

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

I.T.A. No.: 211/KOL/2024

Assessment Year: 2018-19

Takdah Lingding GPSKUS Limited.....Appellant
[PAN: AADAT 6301 M]

Vs.

ITO, Ward-3(2), Darjeeling.....Respondent

Appearances:

Assessee represented by: Promit Majumdar, Adv.

Department represented by: Swapan Kumar Bera, JCIT.

Date of concluding the hearing : April 17th, 2024

Date of pronouncing the order : April 29th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-1, Jaipur [in short Id. 'CIT(A)'] dated 07.12.2023 arising out of the assessment order framed u/s 143(1) read with Section 154 of the Act dated 31.05.2019.

2. Ld. Counsel for the Appellant submitted that Id. CIT(A) did not consider his condonation petition and rejected the ground of delay and dismissing the

appeal only on the point of limitation. Ld. Counsel for the assessee further submits that the Appellant has submitted a cogent reason of delay as there was pandemic in the year 2020 & 2021, the assessee was leaving far from the location and it was very tough to move but ld. CIT(A) did not consider and dismissed the appeal. His prayer is to condone the delay and case record be sent back to the ld. CIT(A) for fresh decision.

3. We have perused the record and find that the Appellant being a cooperative society registered under West Bengal Cooperative Society Registration Act filed its return of income for AY 2018-19 declaring total income NIL after deduction u/s 80P of the Act. The Appellant is an agricultural credit society with main object to provide agriculture credit facility to its members. After submitting return CPC assessed the total income of the assessee at Rs. 13,58,174/- without allowing deduction u/s 80P of the Act. The Appellant applied for rectification through rectified return on 18.06.2019. However, the Appellant applied for a rectification through rectified return on 18.06.2019. However, the Appellant did not receive any response nor any rectification order u/s 154 of the Act. The Appellant had preferred appeal before ld. CIT(A) against the same and the ld. CIT(A) had dismissed the appeal by observing thus:

“The first notice was issued to the appellant fixing the hearing on 07.12.2015. But none attended on this date. The case was re-fixed through another notice and date of hearing was fixed for 13.02.2018. And on this date an adjournment was requested and it was allowed for hearing on 27.02.2018. None attended on this date. However, a request for adjournment was made on 03.03.2018 for preparation of paper book. The matter was fixed for hearing on 27.06.2019 and notice was accordingly served. On 26.06.2019 another petition for adjournment requesting for some more time for preparation of paper book was requested. The matter was therefore re-fixed through a notice fixing hearing on 14.08.2019. None attended on this date. Another opportunity for hearing was given on 12.09.2019 through a separate notice. On the said date the appellant again moved an application for adjournment and as per request the matter was re-fixed for 24.09.2019. None attended on this date. One final opportunity was given to the appellant and the matter fixed for hearing on 15.10.2019. Even on this date none attended. It is now clear that for a period of almost

4 years several opportunities have been given to the appellant but instead of utilising such opportunities the appellant either does not attend or seeks adjournment for preparation of paper book. It does not take about 4 years to prepare paper book and written submission for arguing in an appeal. I am therefore convinced that the appellant has no desire to pursue any of the grounds of appeal and sufficient opportunities have been already given to the appellant. No further opportunities is necessary for the appellant."

Considering the above discussion and facts, the appeal filed is not in conformity with the provisions of Section 249(2) of the Act and there is no sufficient cause for condonation of delay in filing the appeal. The present appeal is dismissed as not maintainable.

4. Being aggrieved and dissatisfied with the impugned order the assessee has preferred the present appeal before the Tribunal.

Now, the only question for a determination is that whether condonation petition of the assessee reveals sufficient cause for delay.

5. In this context, we have perused the several decisions of the Hon'ble Apex Court and find that in *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575], this Court reiterated the following classic statement from *Krishna vs. Chathappan* [1890 ILR 13 Mad 269]:

"... Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

5.1. In *N.Balakrishnan v. M.Krishnamurthy* [1998 (7) SCC 123], this Court held:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long

range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice..... Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.

A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

6. The present case is at hand that intimation order u/s 143(1) of the Act was passed on 31.05.2019 and the appeal was filed on 11.09.2021. The reason had been assigned by the assessee which is as thus:

"Since March 2020 the entire state of West Bengal was locked down due to severe Covid pandemic. Movement within the state was also restricted specially in the hills of Darjeeling. Under the circumstance, the Appeal in Form 35 could not be filed within due time and it was delayed by a few days. Now it is preyed before your good office that the unavoidable and unintentional delay may kindly be condoned."

7. It is an undisputed fact that in the year 2020 & 2021 whole world was affected with Corona, movement was completely restricted.

8. Keeping in view the above cited decisions and the principle laid down by the Hon'ble Apex Court with respect to the condonation of delay, we are of the view that the there was no intentional delay rather it was bonafide. Accordingly, the delay is hereby condoned and the case is remanded back to the file of Id. CIT(A), by giving an opportunity to assessee to submit his case and thereafter Id. CIT(A) shall pass fresh order after hearing. The impugned order passed by Id. CIT(A) is here by set aside.

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

Order pronounced in the open Court on 29th April, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 29.04.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Takdah Lingding GPSKUS Limited, 1, Takdah, village-Takdah, Darjeeling, West Bengal-734 222.**
- 2. ITO, Ward-3(2), Darjeeling.**
3. CIT(A)-1, Jaipur.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata