

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA Nos. 1199 to 1201/Bang/2024
Assessment Years : 2013-14, 2014-15 & 2017-18

M/s. The Tungabhadra Credit Co-operative Society, Silver Jubilee Building, Shimoga Road, Harihara SO, Harihar, Davangere, Karnataka – 577 601. PAN: AACFT8751D	Vs.	The Income Tax Officer, Ward – 1, Davangere.
APPELLANT		RESPONDENT

Assessee by	:	Shri Kotresh K, CA
Revenue by	:	Ms. Neha Sahay, JCIT-DR

Date of Hearing	:	01-08-2024
Date of Pronouncement	:	12-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of order passed by the NFAC, Delhi vide order dated 24.01.2024 for A.Y. 2013-14 and 02.02.2024 for A.Ys. 2014-15 & 2017-18.

ITA Nos. 1199 to 1201/Bang/2024

2. At the outset, the Ld.AR submitted that, there is delay of 88 days in filing the appeal for A.Y. 2013-14 and delay of 79 days in filing the appeal for A.Ys. 2014-15 & 2017-18 before this Tribunal. The assessee has furnished affidavit in support of the delay explaining the reasons which is scanned and reproduced as under:

INDIA NON JUDICIAL
Government of Karnataka
Rs. 100
e-Stamp

Certificate No.	: IN-KA33965150015087W
Certificate Issued Date	: 19-Jun-2024 01:50 PM
Account Reference	: NONACC (FI)/ kakalc08/ HARIHAR/ KA-DV
Unique Doc. Reference	: SUBIN-KAKAKSFCL062419484363144W
Purchased by	: THE TUNGABHADRA CREDIT CO OP SOCIETY LTD HARIHAR
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: THE TUNGABHADRA CREDIT CO OP SOCIETY LTD HARIHAR
Second Party	: K KOTRESH AND CO BANGALORE
Stamp Duty Paid By	: THE TUNGABHADRA CREDIT CO OP SOCIETY LTD HARIHAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

NOTARY
HARIHAR

AFFIDAVIT

M.S.V.
ಕೆ.ಕೆ.ಕೆ.
ಕೆ.ಕೆ.ಕೆ. ಕೆ.ಕೆ.ಕೆ. ಕೆ.ಕೆ.ಕೆ.
ಕೆ.ಕೆ.ಕೆ. ಕೆ.ಕೆ.ಕೆ. ಕೆ.ಕೆ.ಕೆ.

Statutory Alert

AFFIDAVIT OF Shri SHIVANANDAPPA M

That, I Shivanandappa M aged about 72 years S/o Basappa residing at Vidyanagar, Harihar do hereby solemnly affirm and state as follows:

1. That, I am the President of **M/s The Tungabhadra Credit Co-operative Society Limited** bearing PAN: AACFT8751D with effect from 06/09/1983. As such I am conversant with the affairs of Appellant Society.
2. That, the income tax compliances right from filing of the returns, appeals and relevant representations before the income tax authorities was entrusted to Mr. D R Shankar, Income Tax Practitioner, Harihar.
3. That, the orders u/s 250 of the Income Tax Act, 1961 from the National Faceless Appeal Centre (NFAC) for AY 2013-14 was passed on 24/01/2024, and for AY 2014-15 and AY 2017-18, the orders were passed on 02/02/2024. Aggrieved by the said orders, the appellant society wishes to prefer an appeal before the Income Tax Appellate Tribunal (ITAT). However, the statutory time limit to file appeal before the ITAT for AY 2013-14 was 24/03/2024 and the statutory time limit to file appeal before the ITAT for AY 14-15 and AY 17-18 was 02/04/2024. Accordingly, there is delay of 87 days in the case of AY 2013-14 and delay of 78 days in the case of AY 2014-15 & AY 2017-18.
4. That, the delay in filing appeal is due to the following facts:
 - i. As the income tax compliances were entrusted to Shri D R Shankar, the appellant society depended and completely relied on the advice and guidance of the said tax consultant.
 - ii. However, the above-said tax consultant, Shri D R Shankar did not intimate about the passing of the orders u/s 250 for said assessment years.
 - iii. It was only when there was a phone call from the office of the Jurisdictional Assessing Officer for the recovery of demands that the Appellant Society came to know that the appellate orders u/s 250 were passed.
 - iv. Thereafter on enquiry with the above said tax consultant it was given to understand that he was not checking the emails on a regular basis. Accordingly, he was not aware of the disposal of the appeals at the first appellate level.



M.S.D.
ಶ್ರೀ. ದಿ. ಶಿವಾನಂದಪ್ಪ ಮಠವಳ್ಳಿ
ಪ್ರೆಸಿಡೆಂಟ್, ಮಂಡಲ
ಮಂಡಲ, ಹರಿಹರ

NO. OF CORRECTIONS: 1

2.1. It is submitted by the assessee that the reason causing delay in filing appeals before this *Tribunal* was because the authorized representative was not following up with the proceedings in respect of all the notices and the impugned order were sent by the office of Ld.CIT(A). It is submitted that the assessee was not aware about the same.

2.2. It is submitted that, upon the Auditor being changed by the assessee, the ex-parte order passed by the Ld.CIT(A) was informed to the assessee for all the three years.

2.3. 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*.

2.4. 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.

ITA Nos. 1199 to 1201/Bang/2024

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

3. From the affidavit filed by the assessee, there does not arise any malafide intention on behalf of assessee for not filing the present appeal before this *Tribunal*.

3.1. In our view, the assessee has made out a reasonable cause for the delay that is caused in filing the present appeals before this *Tribunal*. Nothing to establish any contrary 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.

3.2. 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

ITA Nos. 1199 to 1201/Bang/2024

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.”

3.3. 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 appeals as it is not attributable to the assessee.

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.

3.4. 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*

ITA Nos. 1199 to 1201/Bang/2024 *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 appeals before this *Tribunal*.

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

4. At the outset, the Ld.AR submitted that this is the second round of litigation. He submitted that this *Tribunal* had remitted the issue to the Ld.AO to consider the claim of assessee regarding deduction u/s. 80P(2)(a)(i) of the act in accordance with law. The Ld.AR submitted that the assessing officer once again dismissed the claim of assessee by relying on the decision of *Hon'ble Supreme Court* in case of *Citizen Co-operative Society Ltd. vs. ACIT* reported in 397 ITR 1. He submitted that the authorities below has not considered the decision of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in 431 ITR 1 as the facts of the assessee is different from the facts considered by *Hon'ble Supreme Court* in case of *Citizen Co-operative Society Ltd. vs. ACIT (supra)*.

ITA Nos. 1199 to 1201/Bang/2024

4.1. On the contrary, the Ld.DR relied on the orders passed by authorities below.

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

5. Admittedly, the recent decisions of *Hon'ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* and *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO* reported in (2023) 154 taxmann.com 305 has not been considered by the authorities below.

5.1. In the first round of litigation, this *Tribunal* did not have the benefit of the above referred decisions by *Hon'ble Supreme Court* as it has been passed after this *Tribunal* pronounced the order. In the interest of justice, we once again remit these issues to the Ld.AO to consider the claim of assessee in accordance with the decisions of *Hon'ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* and *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO (supra)*. We also direct the Ld.AO to consider the decisions of this *Tribunal* wherein the claim in respect of interest on fixed deposits if any is not allowed u/s. 80P(2)(d) has to be considered in accordance with law by allowing the expenditure u/s. 57.

ITA Nos. 1199 to 1201/Bang/2024

Various decisions of this *Tribunal* may also be referred to for the sake of completeness of this issue.

Accordingly, the grounds raised by assessee in all the three appeals stands partly allowed for statistical purposes.

In the result, all the three appeals filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 12th August, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 12th August, 2024.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore