

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

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

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1.	323/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Kurud, Dist. Dhamtari (C.G.) PAN : AAAAG9891Q	The Income Tax Officer Dhamtari (C.G.)	2011-12
2.	324/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Kosmarra Dist. Dhamtari (C.G.) PAN : AAAAG9915D	The Income Tax Officer Dhamtari (C.G.)	2011-12
3.	325/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Madeli, Dist. Dhamtari (C.G.) PAN : AABAG0201F	The Income Tax Officer Dhamtari (C.G.)	2014-15
4-5.	326/RPR/2023 327/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Sankardah, Dist. Dhamtari (C.G.) PAN : AAAAG9931D	The Income Tax Officer Dhamtari (C.G.)	2011-12 2013-14
6-7.	328/RPR/2023 329/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Bendri, Dist. Dhamtari (C.G.) PAN : AAAAG9901F	The Income Tax Officer Dhamtari (C.G.)	2014-15 2015-16

8-9.	330/RPR/2023 331/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Kobebod, Dist. Dhamtari (C.G.) PAN : AAAAG9996L	The Income Tax Officer Dhamtari (C.G.)	2015-16 2018-19
10-13.	332/RPR/2023 333/RPR/2023 334/RPR/2023 335/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Doma, Dist. Dhamtari (C.G.) PAN : AAAAG9787D	The Income Tax Officer Dhamtari (C.G.)	2013-14 2014-15 2015-16 2018-19
14-17.	336/RPR/2023 337/RPR/2023 338/RPR/2023 339/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Bhakhara Dist. Dhamtari (C.G.) PAN : AAAAG9916A	The Income Tax Officer Dhamtari (C.G.)	2013-14 2014-15 2015-16 2016-17
18.	340/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Donar, Dist. Dhamtari (C.G.) PAN : AAAAG9914C	The Income Tax Officer Dhamtari (C.G.)	2011-12
19.	341/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit, Donar, Dist. Dhamtari (C.G.) PAN : AAAAG9914C	The Income Tax Officer Dhamtari (C.G.)	2015-16

Assessee by : Shri Rakesh Dhody, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 04.12.2023

घोषणा की तारीख / Date of Pronouncement : 05.12.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeals filed by the aforementioned assessee societies/samitis are directed against the respective orders of the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, which in turn arises from the respective orders passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') for the captioned assessment years. As the issues involved in the present appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. I shall first take up the appeal filed by the assessee in ITA No.325/RPR/2023 for assessment year 2014-15 and the order, therein, passed shall *mutatis-mutandis* apply to the remaining appeals. The assessee society has assailed the impugned order on the following grounds of appeal:

“(iv) That the Id CIT(A) has erred in sustaining the disallowance of deduction u/s.80P(2) made by the Id AO at Rs. 23,767/ i.e., the gross profit of PDS business of Rs. 2,58,020/ less proportionate expenses of Profit & Loss Account of Rs. 2,34,253/ hence the net profit from the PDS business comes to Rs 23,767/ and full amount is eligible for deduction u/S80P(2)(GJ(11) for such other business.

(v) The Learned AO has only allowed a general deduction of Rs 50,000/ U/S 80P(2)(GJ(11) whereas the entire income of the society is deductible U/S 80P

(v) The Id AO has erred in disallowing the deduction u/s80P(2) of other income including dividend income of Rs.7,15,444/ and membership fees/entry fees income of Rs.285/ totaling to Rs. 7,15,729/. The learned AO has only allowed dividend income of Rs.1,53,238/ as exempt and the entire amount of Rs 5,62,206/ which is clearly eligible for the deduction u/s80P(2).

(vi) The entire afore said additions can be explained with the help of the following chart:

S.No	Particulars	Gross Amount (A)	Proportionate Expenses of P&L (B)	Difference of Depreciation (C)	Expenses TDS (D)	Net Profit E=A-B-C-D
1	Fertilizer Division A/C	8,046	682,061	0		-674,015
2	PDS A/C	258,020	234,253	0		23,767
3	Paddy Trading A/C	1,971,889	307,555	0	279,470	1,384,864
4	Banking activity A/C	284,021	118,222	0		165,799
5	Interest account	-771,715	-	0		-771,715
6	Dividend and other Income	715,729	-	0		715,729
	GTI as per AO and Assessee	2,465,991	1,342,092	0	279,470	844,429
	Less Dividend Claimed Exempt					1,53,238
	Adjusted GTI					6,91,192
	Deduction U/S 80P(2)(c)(ii)					50,000
	Taxable Income computed					6,41,192
	Taxable Income computed by learned AO and confirmed by Hon CIT (A)					9,20,661
	Difference is of TDS which has already being added in Computation					279,470

The assessing officer had added Rs 2,79,470/ again on A/C of TDS debited to Paddy account whereas the assessee society had already added the same in computation of total income hence the same may be deleted.

2. That the CIT(A) has erred in completing the appellate proceedings without giving reasonable and sufficient opportunity of being heard to the appellant, which is against the principle of natural justice.

3. The appellant craves leave to add, urge, alter, modify and withdraw any ground/grounds before or at the time of hearing of the appeal.”

3. Before proceeding any further, I may herein observe that all the appeals filed by the assessee appellant involves a delay, as under (as per details filed by the Ld. AR):

ITA No. 323/RPR/2023 & 18 Others
Gramin Sewa Sahakari Samiti Maryadit

Sl. No.	Name of the society	Appeal No.	Date CIT order	Due date	Current	Delay
1.	Gramin Sewa Sahakari Samiti Maryadit, Kurud	323/RPR/2023	29-Dec.-2022	27-Feb-2023	3-Nov-2023	249
2.	Gramin Sewa Sahakari Samiti Maryadit, Kosmarra	324/RPR/2023	10-Jun-2022	9-Aug-2022	3-Nov-2023	451
3.	Gramin Sewa Sahakari Samiti Maryadit, Madeli	325/RPR/2023	29-Apr-2022	28-Jun-2022	3-Nov-2023	493
4.	Gramin Sewa Sahakari Samiti Maryadit, Sankardah	326/RPR/2023	28-Mar-2023	27-May-2023	3-Nov-2023	160
5.	Gramin Sewa Sahakari Samiti Maryadit, Sankardah	327/RPR/2023	27-Feb-2023	28-Apr-2023	3-Nov-2023	189
6.	Gramin Sewa Sahakari Samiti Maryadit, Bhendri	328/RPR/2023	17-Oct-2022	16-Dec-2023	3-Nov-2023	322
7.	Gramin Sewa Sahakari Samiti Maryadit, Bhendri	329/RPR/2023	17-Oct-2022	16-Dec-2023	3-Nov-2023	322
8.	Gramin Sewa Sahakari Samiti Maryadit, Kodebod	330/RPR/2023	11- Mar-2022	10-May-2022	3-Nov-2023	542
9.	Gramin Sewa Sahakari Samiti Maryadit, Kodebod	331/RPR/2023	19-Mar-2022	18-May-2022	3-Nov-2023	534
10.	Gramin Sewa Sahakari Samiti Maryadit, Doma	332/RPR/2023	27-Apr-2022	26-Jun-2022	3-Nov-2023	495
11.	Gramin Sewa Sahakari Samiti Maryadit, Doma	333/RPR/2023	27-Apr-2022	26-Jun-2022	3-Nov-2023	495
12.	Gramin Sewa Sahakari Samiti Maryadit, Doma	334/RPR/2023	27-Apr-2022	26-Jun-2022	3-Nov-2023	495
13.	Gramin Sewa Sahakari Samiti Maryadit, Doma	335/RPR/2023	27-Apr-2022	26-Jun-2022	3-Nov-2023	495
14.	Gramin Sewa Sahakari Samiti Maryadit, Bhakhara	336/RPR/2023	11- Mar-2022	10-Mar-2022	3-Nov-2023	542
15.	Gramin Sewa Sahakari Samiti Maryadit, Bhakhara	337/RPR/2023	11- Mar-2022	10-Mar-2022	3-Nov-2023	542
16.	Gramin Sewa Sahakari Samiti Maryadit, Bhakara	338/RPR/2023	11- Mar-2022	10-Mar-2022	3-Nov-2023	542
17.	Gramin Sewa Sahakari Samiti Maryadit, Bhakara	339/RPR/2023	11- Mar-2022	10-Mar-2022	3-Nov-2023	542
18.	Gramin Sewa Sahakari Samiti Maryadit Doner	340/RPR/2023	3- May-2023	3-May-2023	3-Nov-2023	124
19.	Gramin Sewa Sahakari Samiti Maryadit, Doner	341/RPR/2023	3-May-2023	3-May-2023	3-Nov-2023	124

4. Succinctly stated, the assessee society, which is engaged in the business of banking, paddy procurement, sale of fertilizers, seeds and pesticides and controlled items under public distribution system (PDS), had filed its return of income for A.Y.2014-15 on 07.02.2015, declaring an income of Rs. Nil. Subsequently, the case of the assessee society was selected for scrutiny assessment u/s. 143(2) of the Act.

5. Assessment was framed by the A.O vide his order passed u/s. 143(3) dated 12.02.2016, wherein the income of the assessee society was determined at Rs.9,20,660/- after, inter alia, making multi-facet additions/disallowance u/s. 80P of the Act.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. As is discernible from the records, the assessee society despite having been given sufficient opportunity had failed to avail the same and did not put up an appearance in the course of the proceedings before the first appellate authority. For the sake of clarity, the notices which were issued by the CIT(Appeals) but not complied with by the assessee society are culled out as under:

Sr. No.	Date of issue of notice u/s.250	Sent by/through	Compliance by Appellant
1.	22.02.2021	ITBA	No compliance
2.	18.01.2022	ITBA	No compliance

3.	07.02.2022	ITBA	No compliance
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After deliberating at length in the backdrop of plethora of judicial pronouncements, the CIT(Appeals) observed that as the assessee society despite having been afforded sufficient opportunity had neither participated in the course of the proceedings before him nor furnished any document, explanation or evidence in support of the grounds of appeal based on which, the impugned issue was assailed before him, thus, had failed to discharge the onus that was cast upon it as regards proving the genuineness of the transactions/additions made by the A.O. After so concluding, the CIT(Appeals) proceeded with and disposed off the appeal on the basis of facts and material available on record. Referring to the fact that though the assessee society on the basis of its multi-facet grounds of appeal had raised certain contentions before him, which however, were not supported by any corroborative evidence/ information, the CIT(Appeals) dismissed the appeal. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

“4. Findings and Decision :

In this case, the assessment order u/s. 143(3) of the I.T. Act of the Act has been passed by the AO on 12.02.2016 and the date of service of the order as per the appeal Memo in Form No.35 filed by the appellant is mentioned as 26.02.2016. The appellant has filed the appeal on 22.03.2016, which is within the prescribed period.

4.1 The appellant had not filed his written submission with his Form 35. Therefore, it was given multiple opportunities to file written submission. The notices were issued electronically through the ITBA,

but the appellant has failed to comply with the same. The details of the notices issued are as under :

Sr. No.	Date of issue of notice u/s.250	Sent by/through	Compliance by Appellant
1.	22.02.2021	ITBA	No compliance
2.	18.01.2022	ITBA	No compliance
3.	07.02.2022	ITBA	No compliance

4.2 The issue of non-compliance by assesseees at appellate stage has been considered and decided by the Hon'ble Supreme Court and Various High Courts as discussed below:

4.3 The Hon'ble Supreme Court in the decision pronounced on October 25, 2019 in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd in Civil Appeal No. of 2019 (Arising out of SLP (Civil) No. 29855 of 2018) has held that if a notice is duly served upon the litigant through its authorized representative, and it was provided sufficient opportunity to appear before the Court and contest the matter but the litigant chooses to let the matter proceed ex-parte, the order cannot be recalled.

In the case of the present appellant, the notices to the appellant u/s 250 of the I.T. Act, 1961, have been issued online through the ITBA software, as is required under the Faceless Assessment & Appeals, now in practice.

The decision rendered on 18 October, 2019 by the Hon'ble Supreme Court in the case of PCIT vs M/s I Ven Interactive Ltd in Civil Appeal No.8132 of 2019 (Arising out of SLP(C) No.3530/2019) is also squarely applicable.

4.4 The Hon'ble jurisdictional Gujarat High Court in the latest decision on 27.06.2018 in the case of PCIT-3 Vs. Ashokji Chanduji Thakor in ITA No.710, 711, 712, 713, 714, 717 of 2018, has held as under:-

1. Heard the learned advocates for the respective parties at length. Perused the impugned judgment and order passed by the learned Tribunal. By impugned judgment and order passed by the learned ITAT, the Tribunal has remitted the matter back to the file of the learned CIT(A) for afresh adjudication by solely observing that —we consider it expedient to restore the

matter back to the file of the CIT(A) in the larger interest of justice with a view to enable the assessee to avail opportunity once more." No reasons whatsoever have been assigned by the learned ITAT and learned Tribunal has not at all observed anything on merits of the order passed by the learned CIT(A). Nothing is observed whether assessee was prevented from appearing before the learned CIT(A) and / or there were any justifiable reasons for the assessee not to appear before the learned CIT(A). The impugned order passed by the learned Tribunal is non speaking and unreasoned order. The manner in which, the learned Tribunal has disposed of the appeal is not at all appreciable and same cannot be sustained. Without any cogent reasons and / or justifiable reasons, the matters cannot be remitted casually and lightly. Merely by observing that that "we consider it expedient in the larger interest of justice", a well reasoned order passed by the learned CIT(A) could not have been set aside in such a manner and the matter cannot be restored to the file by the learned CIT(A). Thus, the impugned order passed by the learned Tribunal can be said to be suffering from vice of arbitrariness, unreasonableness and therefore, interference of this Court is called for. It is true that normally High Court would not interfere with the order of remand passed by the learned Tribunal remanding the matter for fresh adjudication. However, provided the order passed by the learned Tribunal is backed by cogent reasons and does not suffer from any unreasonableness and arbitrariness like in the present case. The exercise of powers in such a manner and exercise of such appellate powers and passing the non speaking and non reasoned order and the orders which are passed by the Tribunal, which suffers from unreasonableness and arbitrariness and / or at the whims of the Tribunal not backed by any reason can be said to be pure question of law and therefore, interference of this Court is required.

1 It is required to be noted that in the present case right from very beginning i.e. assessment proceeding, assessee was non cooperative. Number of opportunities were given by the AO, however assessee did not cooperate and even did not file any reply. Therefore, considering the material on record, the AO made addition as unexplained investment. Even before the learned CIT(A) also the assessee was non cooperative. Number of opportunities were given to the assessee to represent his case, however none remained present on behalf

of assessee. Thereafter, the learned CIT(A) proceeded further with the appeal ex-parte and decided the appeal on merits and confirmed the order passed by the AO confirming additions of unexplained investment. Thus, even learned CIT(A) also decided the matter on merits. On going through the orders passed by the AO as well as learned CIT(A), we are of the opinion that in absence of any explanation by the assessee on the investment in question, AO was justified in making the addition of unexplained investment and thereafter learned CIT(A) was justified in confirming the same. Therefore, even the order passed by the learned CIT(A) which was on merits was not required to be interfered with by the learned CIT(A) and ought not to have been quashed and set aside without assigning any reasons. Under the circumstances, the impugned orders passed by the learned Tribunal cannot be sustained.

In view of the above and for the reasons stated above, the questions of law are answered in favour of the Revenue and against the assessee and impugned common judgment and order passed by the learned Tribunal in IT(SS) A No.117/AHD/2015 to IT(SS) A No.122/AHD/2015 is hereby quashed and set aside and the orders passed by the AO as well as learned CIT(A) are restored. All the appeals are allowed accordingly. No costs."

4.5 The decision of the Hon'ble High Court of Mumbai in the case of M/s Chemipol v/s. Union of India [Central Excise Appeal No.62 of 2009] clearly states, that every court judicial body or authority, which has a duty to decide a matter between two parties, inherently possesses the power to dismiss the case in default. For the sake of reference, the relevant extract of the judicial pronouncement rendered by the Hon'ble High Court of Mumbai quoting decision of Hon'ble Supreme Court in case of Nandramdas Dwarkadas, AIR 1958 MP 260, is reproduced below :

"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses."

4.6 The principle that every court that is to decide on a matter of dispute, inherently possesses the power to dismiss the case for

default, has been upheld by the Hon'ble Supreme Court in case of Dr. P. Nalla Thampy Vs. Shankar (1984 (Supp) SCC 63 and the case of New India Assurance vs. Srinivasan (2000) 3 SCC 242. In the latter case, the Apex Court has held as under:-

"That every court or judicial body or authority, which has a duty to decide a list between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi judicial body. In the absence of the complainant, therefore, the court will be will without its jurisdiction to dismiss the complaint for non prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non appearance of the complainant."

4.7 The Hon'ble Bombay High Court has also laid down the proposition that where the appellant in spite of notice is persistently absent and the Tribunal on facts of the case is of the view that the appellant is not interested in prosecuting the appeal, it can in exercise its inherent power to dismiss the appeal for non-prosecution. In the case of CIT Vs. B. N. Bhattacharya reported at 118 ITR 461, it was held that appeal does not mean merely filing of appeal but effectively pursuing it.

4.8 The Hon'ble ITAT Delhi (ITR No.2006/De1/2011 dt.19.12.2001) in the case of Whirlpool of India Ltd. v. DCIT had dismissed appeal for non attendance at hearings, inferring that assessee was not interested in prosecuting of appeal.

4.9 In the case of Chadha Finlease Ltd. V. ACIT (ITA No.3013/Del/2011 date of order 20.12.2011) the Hon'ble ITAT Delhi had dismissed the appeal for non-attendance at hearings.

4.10 In its decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. on 02.09.2011 (ITA No.798 of 2009), the Hon'ble High Court of Delhi had held that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to give premium to the

assessee for his negligence. When the assessee is non-cooperative, it can naturally be safely concluded that the assessee did not want to adduce evidence as it would expose falsity and non genuineness.

4.11 In view of the facts and legal position discussed above, it is presumed that appellant is not interested in pursuing the appeal and not having any documents, explanation and evidence in support of grounds of appeal raised and thus has not discharged the onus to prove the genuineness of the transactions/ addition made by the AO. It is seen that no written submission filed till date. In view of the lack of prosecution by the appellant, I proceed to decide the appeal on the basis of facts and material available on record.

5. I have carefully gone through the order u/s. 143(3) of the Act, grounds of appeal, the statement of facts as well as the relevant provisions of law. The appellant has filed multiple grounds of appeals but the details furnished by the appellant with the Form 35 does not provide any further information or corroborating evidences.

6 In view of the above clear position of law and respectfully relying upon the judgments of Hon'ble High Courts as above, this issue is dismissed.

6.1 In the result, appeal is dismissed.”

7. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal.

8. I have heard the Ld. Authorized Representative of both the parties, perused the orders of the lower authorities as well as material available on record.

9. Shri Rakesh Dhody, Ld. Authorized Representative (for short 'AR') for the assessee society at the threshold of hearing of the appeal submitted that the present appeal involved a delay of 493 days. The Ld. AR has filed an “affidavit” dated 06.11.2023 of the assessee society which had sought for condonation of the

delay involved in filing the present appeal. For the sake of clarity, the same is culled out as under:

- 1 Condo-nation of delay in submission of appeal in Gramin Sewa Sahakari Samiti , Madeli District Dhamtari (CG) V/S ITO Dhamtari PAN AAAAG9931D filed on 03-11-2023 AY 2014-15
 - 2 That the appeal filed by the Assessee society before the Commissioner of Income Tax (A) National Faceless Appeal Centre (NFAC) was disposed of by order dated 29-Apr-2022
 - 3 That the time for filing of the appeal expired on 28-Jun-2022 and the delay is of 496 days
 - 4 That Assessee society appointed Shri Rakesh Khandelwal Chartered Accountant as their Attorney to look after the entire appeal matter with CIT Appeal and thereafter if required file the appeal with ITAT but unfortunately the Attorney who was looking after the cases lost his life due to COVID-19 and his office was completely disturbed and there was no one even to tell the status of the cases. A new Chartered Accountant lady took over the charge of his office but even after passing of the substantial time she was unable to tell the status of the cases. The said CA was handling number of such societies from Dhamtari
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a Ram
- 6 NOV 2023

5 That Honorable CIT has also dismissed the case on the ground that no authorized person attended the case and only filing of Appeal with CIT (A) was made. The matter was never raised with the CIT(Appeal) that the attorney who was looking after the case lost his life in COVID-19

6 That assessee society would further like to submit that all the societies are working under the Government supervision and Jila Sahakari Bank in Rural areas and they are also not computer literate. All the books of accounts such as cash book and ledger are still being maintained manually. The access to internet is also poor in the rural area.

7 That the memo of Appeal has been filed on 03-11-2023 in the Office of the Tribunal

Your honor is kindly requested to condone the delay in filing the said appeal so that the people living in the remote areas gets a reasonable time and proper justice.

Elaborating on the reasons leading to the aforesaid delay, it was submitted by the Ld. AR that there were multi-facet reasons leading to the same, viz. (i) that as the earlier chartered accountant of the assessee society, viz. Shri Rakesh Khandelwal who was looking after the matter before the CIT(Appeals) had unfortunately expired in the month of April, 2021, therefore, the case of the assessee society had thereafter remained unattended; (ii) that the staff of the assessee society which was working under the Government supervision and Jila Sahakari Bank in a rural areas was not computer literate; (iii) that books of the account of the assessee society was being manually maintained; and (iv) that there was no proper access of internet in the rural area where the assessee society was based. Carrying his

contention further, the Ld. AR submitted that as the delay involved in filing of the appeal had occasioned due to bonafide reasons and not on account of any malafide intention of the assessee appellant, thus, the same in all fairness be condoned.

10. Per contra, the Ld. Sr. Departmental Representative (for short 'DR') vehemently opposed the request of the assessee for condonation of delay involved in filing of the present appeal. The Ld. DR submitted that as the delay of 493 days involved in filing of the appeal was inordinate, therefore, the same did not merit to be condoned. Elaborating further on his contention, the Ld. DR submitted that in majority of the appeals in Form 35, the e-mail account of the assessee societies/samitis was mentioned. Backed by the aforesaid facts, the Ld. DR submitted that now when the order of the CIT(Appeals) in majority of the cases was dropped in the e-mail account of the respective assessee, it was incomprehensible that as to how the assessee could claimed that it had remained unaware of the said order despite lapse of substantial time period. Apart from that, it was submitted by the Ld. DR that the conduct of the assessee society could also safely be gathered from the fact that even otherwise, in the course of the proceedings before the CIT(Appeals), it had despite sufficient opportunity failed to put up an appearance before him, as a result whereof, the latter was constrained to dispose off the appeal by way of an ex-parte order.

11. I have thoughtfully considered the contentions advanced by the ld. authorized representatives of both the parties as regards the condonation of the

delay involved in filing of the present appeal. Admittedly, it is a matter of fact borne from record that there is an inordinate delay of 493 days involved in filing of the present appeal. Although the claim of the Ld. AR that the delay of 493 days involved in filing of the present appeal had occasioned, inter alia, for the reason that Shri Rakesh Khandelwal, Chartered Accountant who was looking after the case of the assessee society had unfortunately expired, though at the first blush appeared to be a justifiable reason, but a closure scrutiny of the facts in no way supports the aforesaid claim of the assessee. On a perusal of the records, it transpires that Shri Rakesh Khandelwal, Chartered Accountant had unfortunately expired in the month of April, 2021, i.e., at the time when the appellate proceedings were going on in the case of the assessee society before the CIT(Appeals). As observed by me hereinabove, the assessee society had not only failed to bring the aforesaid fact to the notice of the CIT(Appeals) and thereafter make necessary arrangements for prosecuting its appeal before him but had adopted a callous and non-cooperative approach in the course of the proceedings before him at all. It is incomprehensible that the assessee society was not conversant about the fact that its appeal has been taken up for hearing by the CIT(Appeals) and was pending before him. I, say so, for the reason that as observed by the CIT(Appeals), the assessee society despite having been validly put to notice on three occasions about the respective dates of hearing of its appeal had chosen not to participate in the same. As the assessee society had neither on any occasion despite validly been intimated about the hearing of the appeal put up an appearance before the

CIT(Appeals); nor brought the fact about unfortunate demise of its chartered accountant, viz., Shri Rakesh Khandelwal (supra) in the month of April, 2021 to his notice or thereafter, made necessary arrangements to prosecute the matter before the first appellate authority, therefore, it can safely be concluded that it had consciously chosen to adopt a lackadaisical approach and a callous conduct in the course of said appellate proceedings. Apart from that, I find no substance in the claim of the Ld. AR that demise of its earlier chartered accountant, viz. Shri Rakesh Khandelwal in the month of April, 2021 justified the failure on the part of the assessee society to participate in the course of the proceedings pending before the CIT(Appeals) which had culminated much thereafter vide the latter's order dated 29.04.2022, i.e., after a period of 1 year.

12. Apropos the filing of the present appeal by the assessee society with the Tribunal on 03.11.2023, I am unable to comprehend as to on what basis the assessee society had claimed that the same had occasioned due to the demise of its earlier chartered accountant, viz., Shri Rakesh Khandelwal (supra). As Shri Rakesh Khandelwal, Chartered Accountant had unfortunately expired in the month of April, 2021, therefore, his sad demise by no stretch of imagination would justify the filing of the substantially delayed present appeal by the assessee society on 03.11.2023 against the stipulated time period which had lapsed way back on 28.06.2022. Although I cannot remain oblivious of the fact that the death of the assessee's counsel who was earlier looking after its income-tax matters justifiably explain some delay/non-compliances which may have surfaced on account of the

matter/case having remained unattended for some period, but it is incomprehensible that as to how the sad demise of the counsel in the month of April, 2021 would justify the inordinate delay of 1½ years (approx.) involved in filing of the present appeal that was filed on 03.11.2023, i.e., after 2½ years from the date of said unfortunate event. I, say so, for the reason that as in the present case, the assessee had filed the appeal on 03.11.2023 i.e. two and half years from the unfortunate demise of its chartered account, therefore, there is no basis for the assessee to have claimed that the said delay had occasioned for the reason that its case had remained unattended after the death of his previous counsel. As the assessee ought to have taken necessary steps not only in prosecuting the matter which on the date of death of his earlier counsel was pending before the CIT(Appeals), but was also expected to be vigilant to file the appeal against the impugned order before the Tribunal within the stipulated time period, which, as observed by me hereinabove, he had failed on both counts for no justifiable reasons. As such, the failure of the assessee society to prosecute the appeal before the CIT(Appeals) and thereafter, substantially delaying the filing of the present appeal clearly reveals its lackadaisical approach with respect to its income tax matters.

13. In my considered view, the assessee society had only in order to wriggle out from the inordinate delay of 493 days involved in filing of the present appeal, had tried to justify the same on the ground that the same occasioned for the reason that its earlier counsel had expired and its income-tax matters had remained

unattended. The aforesaid explanation of the assessee society does not inspire any confidence for the reason that it ought to have made necessary arrangements for both prosecuting the matter before the first appellate authority and thereafter filing the appeal against the latter's order well within the prescribed time period contemplated in law. As observed by me hereinabove, the callous and irresponsible conduct of the assessee society is not only discernible from the inordinate delay involved in filing of the present appeal but also, its conduct in the course of the proceedings before the CIT(Appeals), wherein it had adopted an evasive approach and had on no occasion despite having been put to notice about the hearing of the appeal had put up an appearance before the said appellate authority.

14. Apropos, the claim of the assessee that as it is working in the rural areas with a skeletal staff who were not computer literate, I am unable to approve the said reason advanced by the assessee society in its attempt to explain the inordinate delay involved in filing of the present appeal. As all the assessees without any exception are expected to be vigilant and comply with the statutory obligations cast upon them within the prescribed time period, therefore, the mere fact that the assessee society suffered from a locational disadvantages or that its staff was not computer savvy, cannot be pressed into service for justifying the substantial delay of 493 days involved in filing of the present appeal. Also, the claim of the assessee society that there was no proper access to internet in the rural area where it was based would also not come to its rescue. Based on my

aforesaid observations, I am of the view that not only the lackadaisical approach adopted by the assessee society in substantially delaying the filing of the present appeal by an inordinate period but also its non-cooperative attitude and sheer carelessness in the course of the proceedings before the CIT(Appeals) wherein it had despite being well informed evaded participation in the course of the proceedings before him, therein, irrefutably evidence the fact that the substantial delay involved in filing of the appeal was not backed by any bona fide reasons, but a careless approach on its part, which it had tried to justify on the basis of its multi-facet contentions that have not legs to stand upon.

15. At this stage, I may herein observe that where an application for condonation of delay has been moved bonafide, then, the Court would normally condone the delay, but where the delay has not been explained at all and in fact there is an unexplained and inordinate delay coupled with negligence or sheer carelessness, then, the discretion of the court in such cases would normally tilt against the applicant. My aforesaid conviction is supported by the order of **“Division Bench” of the ITAT, Mumbai** in the case of **M/s. Phoenix Mills Ltd.**

Vs. Asstt. CIT in ITA No.6240/MUM/2007 for A.Y.1999-2000, dated 23.03.2020.

Reverting to the facts of the present case, I have already examined the reasons that had led to the inordinate delay, which has not been explained by the assessee society to have occasioned due to bonafide reasons. As observed by me hereinabove, as there was no justifiable reason for the assessee society to file the present appeal after 493 days from the lapse of the prescribed period, therefore,

there appears to be no reason to adopt a liberal view and condone the inordinate delay therein involved. Also, I may observe at this juncture that the law of limitation has to be construed strictly as it has an effect of vesting on one and taking away the right from the other party. The delay in filing of the appeals cannot be condoned in a mechanical or a routine manner since that would undoubtedly jeopardize the legislative intent behind Section 5 of the Limitation Act.

16. I may herein observe that in the case of **State of West Bengal Vs. Administrator, Howrah 1972 AIR SC 749**, the **Hon'ble Apex Court** had held that the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice, particularly when there is no motive behind the delay. The expression "sufficient cause" will always have relevancy to reasonableness. The action which can be condoned by the court should fall within the realm of normal human conduct or normal conduct of a litigant. However, as observed by me hereinabove, as the assessee appellant in the present case had acted in defiance of law, therefore, there can be no reason to allow its application and condone the substantial delay of 493 days involved in preferring of the captioned appeal.

17. Also, I may herein draw support from a "Third Member" decision of the Tribunal, in the case of **Jt. CIT Vs. Tractors and Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai)**, wherein a fine distinction was drawn between normal delay and inordinate delay. It was held as under:

“A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach, but in the latter case no such consideration may arise and such a case deserves a liberal approach.”

In the present case before me, the delay of 493 days cannot be simply condoned on the basis of the hollow claim of the assessee that the same had occasioned for the multi facet reasons, viz. (i) that as the earlier chartered accountant of the assessee society, viz. Shri Rakesh Khandelwal who was looking after the matter before the CIT(Appeals) had unfortunately expired in the month of April, 2021, therefore, its case for the said reason had, thereafter, remained unattended; (ii) that the assessee society is based in a rural area; (iii) that the staff of the assessee society which was working under the Government supervision and Jila Sahakari Bank in a rural area, was not computer literate; (iv) that books of the account of the assessee society was being manually maintained; and (v) that access of internet was also not proper in the rural area where the assessee society was based. As observed by me hereinabove, the conduct of the assessee society reveals beyond doubt that the delay in filing of the appeal had occasioned on account of sheer negligence and carelessness on its part as regards filing of the present appeal within the stipulated time period.

18. Also, as observed by the **Hon'ble Supreme Court** in the case of **Ramlal, Motilal and Chotelal Vs. Rewa Coalfields Ltd. AIR (1962) 361 (SC)** that seeker of justice must come with clean hands, therefore, now when in the present appeal

before me the assessee appellant had failed to come forth with any good and sufficient reason that would justify condonation of the inordinate delay of 493 days involved in preferring of the same, therefore, I decline to condone the same and, thus, without adverting to the merits of the case dismiss the captioned appeal of the assessee society as barred by limitation.

19. In the result, the appeal of the assessee society in ITA No.325/RPR/2023 for A.Y. 2014-15 is dismissed in terms of my aforesaid observations.

ITA Nos.323 & 324/RPR/2023 & 326 to 341/RPR/2023

20. As the facts pertaining to the delay involved in the captioned respective appeals filed by the assessee societies/samitis remains the same as were there before me in the aforementioned ITA No.325/RPR/2023 for assessment year 2014-15, therefore, my order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeals, i.e., ITA Nos.323, 324, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340 & 341/RPR/2023. In these cases also, I decline to condone the inordinate delay mentioned in the preceding paragraph (reproduced as a “chart”), and, thus, without adverting to the merits of the case dismiss the captioned appeals of the assessee societies/samitis as barred by limitation as per observations recorded while disposing off the appeal in ITA No.325/RPR/2023 for A.Y. 2014-15.

21. In the result, all the appeals filed by the assessee societies/ samitis are dismissed in terms of the aforesaid observations.

Order pronounced in open court on 05th day of December, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 05th December, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.