



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.321/CTK/2023

Assessment Year : 2018-19

ITA No.322/CTK/2023

Assessment year: 2018-19

Cuttack Club, At:Barabati Stadium, Cantonment Road, Cuttack	Vs.	Addl./Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer, National e-assessment centre, Delhi
PAN/GIR No.AABCC 7150 M		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Saranghi, CA/Shri Digant Dash, Adv and Shri Jay Prakash Shah, Treasurer.

Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 03/01/2024

Date of Pronouncement : 03 /01/2024

ORDER

ITA No.321/CTK/203

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 29.9.2023 in Appeal No. NFAC/2017-18/10216426 for the assessment year 2018-19.

2. Shri S.K.Sarangi, CA/Shri Digant Dash, Adv and Shri Jay Prakash Shah, Treasurer of assessee club appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is a members club, which is also heritage club running from 1886. It was the submission that the Id CIT(A) had dismissed the appeal of the assessee on account of delay in filing of the appeal. It was the submission that the appeal was filed with a delay of 607 days. Alongwith Form 35 filed before the Id CIT(A), the assessee had mentioned that the delay in filing the appeal was on account of the illness of the Sr. Accountant and non-availability of Accountant at that point of time and that after the Accountant rejoined, the papers had been produced before the counsel and the appeal had been preferred. It was the submission that on perusal of the order of the Id CIT(A) at para 6 clearly showed that after considering the exclusion of Covid period, the actual delay was 226 days. It was the further submission that the Sr.Accountant of the assessee club Shri Arunodoya Sahoo, had also subsequently passed away and the assessee has produced the death certificate. It was the further submission that the treasurer of the assessee club Shri Jay Prakash Shah was also under going medical treatment for carcinoma and also under gone surgery subsequently. Id AR has also placed the medical report of Shri Jay Prakash Shah before me to support his claim. It was the submission that it was only on account of unfortunate

issues that the assessee could not file the appeal within time. It was the submission that the only issue on merits of the assessee's case was addition of Rs.32,73,460/- representing the subscription from the members which had been claimed as exempt by the assessee on account of principles of mutuality, which was disallowed by the Assessing Officer. Ld AR drew my attention to Note-13 i.e. income and expenditure account for the relevant period to show that under the head "other income", the subscription from the members has been claimed as exempt and other incomes have been offered to tax after claiming the necessary expenses. It was the submission that in view of principles of mutuality, the contribution from the members cannot be treated as the income of the assessee insofar as no person can make profit from himself.

4. In reply, Id Sr DR submitted that the delay should not be condoned. It was the submission that if at all, the issue could be restored to the file of the AO so that the AO can examine the principles of mutuality again. It was the submission that the order of the Id CIT(A) is liable to be upheld as also the AO.

5. I have considered the rival submissions. A perusal of the facts in the present case clearly show that the delay in filing the appeal before the Id CIT(A) has been clearly on account of the sickness of the Sr Accountant of the assessee and the treasurer of the assessee. The medical records are also available in regard to the treasurer, which clearly proves the

genuineness of the claim. The death certificate of the Sr Accountant also supports the claim of the assessee. This being so, I am of the view that the delay in filing the appeal is liable to be condoned and I do so. Under normal circumstances, as the Id CIT(A) has dismissed the assessee's appeal on account of the delay, the appeal should be restored to the file of the Id CIT(A) for re-adjudication on merits. However, considering the smallness of the revenue and the fact that the issue is quite simple and straightforward in respect of the merits, it is noticed that in the assessment order itself in para 2, the AO has mentioned that the disallowance was only in respect of subscription from the members, which is also evident from the income and expenditure account. Considering the fact that the assessee club is eligible for claim of mutuality, obviously, the subscription from the members would be exempt on account of principles of mutuality. Consequently, the addition as made by the AO and confirmed by Id CIT(A) of Rs.32,73,460/- by disallowing the claim of the exemption of subscription from the members stands deleted.

6. In the result, appeal stands allowed.

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7. This is an appeal filed by the assessee against the order of Id CIT(A), NFAC, Delhi dated 29.9.2023 in Appeal No.NFAC/2017-18/10216425 against

the confirmation of penalty u/s.270A of the Act for the assessment year 2018-19.

8. It is noticed that the appeal of the assessee was dismissed by the Id CIT(A) on account of delay in filing of appeal by 319 days. As I have already found that the delay in filing the quantum appeal before the Id CIT(A) was on account of reasonable cause and same stands condoned, on similar grounds, the delay in filing the appeal in regard to penalty before the Id CIT(A) is condoned.

9. As I have already deleted the addition on merits while adjudicating the quantum appeal, which is the foundation for levy of penalty and the subject matter of appeal, the penalty as levied by the AO and confirmed by Id CIT(A) stands deleted.

10. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 03/01/2024.

(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 03 /01/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Cuttack Club, At:Barabati Stadium, Cantonment Road, Cuttack
2. The Respondent: Addl./Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer, National e-assessment centre, Delhi
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT, Cuttack.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack