

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

**BEFORE SHRI. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.259/Bang/2024
Assessment Year : 2020-21

M/s. Prathamik Krishi Pattin Sahakari Sangh Niyamit Mareguddi, CTS PKPS Sangh Niyamit, Mareguddi, Jamkhandi Bagalkot – 587 301. PAN : AAAAP 6078 N	Vs.	ITO, Ward – 1 and TPS, Bagalkote.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Saidappa B. Gadadi, CA
Revenue by	:	Shri. G. Manoj Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.03.2024
Date of Pronouncement	:	14.05.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

This is an appeal filed by the assessee against the order passed by the National Faceless Appeal Centre (NFAC), Delhi, (DIN & Order No.ITBA/NFAC/S/250/2023-24/1059657296(1)) dated 12.01.2024, on the following grounds:

- The Hon'ble CIT (appeals) has erred in simply stating that additions made by the AO are based on solid evidence but the faceless assessing officer only based on the return of income made the additions in ignorance of tax audit report u/s 44AB of the act and the audited balance sheet and profit & loss account.*

2. *The Hon'ble CIT (appeals) has failed to conclusively prove on what solid evidences the assessing officer has made disallowance of statutory benefit u/s 80P and how the deposits of farmer members and statutory provisions created by the society would become unexplained cash credits u/s 68 of the act, as the assessing officer has had access to tax audit report u/s 44AB of the act and financial statements and the learned AO was completely aware that appellants society is acting_ for the benefit of farmer members and PACS is just a facilitator between farmer members and the financing bank.*
3. *The learned assessing officer was known the fact that PACS society is dealing with farmer members knowing the same fact the assessing officer asked byelaws and financial statements in English language and the AO was completely aware how the documents would be in the society but did not made any efforts to verify the tax audit report u/s 44AB of the act and underlying attachments and did not made any efforts to collect the documents from the department of co-operative society Karnataka state by invoking the power vested u/s 133(6) of the act.*
4. *The learned assessing Officer has erred in disallowing the statutorily given benefit u/s 80P (2) (a) (i) as PACS societies act for the benefit of farmers they are just facilitator between members and the NABARD.*
5. *The learned assessing officer has erred in simply making addition of unsecured loans and other payables as unexplained cash credits u/s 68 of the act without having look at the asset side of the balance sheet as facilitator between farmer members and NABARD, society has to collect the same and remit back to the financing bank.*
6. *The learned assessing officer has erred in not considering the earlier year assessment orders wherein the opening balance of unsecured loans and other payables were assessed in earlier years and were found correct*
7. *The learned assessing authority has simply made addition of unsecured loans as unexplained cash credits in the audited Balance sheet of PACS which is self-explanatory and it was specifically mentioned these are deposits received.*
8. *The learned assessing officer has failed to understand the nature of transaction with the farmer members as farmer members have not advanced any loan but they have kept the deposit with the assessee.*
9. *The learned assessing officer has erred in not considering the genuineness and regularity in the maintenance of the books of accounts to confirm the same the assessing officer may have invoked the power vested u/s 133(6) to collect the documents from department of co-operative society Karnataka state.*
10. *The learned assessing officer has erred in determining the creditworthiness of the farmer members of PACS as farmer members*

are not the men of means, but farmer members are depositors of their small savings.

11. *The learned assessing officer has erred in not considering the Human Probability Test is one of the important tests laid down the highest Court of India in order to check the genuineness as the farmer members keep the small savings with the assessee to save for future.*
12. *The learned assessing officer has erred in not drawing the inference that the receipts are belonging to assessee and are assessable in the hands of the assessee.*
13. *The learned assessing officer has erred in not considering the plea of the assessee to produce the documents for verification as the documents asked by the officer were in bulk and could not be scanned and uploaded in the e-filing portal.*
14. *The learned assessing officer has erred in not considering the fact that onus of satisfactorily explaining the source in the hands of members is not of the assessee society.*
15. *The appellant craves leave to amend, add, alter or delete any of the above grounds of appeal.*

2. Brief facts of the case are that assessee filed return on 14.01.2021 declaring total income of Rs.40,230/-. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessing officer(AO) noted from the ITR filed by the assessee that it has disclosed unsecured loan from others at Rs.14,97,85,119/-, other payable amount at Rs.50,89,082/- and claimed deduction under section VIA at Rs.45,24,467/-. The questionnaire was issued to the assessee to justify the above observations. However, assessee did not submit any reply. Assessee was granted adequate opportunities, in spite of that assessee did not make any compliance. Accordingly, on the basis of documents available with the AO, he completed the assessment under section 144 of the Act on 29.08.2022 and assessed income at Rs. 15,94,18,900 by adding the above liability and denying the deduction claimed.

3. Aggrieved from the above order, appeal was instituted before CIT(A) on 04.02.2023 by delay of 129 days. Assessee furnished explanation regarding condonation of delayed filing of appeal. The CIT(A) noted that no case has been made out by the assessee explaining such a long delay, dismissed the appeal of the assessee *in-limine* after relying on the various judgments. The CIT(A) also decided the issue on merits confirming the order of the AO.

4. Aggrieved from the above order, assessee filed appeal before the ITAT.

5. The learned AR of the assessee at the outset of hearing submitted that CIT(A) has not condoned the delay of 129 days. In this regard, he has filed an affidavit dated 18.03.2024 which is as under:

1. *We have been assessed to the income tax with the Income Tax officer ward- 1 & TPS, Bagalkote.*
2. *We have prepared an appeal against the order u/s 144 of the act of the faceless assessing officer dated 29.08.2022 for the AY 2020-21 before the Hon'ble Commissioner of Income Tax (Appeals), NATIONAL FACELESS APPEAL CENTRE (NFAC), DELHI.*
3. *That the above referred appeal filed by us before the Commissioner (Appeals) was disposed of appeal by order dated 12/01/2024 passed by Commissioner of Income Tax (Appeals), NATIONAL FACELESS APPEAL CENTRE (NFAC), DELHI, was uploaded in the e-filing portal on 12/01/2024.*
4. *That the knowledge of order passed u/s 144 of the act came to our notice only after receipt of recovery notice from the office of Income Tax Officer Ward-1 & TPS, Bagalkot.*
5. *That the case was handled by local tax practitioner who was familiar with filing reply to assessments notices and appeals manually due to*

change in the assessment and appeal proceedings, the local tax practitioner was not familiar with new faceless assessment and appeal procedure in this regard he contacted his senior Shri CA. Saidappa B Gadadi to attend the faceless assessment and appeal who informed to attend the same after 15/12/2022 due to his prescheduled assignments. As soon as the newly appointed council Shri CA. Saidappa B Gadadi took the case in hand the assessment order was already passed without any responses to the same owing to unawareness about the e-assessment and appeal procedures by the earlier council.

6. *That the learned faceless assessing authority made the addition u/s 68 of the act the deposits of members and the provisions even though he was aware how the society functions and what are documents societies keep and in complete ignorance of tax audit report u/s 44 AB of the act and created huge demand of Rs.16,08,42,286/-.*
7. *That the management of the society was under the state of shock as payment of such huge demand is nothing but closure of society, as the society is serving the members who are farmers to strengthen them financially and if the society is punished with rigorous recovery proceedings, it will directly deprive the interest of farmers. Due to this astonishment there is substantial delay to decide to whom the task of filing appeal be given as the council who was familiar with filing response physically has showed his incapacity to file the appeal before Hon'ble CIT(A) to find the proper council who is familiar with filing of appeal and get in touch with the earlier council to get documents there was delay of more than 100 days.*
8. *That in this way there is a delay for filing an appeal before CIT(A) in the space provided in Form-35 same was brought to the notice of Hon'ble CIT(A) along with the clarification letter from the earlier council.*
9. *That I had no intention to jeopardize the interest of the revenue by delaying the filing of the appeal.*

6. He further submitted that appeal was migrated to the NFAC and the CIT(A) has issued notices on various dates which were never served to the assessee. The intention of the assessee was not to disrespect the notices issued by the CIT(A). He requested that if a chance is given to the assessee for representing the case before the CIT(A), assessee will

produce all details as required by the Revenue authorities. The Id. AR of the assessee relied on the judgment of the co-ordinate bench of the ITAT Bangalore in the case of Mrs. Parvati Bandi vs ITO-1 Koppal in ITA NO. 1150/Bang/2023 order dated 28.02.2024.

7. On the other hand, the learned DR relied on the order of the lower authorities and submitted that the assessment was completed under section 144 of the Act and before the CIT(A) assessee also filed appeal with a delay of 129 days and assessee did not comply with the notices issued by the CIT(A). Accordingly, he objected for condoning the delay before the CIT (A).

8. Considering the rival submissions, we noted that the assessee filed return of income and claimed deduction under Chapter VI A. During the assessment proceedings, assessee did not comply with the notice issued by the Assessing Officer (AO). Accordingly, the AO for want of proper explanation, added the entire unsecured loans and other payables & provisions appearing in income tax return filed and AO completed the assessment under section 144. Before completing the assessment, the information was also send to the assessee through registered post. Before the CIT(A), appeal was filed belatedly by 129 days. In this regard, assessee has filed an affidavit explaining the reasons stated therein. We notice from the statement of facts submitted that the person who is looking after the operation of the society is having very low qualification as compared to sophisticated banks and who could not understand the notice send in English and he was not well versed to operate the email. When

the assessee received recovery notice from the Office of the Income Tax Office, Ward – 1 and TPS, Bagalkot, he approached his CA and immediately filed the appeal. In view of the above noted facts narrated in the affidavit, we note that assessee had sufficient reasons for not filing the appeal within the due date before the CIT(A). Considering the affidavit filed by the assessee and oral submissions made also before us regarding the same, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:

"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finislitium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result 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 vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time

then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

9. Respectfully following the above judgments and considering the totality of the facts and in the interest of justice, we condone the delay of 129 days in filing the appeal and the matter is sent back to the CIT(A) for fresh consideration as per law after giving reasonable opportunity of being heard to the assessee. The assessee is directed to produce the necessary documents for substantiating its case and to avoid unnecessary adjournments for early disposal of the case and update the email, mobile No. and address for communication.

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

Pronounced in the open court as per Rule 34 of the ITAT Rules.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated: 14.05.2024.
/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.