

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

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

ITA Nos. 1220 & 1221/Bang/2024
Assessment Years : 2015-16 & 2018-19

M/s. Arjuna Souhardha Pathina Sahakari Niyamitha, No. 88, 1 st Floor, Jeerpge Bldg., 11 th Cross, Malleshwaram, Bangalore – 560 003. PAN: AADAA2035P	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Lakshmi .S, Advocate
Revenue by	:	Shri Sreenivasa Karthik Devara, JCIT (DR)

Date of Hearing	:	07-08-2024
Date of Pronouncement	:	13-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arise out of a consolidated order passed by
Ld.CIT(A)-11, Bangalore for A.Ys. 2015-16 and 2018-19.

2. At the outset, the Ld.AR submitted that there was delay of 112 days in filing both the appeals before the Ld.CIT(A) which was not condoned. The reason that caused the delay is reproduced in the impugned order at page 3. It is submitted by the Ld.AR that the assessee was advised by the erstwhile authorised representative to pay the demand and that there was no redressal mechanism available against such assessment order. It is stated therein that the assessee thereafter approached another tax consultant who advised the assessee to file appeal, that causing the delay. The Ld.AR submitted that, the assessee diligently filed the appeal immediately upon receipt of the advise from another consultant and there is no malafide intention on behalf of the assessee, though belatedly. He thus prayed for the remission of the issues to be considered on merits.

2.1. The Ld.DR though objected could not controvert that the delay in filing the appeals before the Ld.CIT(A) could not be attributable to the assessee.

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

3. From the submissions of assessee reproduced in the impugned order, there does not arise any malafide intention on behalf of assessee for not filing the present appeals before the Ld.CIT(A) in the period of limitation.

3.1. In our view, the assessee has made out reasonable cause for the delay caused in filing the appeals before the Ld.CIT(A). Nothing to establish any contrary intention was brought on record by the revenue before this *Tribunal*. In our opinion there is sufficient cause and reasonable cause to condone the delay of 112 days 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 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.

Accordingly, we condone the delay in filing the present appeals before the Ld.CIT(A).

4. At the outset, the Ld.AR submitted that, this is the second round of litigation. He submitted that this *Tribunal* 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 did not consider the decision of *Hon’ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in 431 ITR 1. It is submitted that 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)*.

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. We note that the Ld.CIT(A) did not consider the issues on merits. However no purpose will be served if the issues are remanded to the Ld.CIT(A). Necessary verification based on the ratios by *Hon'ble Supreme Court* are to be carried out.

5.2. 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 was 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. 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 both the appeals stands partly allowed for statistical purposes.

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

Order pronounced in the open court on 13th August, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 13th August, 2024.
/MS /

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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