

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

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|--------------------------|
| ITA No.979/Bang/2024     |
| Assessment Year: 2017-18 |

|   |            |                               |
|---|------------|-------------------------------|
| Karnataka Power Corporation<br>Limited Employees Credit Co-op.<br>Society Limited<br>Subhash Nagar,<br>Behind Rama Mandira<br>Mandya 571 401<br>Karnataka<br><br><b>PAN NO : AAAAK2811N</b> | <b>Vs.</b> | ITO<br>Ward-1 & TPS<br>Mandya |
| <b>APPELLANT</b>  |            | <b>RESPONDENT</b>             |

|                      |   |  |
|----------------------|---|--|
| <b>Appellant by</b>  | : | Sri Shankare Gowda, A.R.                               |
| <b>Respondent by</b> | : | Sri Ganesh R. Gale, Standing Counsel for<br>department |

|                              |   |            |
|------------------------------|---|------------|
| <b>Date of Hearing</b>       | : | 19.06.2024 |
| <b>Date of Pronouncement</b> | : | 19.06.2024 |

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 20.3.2024 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

- 1. The order of the Commissioner of Income-tax ADDL/JCIT (A)-(Appeals) (herein after referred to as 'Learned Appellate Authority' ('LAA')) is bad in law to the extent it is prejudicial to the Appellant, the impugned order is opposed to both law and facts.*
- 2. The LAA erred in concluding the appeal proceedings ex parte without: a. providing any opportunity of being heard to the Appellant; and b. without adjudicating the grounds of appeal preferred by the appellant on merits.*

3. *The LAA erred in law by rejecting the condonation application filed by the Appellant despite the Appellant had demonstrated just, adequate and proper reasons for instituting the appeal beyond the prescribed time limit.*
4. *The LAA erred in not providing an opportunity for hearing or clarification. Had the LAA provided such an opportunity, Appellant would have furnished to the LAA evidence on the fact of the election happenings delaying the filing of the appeal.*
5. *The LAA erred in not considering that the Appellant is a very small organization with not more than 6 staff members and apart from them not being familiar with income-tax assessment matters, the fact that the proceedings are conducted electronically is not familiar to them*
6. *The LAA failed to appreciate and follow the judicial precedents placed before the LAA, which are binding on the LAA, and which were relied on by the Appellant*
7. *The LAA erred in not adjudicating the appeal on merits despite it being a substantial legal issue.*
8. *The LAA erred by confirming the action of LTA of denying the exemption/deduction under section 80P of the Act without considering the objections raised by the Appellant*
9. *The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above grounds of appeal, at any time before or during the hearing of the appeal. Your appellant prays your Honour to consider the facts and circumstances of the case and render justice.*

*Total Tax effect Rs.6,56,945/-*

2. Facts of the case are that in this case assessee is a Co-operative Society formed under Karnataka Co-operative Societies Act filed a return of income for the assessment year 2017-18 declaring gross total income of Rs.36,97,524/- and claimed deduction u/s 80P of the Act to that extent of gross total income and returned income was nil. The assessment was completed u/s 143(3) of the Act amounting deduction u/s 80P(2)(a)(i) of the Act to the tune of Rs.88,958/-. However, the deduction u/s 80P(2)(d) of the Act was denied to the tune of Rs.16,08,566/-. Against this assessee filed appeal before NFAC belatedly by 46 days. Before the NFAC assessee filed a

condonation petition explaining the reason for delay in filing the  
appeal vide letter dated 4.3.2020 as follows:

04-03-2020

THE SECRETARY  
KARNATAKA POWER CORPORATION LIMITED  
EMPLOYEES CREDIT CO OPERATIVE SOCIETY  
LIMITED SUBHASH NAGAR BEHIND  
RAMA MANDIRA MANDYA DISTRICT  
MANDYA-571401  
PAN: AAAAK2811N.

The Commissioner of Income Tax (Appeals)  
Mysore

Honble Sir,

Sub: Application for Condonation of delay in filing appeal.  
Ref: Appeal against Order under section 143(3) AY 2017-18

Our society is assessed to income tax by the assessing, officer ward 1, Mandya. We received the assessment order and demand notices for the assessment year 2017-18 on 20-12-2019. Being aggrieved by the said orders, we ought to have filed the appeal on or before 18-01-2020.

1. However, we could not do so for the following reasons:

- i. There was election code of conduct in the society in the month of DEC 2019, JAN 2020 FEB 2020. Since it was a financial decision and there was a election code of conduct in the society the then board(previous management) did not take any decisions either to pay the tax or to prefer an appeal before the CIT (Appeals) Mysore against the order u/s 143(3) of the IT Act., and also decided to takeup the subject after election.
- ii. Since ours is a Co-operative society registered under the Karnataka Co-operative Societies Act, 1959, it was formal to bring important subjects to the notice of board of directors for appropriate decisions.
- iii. Accordingly , we brought the subject to the Board meeting(present management) which was held on 26.02.2020 and in the board meeting the subject was discussed and decided to file an appeal before the honorable commissioner of income tax Mysore and appointed Shankaregowda Associates Chartered


Accountants, Mandya to file the appeal and board sought the request for condonation of delay in filing the appeal.

- iv. Thereafter we contacted our Chartered Accountant who is in Mandya, got prepared the appeal, signed the appeal papers and filed the appeal.
- v. Therefore, there is a delay in preferring the above appeal. The delay in preferring the above appeal within the stipulated period is neither intentional nor deliberate but for the bonafide reasons as stated above.

The delay in submission of the appeal having been caused by circumstances entirely beyond our control. We, therefore most respectfully prayed that the delay of 46 days in filing the appeal may kindly be condoned and the appeal be kindly admitted.

Thanking you,

Yours faithfully,

  
ಪ್ರಧಾನ ವೇತನ ಕಾರ್ಯದರ್ಶಿ  
Encl:1. Affidavit  
ಕ.ಪ.ಪ್ರ.ಸಿ.(ಎ) ನೌಕರರ ಪತ್ರಿಕೆ  
2. Board resolution, ಮಂಡ್ಯ

2.1 The Id. NFAC has not condoned the delay holding that there was no reasonable cause for filing the appeal belatedly by 45 days and dismissed the appeal of the assessee. Against this once again assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. We have carefully gone through the reasons advanced for delay in filing the appeal before NFAC belatedly by 45 days (1 day of date of receipt of assessment order or date of filing of the appeal before NFAC to be excluded). The assessee advanced reason that due to Election code of conduct in the month of December, 2019 to February, 2020, regular meeting of the Board of Directors were disturbed and as soon as Board meeting was held, the case was discussed so as to take decision to file appeal before the NFAC. Accordingly, there was a delay in filing the appeal before this

Tribunal and this was unwanton and prayed that delay may be condoned.

3.1 We find that there is a sufficient reason in filing the appeal belatedly before NFAC and this sufficient cause should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is a prime factor while considering the reason for delay. In this case on hand, the issue for consideration on merit is regarding granting of deduction u/s 80P(2)(d) of the Act. This issue was squarely covered by the earlier decision of coordinate bench in the case of Kotekar Vyavasaya Seva Sahakara Sangha Niyamitha in ITA Nos.452 to 454/Bang/2024 dated 1.5.2024, wherein the issuing of granting of deduction u/s 80P(2)(d) of the Act has been remitted to the file of ld. AO with following observations:

*“6. We have heard the rival submissions and perused the materials available on record. As regards the claim of deduction u/s 80P(2)(d) of the I.T. Act, we direct the A.O. to verify whether interest / dividend is received by the assessee out of investments made with Cooperative Societies. If the assessee earns interest / dividend income out of investments with co-operative society, as observed by Hon’ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. in Civil Appeal No.10069 of 2016, order dated 14.09.2023, the same is entitled to deduction u/s 80P(2)(d) of the I.T. Act.*

*6.1 Without prejudice to the above, we make it clear that if the interest earned by assessee from the banks is considered under the head “Income from other sources”, relief to be granted to the assessee u/s 57 of the Act in accordance with law. Accordingly, the issue is restored to the file of ld. AO for de-novo consideration with the above observations.”*

3.2 Therefore, on merit, the issue is in favour of the assessee but there is a technical defect in the appeal since the appeal was not filed within the period of limitation. The assessee explained the reason for delay, which was very reasonable. As against the petition filed by the assessee for condonation of delay, the revenue has not filed any counter application to deny the contention made by the assessee. While considering the similar issue, the Hon’ble Supreme Court in

the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471), wherein held that when substantial justice and technical consideration are pitted against each other, the cost of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. In the case in hand, the issue on merit regarding granting of deduction u/s 80P(2)(d) of the Act is already decided by the coordinate bench. Moreover, no counter petition filed by the revenue denying the submission made by the assessee. It is not the case of the revenue that the appeal was not filed deliberately, therefore, we have to prefer substantial justice, rather than technicality in deciding the issue as observed by the Supreme Court, if the application of assessee for condoning is rejected it would amount to legalised injustice on technical ground when Tribunal is capable of removing injustice and to do justice. Therefore, we are bound to remove the injustice by condoning the short delay of 45 days and technicalities. If the delay is not condoned, it would amount to legalizing an illegal order, which would result in unjust enrichment on the part of state by retaining the tax relatable thereto. Under the scheme of constitution, government cannot retain even a single pie of individual citizen as tax, when it is not authorized by an authority of law. Being so, considering the facts and circumstances of the case, we condone the delay of 45 days in filing the appeal belatedly before the NFAC and after condoning the delay in filing the appeal before NFAC, we are of the opinion that the issue in dispute with regard to granting of deduction u/s 80P(2)(d) of the Act is required to be looked into at the end of ld. AO as observed by this Tribunal in the case of Kotekar Vyavasaya Seva Sahakara Sangha Niyamitha in ITA Nos.452 to 454/Bang/2024 dated 1.5.2024 cited (supra) as in para 6 & 6.1 as reproduced in earlier para pf this order at para 3.1 above. Accordingly, the issue in dispute with regard to granting of deduction

u/s 80P(2)(d) of the Act is remitted to the file of ld. AO for fresh consideration.

4. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 19<sup>th</sup> June, 2024

**Sd/-**  
**(Prakash Chand Yadav)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 19<sup>th</sup> June, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**