

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 452/Bang/2023
Assessment Year : 2010-11

M/s. Rashtriya Computer Saksharatha Samithi Trust, PN IV 491 of Shairmail BU Puttur, Near Bus Stand Puttur, Dakshina Kannada – 574 201. Karnataka PAN: AAATR9338J	Vs.	The Assistant Commissioner of Income Tax (Exemption), Circle – 1, Mangaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri SreehariKutsa, Advocate
Revenue by	:	Shri Subramanian .S, JCIT DR

Date of Hearing	:	30-11-2023
Date of Pronouncement	:	01-12-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal filed by the assessee arises out of order dated 07.10.2022 passed by NFAC, Delhi for A.Y. 2010-11.

2. At the outset, the Ld.AR submitted that there is a delay of 190 days in filing the present appeal before this *Tribunal*. The Ld.AR relied on the application for condonation of delay filed by the assessee dated 09.06.2023 along with affidavit. It is the submission of the Ld.AR that the Ld.CIT(A) had sought for

remand report in respect of the submissions made by the assessee by directing the Ld.AO to verify the books of accounts for determination of income in the hands of the assessee. The Ld.CIT(A) remanded the issue back to the Ld.AO in the absence of the response from the assessing officer. At that juncture, the assessee was advised to wait for the OGE to be passed by the Ld.CIT(A). However, it is submitted that the Ld.AO in the OGE taxed the net surplus.

2.1. It submitted by the Ld.Ar that was under such circumstances, the appeal was not be filed by the assessee against the impugned order, within the period of limitation. The Ld.AR thus submitted that, due to inadequate advice, the assessee could not file appeal against the impugned order within time and therefore the delay cannot be attributed to the assessee.

2.2. The Ld.DR opposed for the condonation of the delay.

We have perused the submissions advanced by both sides in the light of records placed before us.

3. In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

It is also submitted by the Ld.AR that there is no malafide intention on behalf of assessee in not filing the present appeal within time. Considering the circumstances under which the

delay was caused in filing the present appeal before this *Tribunal* and that nothing contrary could be established by the revenue before us.

3.1. We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

3.2. Considering the submissions by both sides and respectfully following the observation by *Hon'ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals as it is not attributable to the assessee.

Accordingly, the delay in filing the present appeal stands condoned.

4.On merits of the case, we note that the Ld.CIT(A) do not have the power to remand the issue to the Ld.AO by virtue of amendment to section 250 of the act. It is also noted that the assessment order is also passed u/s. 144 of the act without considering the submissions of the assessee.

4.1. In the interest of justice, we remand this issue for *denovo* consideration to the Ld.AO. The Ld.AO is directed to pass a speaking order after considering the submissions / evidences / details filed by assessee. Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, the grounds raised by assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 01st December, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 01st December, 2023.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)-12 |

By order

Assistant Registrar,
ITAT, Bangalore