

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'A' BENCH : BANGALORE**

**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 350/Bang/2024
Assessment Year : 2020-21

M/s. Vasavi Credit Co-operative Society Ltd., #11-12/105, Patel Road, 1 st Floor, Raichur – 584 101. PAN: ACMPP4981D	Vs.	The Income Tax Officer, Ward – 1, Raichur.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sunaina Bhatia, Advocate
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Department

Date of Hearing	:	08-05-2024
Date of Pronouncement	:	31-05-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 05.01.2024 passed by NFAC, Delhi for A.Y. 2020-21.

2. At the outset, the Ld.AR submitted that the Ld.CIT(A) did not decide the issue on merits and dismissed the appeal as the appeal filed was time barred. The Ld.AR submitted that appeal

was supposed to be filed against the assessment order dated 19.09.2022 within 30 days. However, the appeal has been filed on 28.02.2023.

3. The Ld.AR submitted that the reason for the delay was mentioned in form 35 that reads as under:

“The Appellant submits that the Order was passed on 19.09.2022, however, the communication regarding the same passed into the spam folder of the Appellant's registered email. The Appellant therefore was unaware of the Order being passed until the end of January. Once the Appellant learned that the Order was passed, the same was forwarded to the authorized representative to prepare and file the appeal. The appeal then came to be prepared and is filed with a delay of 133 days. The Appellant submits that there was no mens rea, and the delay occurred entirely due to circumstances beyond the control of the Appellant. The Appellant most humbly prays that the delay be condoned in the interest of justice, and the appeal admitted and heard on merits.”

4. The Ld.AR submitted that assessee is a credit co-operative society and carries out the activity of extending loans to its members out of which assessee has earned interest which was claimed as exempt u/s. 80P(2)(a)(i) of the act.

5. The Ld.AR submitted that assessee has also earned interest out of deposits made in scheduled banks. She submitted that the issues has to be analysed in the light of the decisions placed by *Hon'ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT* reported in 431 ITR 1 and *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors.* in Civil Appeal Nos. 10069 of 2016 dated 14.09.2023.

Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO reported in (2023) 154 taxmann.com 305

6. She thus prayed that the appeal may be remanded to the Ld.AO for necessary verification and for consideration of the claim in accordance with law.

7. On the contrary, the Ld.DR submitted that assessee has not justified the delay caused in filing the appeal before the Ld.CIT(A) and therefore the NFAC has rightly dismissed the appeal without condonation. He thus vehemently supported the orders passed by the authorities below.

8. We have perused the submissions advanced by both sides in the light of records placed before us. We note that there is no delay in filing the present appeal before this *Tribunal*.

9. The assessee had stated the reason or the delay before the Ld.CIT(A) that as the communication from the authorities was received in SPAM folder of the assessee's email, assessee went unnoticed. It was only when the assessee received the order of the Ld.AO, the papers were forwarded to the representative who then prepared the appeal to be filed before this *Tribunal*.

10. On merits, it is noted that the issue needs detailed consideration of evidence and verification in the light of the ratios expounded by *Hon'ble Supreme Court* in the decisions relied by the Ld.AR hereinabove. In our view, the issue relating to

condonation of delay must be considered on a rationale, common sense and pragmatic manner. There cannot be any presumption that delay is occasioned deliberately or on account of culpable negligence or for any malafide intention. A litigant would not stand on a beneficial situation by resorting to the delay. Instead of looking into whether the reasons stated by the assessee in support of condonation of delay, are sufficient, what must be considered is whether the assessee was diligent enough to take necessary and appropriate steps to show that the delay was caused notwithstanding that it is due diligence.

11. In the present case, the assessee has explained the reason that caused delay in filing appeal before the Ld.CIT(A). The reason cited is a reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. One should keep in mind that while construing the expressions “sufficient cause”, the principle leading to advancement of substantial justice must be of prior importance, and the interpretation of the expression “sufficient cause” must be construed liberally. In view of the above, we have condoned the delay caused in filing the appeal before the Ld.CIT(A).

12. On merits of the case, we note that consistently this *Tribunal* has been remanding the issue relating to the deductions u/s. 80P(2)(a)(i)/(d) to the Ld.CIT(A) for necessary verification as per the ratios laid down by *Hon’ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* and *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB*

vs. The Assessing Officer, Trivandrum & Ors. (supra), and also considering Karnataka Co-operative Societies Act, 1959.

13. With similar directions and in the interest of justice, we remand this issue to the Ld.AO for necessary verification and to consider the claim in accordance with law. The Ld.AO is also directed to consider the directions as per the decision of this *Tribunal* in case of *M/s. Chokkadi Vyavasaya Seva Sahakari Bank Niyamitha vs. ITO* in *ITA Nos. 253 & 254/Bang/2024* vide order dated 29.04.2024 in respect of the issues and the claim of deduction u/s. 80P(2)(d).

Accordingly, the grounds raised by the assessee stands partly 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 31st May, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st May, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore