

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.745/Bang/2024
Assessment Year : 2013-14

M/s. Sarvodaya Credit Co-operative Society Ltd., Carstreet Barkur, Brahmavara Udupi, Udupi – 576 210. PAN : AAEAS 9576 Q	Vs.	ITO, Ward – 1 and TPS, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Shri. Ramnathan, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	13.06.2024
Date of Pronouncement	:	14.06.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the order of CIT(A) dated 21.02.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2013-14.

2. The grounds raised read as follows:

1. *The learned CIT(A) appeal erred in passing the orders in the manner he did.*
2. *The learned CIT(A) A on facts, and in the circumstances of the case is not justified in law in disallowance of interest expenses amounting*

to Rs.52,84,382 based on the revision order passed under section 263 of the income tax act, 1961 by ex- parte order under section 144.

3. *The learned CIT (A) on the facts, and in the circumstances of the case and in law index, allowing the interest expenses amounting to Rs.52,84,382 by assuming that either the said interest paid to schedule banks or cooperative banks by invoking the provision of section 43B of the act or if the interest paid to its members then by invoking the provisions under section 40(a)(ia).*
4. *The Learned CIT(A) failed to consider the delay reason and ought to have condoned the delay and heard the matter on merit.*
5. *Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*
6. *For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed.*

3. Brief facts of the case are as follows:

At the very outset, we notice that the CIT(A) has dismissed the appeal of the assessee ex-parte without condoning the delay of 147 days in filing the appeal before him. The relevant finding of the CIT(A) reads as follows:

“3.1.2 A careful examination of the contents of the column 15 of the Form-35 (which have already been reproduced in earlier part of this order) indicate that it is the case of the appellant that-

- *there is a delay of 147 days in filing present appeal and*
- *it was because it has belatedly come to its knowledge that impugned order had been passed as from the e-filing portal it is learnt that intimation for the same was addressed to an unknown email address shreedharaithal atyahoo.com, without even marking a copy to the appellant registered email address and this no valid order was served on the appellant.*

- *and that after consulting a senior Chartered Accountant, who advised to look into the appellant income tax portal, wherein it was found that impugned order was passed on 31.3.2022 itself.*

Apart from this submission, there are no other details/evidences to support such submission. In the facts and circumstances of the matter, as elaborated above, it was incumbent upon the appellant to submit the specific details duly backed by cogent/tangible evidences, etc. in support of its condonation request at the time of filing the appeal on 23.09.2022, but the same were not submitted at that time. Thereafter also, though the appellant was offered opportunity in this regard, it did not avail the same.

*Reverting to the reasons of delay mentioned in the Form-35, it has been ADMITTED by the appellant that there is a delay of 147 days in filing the present appeal. It is the case of the appellant the reason for this delay is that it had not been served the copy of impugned order as the same was addressed to an unknown email address i.e. shreedharaithalatyahoo.com without even marking a copy to its registered email address. In this respect the matter has been examined and based on the details available on record it is noted that such submission is NOT consistent with the facts forthcoming from records. This is because, the available records clearly indicate that the email id shreedharaithal@yahoo.com which is being claimed as "unknown email address" by the appellant, even as on date is the Registered on the system as its **Primary** Email address as per the Latest Return filed.*

Thus, this claim of the appellant is not coherent with the details forthcoming from the available records. In addition to this, the above submission of the appellant w.r.t. delay in filing-wherein it has been mentioned that it had not been served with the copy of impugned order and after consulting a senior Chartered Accountant it looked into the portal and found the impugned order already passed on 31.03.2022- is in self-contradiction to its own submission in the Form-35 wherein, the appellant itself has recorded the date of service of impugned order/demand notice as 01.04.2022.

To summarise, it is evident that there is absolutely no material on record to substantiate the submission of the appellant w.r.t. condonation of delay and on the contrary there is incoherence in the appellant's submissions and the details forthcoming from available records and such submission also bears apparent self-contradiction, as has been elaborated above.

Thus, all these facts/issues point out that in the peculiar set of facts and circumstances it was significantly incumbent upon the appellant to substantiate its claims in this regard, which the appellant has failed to establish.”

4. Aggrieved by the Order of the CIT(A), assessee has preferred this appeal before the Tribunal. The learned AR reiterated the submissions made before the CIT(A) that assessment order has not been served on the assessee but sent to a wrong email ID. It was stated that CIT(A) has erred in stating that the primary email ID registered in the system is the same as per the latest return filed. The assessee has submitted a Paper Book enclosing therein the return of income filed for the Assessment Years 2013-14 and also 2021-22 wherein primary email ID mentioned is different from that of email ID shreedharaital@yahoo.com to which the assessment order was served. The learned AR further submitted that assessee was not given notice to explain the aforesaid delay condonation application. It was prayed that the matter may be restored to the CIT(A) after condoning the delay of 147 days.

5. The learned DR supported the orders of the CIT(A).

6. We have heard the rival submissions and perused the material on record. Assessee's contention is Assessment Order has never been served on the right email address. It was stated that when Chartered Accountant looked into the IT portal, he noticed that impugned order was passed on 31.03.2022 itself. After noticing the same, immediately the appeal was filed. Assessee has furnished the IT return filed for the Assessment Years 2013-14 and 2021-22 (i.e., the period on which the Assessment Order for Assessment Year 2013-14 which was passed on 31.03.2022 is claimed to have been served on the assessee). On perusal of both the returns filed, we find that the primary email ID given is different from that of shreedharaital@yahoo.com to which the Assessment Order has been served.

7. In the interest of justice and equity, we are of the view that the matter needs to be restored to the CIT(A). The CIT(A) is directed to consider the delay condonation application afresh after taking note of the aforesaid contentions of the assessee (since it is an ex-parte Order). It is ordered accordingly.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(WASEEM AHMED)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 14.06.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.