

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **587/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

Krishnagiri Taluk Agricultural  
Producers Co-op Marketing  
Society,  
S 495, KTAPCMS Ltd,  
1/70, Thirupathur Main Road,  
Pochampalli, Krishnagiri,  
Tamilnadu – 635 206.

Assistant Commissioner of  
v. Income Tax,  
Circle -1,  
Hosur.

**[PAN: AADCK-7372-H]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. T. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 26.06.2023

घोषणा की तारीख/Date of Pronouncement

: 26.06.2023

**आदेश /ORDER**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 18.01.2023 and pertains to assessment year 2017-18.

2. At the outset, learned AR for the assessee submitted that the appeal filed by the assessee is time barred by 06 days for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The AR further submitted that the assessee could not file appeal within the time allowed under the Act, because the General Manager of the appellant society, who is the authorized signatory, was away from station, which caused delay of 06 days. The delay in filing appeal is neither intentional nor willful but due to circumstances beyond the control of the assessee, therefore, delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR, on the other hand, strongly opposing condonation of delay petition filed by the assessee submitted that the reasons given by the assessee do not come within the ambit of reasonable and bonafide reasons, which can be considered for condonation of delay and hence, appeal filed by the assessee may be dismissed as not maintainable.

4. Having heard both sides and considered the petition filed by the assessee for condonation of delay, we are of the

considered view that reasons given by the assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of appeal is condoned and appeal filed by the assessee are admitted for adjudication.

5. The brief facts of the case are that, the assessee is an agricultural producer's cooperative marketing society and arranges for the sale of agricultural produce, from the members and allied businesses. The assessee has not filed the return of income as per the provisions of section 139(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has made cash deposits during demonetization period in specified bank notes amounting to Rs. 26,18,500/-. The Assessing Officer called upon the assessee to explain source for cash deposits. Since, the assessee could not explain source for cash deposits in specified bank notes, the Assessing Officer made additions towards cash deposits u/s. 68 r.w.s. 115BBE of the Act and made additions

of Rs. 18,09,000/-. The Assessing Officer had also added cash deposits of Rs. 1,53,200/- u/s. 69A of the Act, because the assessee could not explain source for said cash deposits. Similarly, the Assessing Officer has denied deduction claimed u/s. 80P of the Act, for the reason that the assessee did not file return of income on or before due date prescribed u/s. 139(1) or 139(4) of the Act. The assessee carried the matter in appeal before the first appellate authority and challenged additions made by the Assessing Officer towards cash deposits and disallowance of deduction u/s. 80P of the Act. But, the assessee neither appeared nor filed any details, even though the CIT(A) provided number of opportunities. Therefore, the CIT(A) disposed off appeal filed by the assessee on the basis of material available on record and sustained additions made by the Assessing Officer towards cash deposits u/s. 68 r.w.s. 115BBE of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

6. The Ld. Counsel for the assessee, submits that the Id. CIT(A) dismissed appeal filed by the assessee for non-appearance without discussing the issue on merits. Therefore,

the issue may be set aside to the file of the Assessing Officer to give one more opportunity of hearing to the assessee.

7. The Id. DR, on the other hand supporting the order of the CIT(A) submits that the assessee neither appeared before the Assessing Officer, nor filed any details. Further, the assessee did not appeared before the CIT(A). Therefore, there is no reason to give another opportunity to the assessee.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with the regard to the settled legal position of law, from the decisions of various courts and tribunals that, if an appellant did not represent its case when the appeal was posted for hearing, then the appellate authorities are left with no option but to dispose off appeal filed by the appellant on the basis of material available on record, but said appeals should be disposed off on merits on the basis of material available on record. In this case, on perusal of order passed by the CIT(A), we find that the CIT(A) has disposed off appeal filed by the assessee for non-prosecution, and said appeal has been disposed off without

considering the issues on merits. Therefore, we are of the considered view that the issue needs to go back to the file of the Assessing Officer to give one more opportunity of hearing to the assessee, because even before the Assessing Officer the assessee did not appear and filed necessary details. Thus, we set aside the order passed by the CIT(A) and restore the issue back to the file of the Assessing Officer and direct the Assessing Officer to redo the assessment denovo in accordance with law.

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

Order pronounced in the Open Court on 26<sup>th</sup> June, 2023 at Chennai.

**Sd/-**  
(वी दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिकसदस्य/**Judicial Member**

**Sd/-**  
(मंजुनाथ. जी)  
**(MANJUNATHA. G)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 26<sup>th</sup> June, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF