Linea Italia (India) (P.) Ltd. v. Joint Commissioner of Income-tax, Circle-8 Kol . reported in [2018] 93 taxmann.com 462 (Calcutta)* in which it has been held a under:-

10. The ratio is utterly inapplicable when the statute confers a benefit and imposes a condition for the enjoyment of the benefit. The dictum would not be applicable, particularly, since the embargo is couched in negative words. Had it been a case where the express prohibition as in the words quoted from Section 80AC were not there, an arguable case could have been made out. However, when the governing provision expressly

mandates that no such deductions shall be allowed unless the assessee filed his returns of income "on or before the due dates specified under" Section 139 (1) of the Act, there is no question of referring to the extended period permitted under Section 139(4) of the Act to seek the benefit. Indeed, if the embargo were not as strict as is evident from the relevant provision, the entirety of Section 139 would have been mentioned in the relevant expression in Section 80AC of the Act which would have included within its sweep the extended period under sub-section (4) thereof. But in such provision referring only to sub-section (1) of Section 139 of the Act, the reference to the other provisions of Section 139 must be understood to have been excluded.

11. Since the legal issue raised by the appellant is directly covered in the judgment of Shelcon Properties P. Ltd. (supra) and the view expressed therein does not require to be revisited notwithstanding the aberration in the case of S.R. Batliboi Associates (supra), the appeal is dismissed at the admission stage. ITAT No.385 of 2016 and GA No.690 of 2018 stand dismissed

Therefore, the lower authorities have rightly disallowed deduction claimed by the assessee.

12. After hearing the rival contentions, I observed that the CIT(A) has dismissed the appeal of the assessee for want of proper reason for explaining the condonation of delay by the assessee. I observed that during the course of appellate proceedings, the assessee filed application for seeking condonation of delay cited supra vide his application dated 12.08.2020. From the above application, it has been observed that the assessee was in consensus with the income tax proceedings with the Department and it was also aware about the filing the appeal of the assessee and it was waiting the reply from the CPC.. Therefore, he did not intimate to his consultant and later on he contacted with his tax consultants and he advised for filing appeal. Therefore, it can be said that the assessee was vigilant. I therefore consider the facts of the case

and in the interest of justice, the delay is condoned. On perusal of the order of the CIT(A) he has not decided the issue on merits of the case. Therefore, considering the facts of the case, the matter is remitted back to the CIT(A) for fresh consideration. The assessee is directed to file cogent matters for substantiating his claim before the CIT(A). Therefore, the appeal of the assessee is allowed for statistical purposes.

13. ITA No.1045/Bang/20222 :The brief facts of the case for the Assessment Year 2019-20 are assessee filed return of income on 26.10.2019 declaring total income of Rs.7,06,840/- after claiming deduction of Rs.18,97,111/- under section 80P(2) of the Act. The intimation was issued to the assessee on 16.04.2020 under section 143(1) of the Act by the CPC, disallowing the deduction claimed under section 80P of the Act of Rs.18,97,111/-. The due date as per intimation for filing return of income was 31.08.2019. As per the information of the assessee, due date for filing return of income in the impugned case is extended due date i.e., 31.10.2019 and the assessee's books of accounts was required to be audited as per section 63 of the Karnataka State Co-operative Societies Act, 1959. The assessee filed appeal before the CIT(A). The CIT(A), after discussing in detail the issue and relying on case laws and section 80AC of the Act, the deduction claimed by the assessee under section 80P of the Act was not allowed.

14. Aggrieved from the above order of the CIT(A), the assessee filed appeal before the Tribunal. The learned AR submitted that the assessee is a Co-operative Society and governed by the Karnataka State Co-operative Societies Act, 1959 and the books of accounts are required to

be audited as per section 63. Therefore the assessee will get benefit of extended due date i.e., 31.10.2019 read with explanation II of section 139 of the Act. Therefore, the assessee is eligible for deduction as per section 80P of the Act.

15. The learned DR relied on the order of the lower authorities and also reiterated the submissions made on merits of the case in ITA No.1044/Bang/2022 and assessee's own case for previous Assessment Year cited supra.

16. At the outset of hearing it was observed that the assessee has filed appeal belatedly before the ITAT by 162 days. The delay has been duly explained by the assessee in para no. 05 in ITA No. 1044/Bang/2022 cited supra and in para No. 06 the delay has been condoned by me. The same proposition will apply in this appeal also , according I condone the delay.

17. After hearing the rival contention I observed from the facts of the case that the assessee filed return of income on 26.10.2019 claiming deduction u/s 80P of the I.T. Act of Rs. 18,97,111/-. The due date for filing income tax return was extended as per order No. 225/157/2019/ITA.II, dated 27.09.2019 upto the 31.10.2019 for those assesseees who were facing difficulties for filling income tax returns as well as all reports of audit. But in the impugned case the assessee has not filed any audit report along with the income tax return. Before me the assessee had filed a paper book containing page No. 01 to 52 (without certifying the documents) in which there is a financial statements for the financial year ending 31.03.2019

signed by Chartered Accountant dated 17.07.2019 without any report of the auditor. On perusal of the Income Tax return "ITR V" filed by the assessee he is not liable for audit u/s 44AB as per coloumn (b) and coloumn (d.ii) and (e) are left blank. In the case on hand the assessee has declared itself that "it is not covered under audit under any other Act" then the benefit of extended due date will not be available to the assessee.

18. The ld. CIT (A) has examined the issue in details and observed that the assessee did not comply the mandatory requirement of section 80AC which is mandatory requirement for claiming deduction under chapter VI A of the I. T. Act. 1961 as decided in the case of Suolificio Linea Italia (India) (P.) Ltd. v. Joint Commissioner of Income-tax (supra). Further, the ld.DR also relied on the judgment of the coordiante bench of the Tribunal cited supra in ITA No. 1062/Bang/2022 for the assessment year 2018-19 order dated 03/01/2023 in which it has been held that the adjustment u/s 143(1) can be made and for getting deduction under Chapter VIA the assessee should have filed return of income within the due date as specified in sec.139(1) of the IT Act. In the above decision the coordinate bench also relied on the judgment of Hon'ble Supreme Court in the case of Checkmate Service Pvt. Ltd., reported in [2022] 143 taxmann.com 178. Further, the coordinate bench of the Tribunal has also decided the similar issue in favour of the Revenue in ITA No.1043/Bang/2022 in the case of M/s. Rushi Sanskruti Vividoddeshaagal Souhard SahakariNiyamit vide order dated 27/01/2023 the ratio decided in

all these judgments are squarely applicable in the present facts of the case. Accordingly the assessee is not eligible to claim of deduction u/s 80P of the Act. Accordingly, the grounds raised by the assessee are dismissed.

19. In the result, the ITA No.1044/Bang/2022 is allowed for statistical purpose and ITA No.1045/Bang/2022 is dismissed.

Order pronounced in court on 31st day of January, 2023

Sd/-

(LAXMI PRASAD SAHU)

Accountant Member

Bangalore,
Dated, January, 2023
NS/ Vms

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
.....
9. Date on which order goes for Xerox &
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
.....
13. Date of Despatch of Order.
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