

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 718 & 719/CHD/2023
निर्धारण वर्ष / A.Y.: 2015-16 & 2016-17

The Khanyan Multipurpose Coop Agricultural Service Society Ltd., Village-Khanyan, Tehsil – Amlah, Fatehgarh Sahib.	बनाम VS	The DCIT, Circle, Mandi Gobindgarh.
स्थायी लेखा सं./PAN /TAN No: AACAT4443M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vibhor Garg, CA
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

तारीख/Date of Hearing : 24.06.2024
उद्घोषणा की तारीख/Date of Pronouncement : 01.07.2024

HYBRID HEARING

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

These are assessee's appeals for assessment year 2015-16 & 2016-17 respectively against the separate orders dated 17.07.2023 passed by the Id. CIT(A) NFAC, Delhi.

2. As both the appeals involve identical facts and issues, therefore, these were heard together and are being disposed of by a common order, for the sake of convenience and

brevity. The facts and issues are taken from ITA No. 718/CHD/2023.

ITA 718/CHD/2023

3. In this appeal, the assessee has raised the following grounds of appeal:

1. *That the impugned order is bad both on facts and law.*
2. *That the ld. CIT(A) has wrongly and illegally disallowed the netting of interest and that too after accepting the basic principle of law that netting of is to be allowed by passing any ex-parte order against the facts and circumstances of the case without allowing the opportunity of being heard against the principle of natural justice.*

4. There is a delay of 70 days in filing the appeal before this Tribunal. The assessee has filed an application for condonation of delay explaining the reasons for the delay occurred in filing the present application. The contents of the application for condonation of delay are reproduced hereunder :

1. *That an ex-parte order was passed u/s 250 dated 17.07.2023 bearing DIN No: ITBA/NFAC/S/250/2023-24/1054405677(1) by Faceless Appeal Centre was received by the society on 17.07.2023, That appeal filed against the order is delayed by 70 days.*
2. *That the appellant is a Multipurposes Co-op society providing services for marketing of agricultural produce and extending credit services to its members and is registered under Punjab Co-op Societies Act, Punjab and is availing deduction u/s 80P of the Income Tax Act,1961.*

3. *That the appellant Society approached their counsel for seeking legal remedy who suggested them to engage a lawyer for filling an appeal before the Hon'ble ITAT, Chandigarh and assured the society members that he will engage the counsel and get the appeal filed before Hon'ble ITAT, Chandigarh and gave full assurance that it's his job and society members have nothing to do with it.*

4. *That in the last week of October, 2023, when we visited the office of our counsel for filing our ITR for AY 2023-24, we enquired about the status of the case from the counsel and only at that time he recollected that one appeal has to be filed against the CIT(A) order and again said that I will file the appeal there is nothing to worry.*

5. *That on getting suspicious about the conduct of the counsel we thought to take a second opinion and then we approached Sh. Vibhor Garg, CA in November 1st week and who after going through the CIT(A) order informed us that the period for filing the appeal before the Hon'ble ITAT has expired and further advised us to file the appeal urgently alongwith the application praying for the condonation of delay in filing the appeal.*

6. *That the delay in filing the appeal is due to the lackadaisical approach of the counsel who did not bother to take the matter seriously and due to this very reason the filing of appeal before Hon'ble ITAT, got delayed.”*

5. From the contents of the application, we find that the assessee was prevented by sufficient cause from filing the appeal in time. Even otherwise, the assessee cannot be said to stand to gain anything by deliberately delaying the filing of the appeal before this Tribunal. Therefore, the delay is condoned.

6. The brief facts of the case are that the assessee is a Multipurpose Co-operative Society which is providing agricultural and financial services to its members and is registered under Punjab Co-operative Societies Act, Punjab.

The assessee filed its return of income for the assessment year 2015-16 on 30.09.2015 declaring 'Nil' income. The case was selected for scrutiny assessment through CASS. Notice u/s 143(2) of the Income Tax Act, 1961 was issued and served upon the assessee on 01.09.2016. Then notice u/s 142(1) of the Act alongwith questionnaire dated 12.09.2017 was issued. In response, the assessee filed replies alongwith books of account. After considering all the facts, the Assessing Officer made addition of Rs.67,47,212/- being the interest income earned on FDR with the State Bank of Patiala and Co-operative Bank, Amloh as income of the Society.

7. Aggrieved, the assessee went in appeal before the CIT(A). The ld. CIT(A) issued notices for 31.12.2020, 07.06.2023, 03.07.2023 and 13.07.2023 on the e-mail Id of the assessee but there was no response from the assessee and no reply or submissions etc. was filed by the assessee. Accordingly, the ld. CIT(A) passed ex-parte order u/s 250 of the Act dated 17.07.2023 dismissing the appeal of the assessee and confirmed the findings given by the Assessing Officer.

8. The assessee is in further appeal before this Tribunal against the order passed by the ld. CIT(A).

9. We have heard the parties and have perused the material on record. It is a fact that the assessee was issued many notices for the hearings fixed in this case, i.e., for 31.12.2020, 07.06.2023, 03.07.2023 and 13.07.2023 on the e-mail Id of the assessee. The ld. Counsel for the assessee stated that the aforesaid notices were sent on e-mail id 'thekhanyansociety@yahoo.in' of the assessee society which were missed or were overlooked as the same were in spam, due to which, compliance to the notices could not be made.

10. It is not the case of the Department that the notices sent on e-mail were purposely not read by the concerned officer/official of the assessee Society, or that such notices were purposely overlooked with a malafide intention. It cannot be doubted that the assessee would not stand to gain by doing so, particularly in view of the fact that it was the assessee's own appeal in which the notices had been issued by the ld. CIT(A). Moreover, in the present case, the notices got missed or overlooked, as they were in spam.

10.1 It is thus apparent that the matter before the ld. CIT(A) could not be attended on behalf of the assessee, since the notices issued to the assessee by the Ld. CIT(A) on the e-mail were either missed or overlooked, since they were in spam.

11. In view of the above, we find that the assessee requires to be given due and adequate opportunity of hearing before the ld. CIT(A), in order to enable it to represent its case in a proper manner. Accordingly, in the interest of justice, the file is restored to the file of ld. CIT(A) to decide the matter afresh in accordance with law after giving reasonable opportunity of being heard to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the ld. CIT(A).

12. The appeal of the assessee is treated as allowed for statistical purposes.

ITA 719/CHD/2023

13. As the issues, facts and circumstances in this appeal, i.e., ITA No.719/CHD/2023 are exactly similar to those of ITA No.718/CHD/2023, therefore, our findings given in ITA No.718/CHD/2023 would apply mutatis-mutandis to ITA

No.719/CHD/2023 also.

14. In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 01.07.2024.

Sd/-

(KRINWANT SAHAY)
ACCOUNTANT MEMBER

Sd/-

(A.D.JAIN)
VICE PRESIDENT

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar