

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1145/Bang/2024
Assessment Year : 2017-18

M/s. Byrambada Primary Agricultural Credit Co-operative Society Ltd., #1, Byrambada PACS, Main Road Ontiyangadi, Virajpet Tq., Kodagu – 571 211. PAN: AABAS2698N	Vs.	The Income Tax Officer, Ward – 1, Madikeri.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vishal S Rao, CA
Revenue by	:	Shri V. Parithivel, JCIT-DR

Date of Hearing	:	16-07-2024
Date of Pronouncement	:	24-07-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 02.03.2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

	Grounds of Appeal	Tax effect relating to each Ground of appeal (see note below)
1	The impugned order of the Appellate Commissioner of Income Tax is liable to set aside in so far as the same is incorrect, irregular, improper, unlawful and oppose to the law and facts of the case.	1,58,452/-
2	The Learned Appellate Commissioner erred in upholding the impugned action of the Assessing Officer in bringing to tax a sum of Rs.5,22,794/- under the head Income from Business denying the deduction u/s 80P(2)(a)(i) of the Act with complete disregard to the decision of the Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Others v. CIT 431 ITR 1 (SC) with regards to Mutuality principles and as such the impugned additions made to that extent are liable to deletion.	1,58,452/-
3	The Learned Appellate Commissioner erred in upholding the impugned action of the Assessing Officer in bringing to tax a sum of Rs.5,22,794/- denying the deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 disregarding the facts that even the nominal members are members	1,58,452/-

	of the society under the provisions of the Karnataka Co-operative Societies Act, 1959, and hence the impugned disallowance is liable to set aside.	
4	The Learned Appellate Commissioner erred in upholding the impugned action of the Assessing Officer in bringing to tax a sum of Rs.5,22,794/- denying the deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 without following the Principles of Consistency in assessment and as such the impugned order is liable to set aside.	1,58,452/-
5	Without prejudice to aforesaid grounds, the Learned Appellate Commissioner ought to have allowed the proportionate deduction u/s 80P(2)(a)(i) attributable to other than the nominal members and as such the impugned order is liable to set aside.	1,58,452/-
6	That the impugned order is liable to set aside in so far as the Appellate Commissioner erred in upholding the levy of Interest of 52,272/- u/s 234B even when the Appellant is not liable there for under the law.	52,272/-
Total tax effect (see note below)		2,10,274/-

2. At the outset, the Ld.AR submitted that there is a delay of 407 days in filing the present appeal before this *Tribunal*.

He has filed the affidavit of the assessee explaining the cause that led to the delay. For the sake of convenience, the same is scanned and reproduced hereinbelow.



INDIA NON JUDICIAL

Government of Karnataka

सत्यमेव जयते

e-Stamp

Certificate No.	: IN-KA21614698884596W
Certificate Issued Date	: 04-Jun-2024 04:26 PM
Account Reference	: NONACC (FI)/ kacrstf08/ VEERAJPET3/ KA-KD
Unique Doc. Reference	: SUBIN-KAKACRSFL0800310600201532W
Purchased by	: BYRAMBADA PACCS LTD
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: BYRAMBADA PACCS LTD
Second Party	: NA
Stamp Duty Paid By	: BYRAMBADA PACCS LTD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)







**BEFORE THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE**

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In the matter of:	
M/s. BYRAMBADA PRIMARY AGRICULTURAL CREDIT CO-OPERATIVE SOCIETY LTD. #1 BYRAMBADA PACS, MAIN ROAD ONTIYANGADI, VIRAJPET TQ KODAGU 571211, Karnataka PAN AABAS2698N APPELLANT	Versus Income Tax Officer ITO Ward-1, Madikeri Income Tax Department, Madikeri. RESPONDENT



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Sr. V.P RAMESH
B.A.LL.B
Notary
Virajpet, Kodagu
Roll No 79/2008

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ITA No. /Bang/2024-25/A.Y. 2017-18

AFFIDAVIT

CONFIRMING THE FACTS STATED IN THE APPLICATION MADE U/S 253(5) OF THE INCOME TAX ACT, 1961 SEEKING CONDONATION OF DELAY IN FILING THE APPEAL

I, T. DEVAIAH BHEEMAIHAH, CEO of the Appellant M/s. Byrambada Primary Agricultural Credit Co-Operative Society Limited, located at #1 Byrambada Pacs, Main Road, Ontiyangadi, Virajpet Taluk, Kodagu 571211 in Kodagu District, State of Karnataka do hereby solemnly declare and confirm that:

1. The Appellant is filing the accompanying appeal u/s 253 of the Income Tax Act, 1961 challenging the orders of the Commissioner of Income Tax, NFAC, made u/s 250 of the Act;
2. The Appellant is a Primary Agricultural Credit Co-Operative Society registered under the Karnataka Co-Operative Societies Act, 1959, carrying on the activity of providing credit facilities to its members.
3. It filed its Return of Income on 1.11.2017 declaring its Total Income as Rs. NIL after claiming deduction u/s 80P(2)(a)(i) of the Act.
4. During the assessment proceedings, the Appellant's Tax consultant, Mr. V.A. Yatish appeared before the AO and submitted the relevant documents. The AO concluded the Assessment Proceedings vide his order dated 7.12.2019 by disallowing the deduction of Rs.5,22,794/- u/s 80P of the Act, stating that the Principles of Mutuality had not been followed since the Society had nominal members as well.
5. The Appellant preferred an appeal with the Appellate Commissioner vide Form 35 filed on 9.3.2020.
6. Thereafter, any notice issued u/s 250 were forwarded by the Appellant to its Tax Consultant. The Appellant was under the belief that the same are complied with.
7. However, the Appellant came to know that the notices issued u/s 250 were not complied with, which resulted in an Ex-Parte Order dated 2.3.2023 by the Appellate Commissioner.

In view thereof, the Appellant obtained the services of a new Tax Consultant for filing further appeal with the Hon'ble Income Tax Appellate Tribunal, who also could not file the appeal challenging the impugned order.

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Sri. V.P. RAMESH
B.A.L.L.B
Advocate & Notary
Virajpet, Kodagu
Roll No 79/2008

of Errors/Corrections.....

9. Ultimately, the Appellant approached the current Tax Consultants M/s Rao & Venkatesulu, Chartered Accountants Bengaluru to handle the matter of representing them before the Hon'ble Income Tax Appellate Tribunal in May 2024.
10. In view of the failure in timely handling of the matter, communication issues between the Appellant and the Tax Consultants and ignorance of the Appellant of the timelines for filing appeal, the order u/s 250 of the CIT(A), NFAC remained unchallenged till today;
11. Hence, the accompanying appeal could not be filed by the Appellant within the time specified u/s 249(2);
12. Thus, the delay of about **402** days is caused in filing the accompanying appeal;
13. Therefore, the Appellant prays that Hon'ble Appellate Tribunal may, please, condone the delay so caused, in filing the accompanying appeal and to admit the said appeal, in terms of Section 249(3) of the Income Tax Act,1961.

I further affirm and declare that the aforesaid facts are true and correct to the best of my knowledge and belief.

Dated this FOURTH day of JUNE, 2024 at ONTIYANGADI, VIRAJPET


T. DEVAIAH BHEEMAIYAH
Designation: CEO
Deponent

sworn to betor me

On this 4 day of June 2024


NOTARY

Sri V.P. RAMESH


B.A.LL.B

Roll no 79/2008

VIRAJPET, KODGU

Roll No 78/2008

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of Errors/Corrections.....




2.1 The Ld.AR submitted that the assessee received all the notices for hearing before the Ld.CIT(A) which was forwarded time and again to the tax consultant. He submitted that, it was not in the knowledge of the assessee that the then tax consultant was not taking necessary steps regarding compliance before the Ld.CIT(A), as a consequence of which an ex-parte order was passed on 02.03.2023.

2.2 The Ld.AR submitted that assessee became informed regarding ex-parte order being passed belatedly.

The Ld.AR submitted that immediately the assessee approached the present AR and an appeal was filed before this *Tribunal*. He prayed that the assessee was under a bonafide belief that, the notices forwarded by assessee to the then tax consultant was being taken cognizance of by the erstwhile tax consultant. He thus prayed for the delay to be condoned as there is no malafide mistake / intention that could be attributable on the assessee in causing the delay in filing the present appeal before this *Tribunal*.

2.3 On the contrary, the Ld.DR though vehemently opposed the condonation of delay was of the opinion that the issue should be decided on merits.

We have perused the submissions advanced by both sides in the light of records placed before us.

2.4 It is noted from the affidavit filed by the assessee that, the assessee was diligently following up with the notices by forwarding it to the tax consultant, however for the best reasons known to the tax consultant, assessee was not represented before the Ld.CIT(A). Under such circumstances, we do not find any malafide intention on behalf of assessee for not appearing before the Ld.CIT(A) as well as in filing the present appeal before this *Tribunal* belatedly as the assessee was not aware about the appellate order being passed. In our view, the assessee has made out a reasonable cause for the delay that caused in filing the present appeal before this *Tribunal*.

It is also noted that there is no malafide intention on behalf of assessee in not filing the appeal before this *Tribunal* within time. Nothing to establish any such intention has been filed by the revenue before this *Tribunal*. In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

2.5 We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law

in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

2.6 Considering the submissions by both sides and respectfully following the observation by *Hon’ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeal as it is not attributable to the assessee.

2.7 In any event, though the procedural law pertaining to the limitation has been drafted to construe it strictly, the fact remains that, considering such technicalities will not advance the cause of justice.

2.8 We take support from the observations of *Justice Krishna Iyer* wherein he has quoted at various occasion while dealing with technicalities that “*any interpretation that alludes substantive justice is not to be followed and that substantive justice must always prevail over procedural technicalities*”. Even *Hon’ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 has laid down a ratio of similar principles. Respectfully following the thoughts propounded by Late *Hon’ble Justice Krishna Iyer*, as well as various decisions of *Hon’ble Supreme Court* on similar issues, I condone the delay caused in filing the present appeal before this *Tribunal*.

Accordingly, we condone the delay in filing the present appeal before this *Tribunal*.

3. On merits of the case, we note that the addition made is disallowance of deduction claimed u/s. 80P of the act. The *Ld.CIT(A)* did not decide the issues on merits, based on the ratio of *Hon’ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT* reported in 431 ITR 1 as well as *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO* reported in (2023) 154 taxmann.com 305 as the case may be. We remit this issue back to the *Ld.CIT(A)* to consider the claim of assessee based upon the evidences furnished in accordance with law and having regards to the ratios laid down by *Hon’ble Supreme Court* in the decisions referred to hereinabove.

Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

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

Order pronounced in the open court on 24th July, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 24th July, 2024.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore