

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE “C” BENCH, BANGALORE**

**Before Shri Laxmi Prasad Sahu, Accountant Member  
and  
Shri Prakash Chand Yadav, Judicial Member**

<b>ITA No. 926/Bang/2024</b> (Assessment Year: 2018-19)		
Alnavar Credit Souhardaha Co-operative Ltd. 01, Indira Nagar, Alanvar 581103 PAN – AADAA0459P	vs.	The Income Tax Officer Ward - 1(1), Hubli
(Appellant)		(Respondent)
Assessee by:	Shri Sandeep Chalapathy, CA	
Revenue by:	Shri Ganesh R. Gale, Standing Counsel	
Date of hearing:	03.07.2024	
Date of pronouncement:	04.07.2024	

**ORDER**

**Per: Prakash Chand Yadav, J.M.**

This appeal filed by the assessee challenges the DIN & order No. ITBA/NFAC/S/250/2002-23/1049609204(1) of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 10.02.2023 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2018-19.

2. The brief facts of the case are that the assessee, a co-operative society, filed its return of income on 01.10.2018 declaring Nil income. The case of the assessee was selected for scrutiny, during the course of assessment proceedings the Id Assessing Officer (AO) relying upon the judgement of the Hon'ble Supreme Court in the case of *Totagars Co-Operative Sale Society v. ACIT* [2023] 188 taxmann.com 282 (SC) disallowed the deduction in respect

of interest income earned by the assessee society. The AO taxed the interest income under the head income from other sources without providing any relief in respect of cost of funds.

3. Aggrieved with the order of the AO the assessee filed appeal before the Id. CIT(A). However, could not attend the appellate proceedings as a result of which the Id. CIT(A) dismissed the appeal of the assessee ex-parte.

4. Now the assessee has come up in appeal before us and argued that the Id. CIT(A) has erred in dismissing the appeal of the assessee without hearing the assessee. It is pertinent to note that there is a delay of around 379 days, in filing of the present appeal before ITAT. For condoning the delay, Ld. Counsel of the assessee argued that the order of the CIT(A) was not served on the assessee on the email ID which was mentioned in the prescribed Column of Form 35. Therefore, the assessee was not able to file the appeal before the ITAT within the period of limitation.

5. The learned D.R. vehemently argued that the delay cannot be condoned because there was no sufficient cause behind this delay.

6. After considering the rival submissions we observe that there is a delay of 379 days in filing the present appeal. In support of the application for condonation of delay the Finance Head of the assessee society has filed an affidavit( annexed with appeal memo). The Finance Head (FH) has stated that he is a 70 year old person and not very much conversant with the operations of computer/email ID. FH, has further clarified that the order of the CIT(A) could have been gone to the spam folder and hence he was unable to see the same in due course. We observe that the Ld CIT(A) has dismissed the appeal of the assessee without dealing with the merits of the case. Section 250(6) of the Act provides that the Ld CIT(A) is bound to decide an appeal on merits.

Considering the facts and circumstances of the case we hereby condoned the delay of 399 days for the reasons mentioned by the FH in the application for condonation of delay supported by duly sworn affidavit. It is settled position of law as held by Apex Court in the case of Collector of Land Acquisition Vs Katiji and others reported in 167 ITR 471(SC) wherein it is held that when technical consideration and substantial justice pitted against each other, cause of substantial justice would be given credence. Therefore, we restore the matter to the file of the Id. CIT(A) and direct him to decide the matter afresh in accordance with law after providing reasonable and meaningful opportunity to the assessee. We also direct the assessee to appear before the CIT(A) and file necessary details failure to do so, will be construed adversely against the assessee without any leniency.

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

Order pronounced in the open Court on 4<sup>th</sup> July, 2024.

Sd/-  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

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

Bengaluru, Dated: 4<sup>th</sup> July, 2024  
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

*By Order*

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