

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

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

SP No.32/Bang/2024 & ITA No.1144/Bang/2024
Assessment year : 2011-12

Janahitha Credit Co-operative, 10 th Cross, WOC Road, 2 nd Stage, Mahalakshmpuram, Bangalore – 560 086. PAN : AAAJJ 0302L	Vs.	The Income Tax Officer, Ward 6(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Balram R. Rao, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	07.08.2024
Date of Pronouncement	:	27.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 30.01.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2011-12.

2. Briefly stated the facts of the case are that the assessee filed return of income on 30.9.2011 declaring total income of Rs.2,24,580 after claiming deduction u/s. Chapter VIA of Rs.9,54,690 and return was processed on 16.2.2012 and intimation was generated. Accordingly, business income was assessed at Rs.25,16,259 instead of

Rs.9,54,695 as declared by the assessee in its return of income. Resultantly there was a demand of Rs.8,97,070.

3. Against intimation u/s. 143(1), the assessee filed appeal before the First Appellate Authority (FAA) on 10.4.2021. The Id. FAA noted that assessee has filed appeal beyond time with unusual delay and without any request for condonation. Accordingly notice was issued to the assessee to remove the deficiency giving 15 days time from 23.12.2022. There was no response from assessee's side, accordingly the FAA did not condone the delay and dismissed the appeal in limine. Aggrieved, the assessee is in appeal before the ITAT which is also time barred by 436 days.

4. The Id. AR reiterated the contents of the affidavit as reasons for delay in filing the appeal before the FAA as well as the ITAT. For the sake of convenience, we are reproducing the same as under:-

3. That the Appellant filed its return of income for the Assessment Year (AY) 2011-12 on 30.09.2011 declaring a total income of Rs. 2,24,580 /- after claiming deduction under section 80P(2) of the Income Tax Act in short "IT ACT" amounting to Rs 9,54,696/-. The return of income filed by the Appellant was processed under section 143(1) of the Act and an intimation dated 16.02.2012 under section of 143(1) of the Act was passed where in the exemption claimed under section 80P of the IT Act was denied and added back to the returned income of the Appellant.

K.N. Ramaswamy

4. That the passing of the intimation under section 143(1) of the Act was not known to the Appellant until the year 2021, when refunds of subsequent AYs (2013-14 and 2014-15) were being adjusted to the said demand. Immediately the Appellant after consultation with their tax consultants filed an appeal challenging the intimation passed under section 143(1) of the Act without further delay on 10.04.2021 before the First Appellate Authority namely CIT(A). It is submitted that the Appeal was belated by 3342 days, before the CIT(A) and the Appellant had also disclosed in the form 35 that the Appeal was belated and also undertook to file a detailed affidavit as and when the case was posted.
5. It is submitted that, the Appellant originally was filing its returns under this PAN: AAAJJ0302L until AY 2017-18. Later for the AY 2018-19 onwards the Appellant filed its return of Income under the new PAN: AADAJ9232D as it could not claim deduction under section 80P of the Act with the status of Artificial Juridical Person and also there were several mistakes in the name of the Appellant.
6. One more additional reason for delay in filing the above appeal before the CIT(A) was that, the Accounts wing of the Appellant kept track of the new PAN AADAJ9232D and totally lost track of the existence of the Old PAN as they had made a specific request to the Income Tax Department to close the old PAN: AAAJJ0302L and consider the new PAN AADAJ9232D. Copy of the letter dt. 19.07.2018 addressed to the Jurisdictional AO, evidencing the surrender of the Old PAN AAAJJ0302L is attached as **ANNEXURE – B** to this affidavit.
7. It is further submitted that, the previous secretary Mr. Ranganathappa M.P. retired on 31.08.2022 and the incoming secretary who is swearing this affidavit was unaware of the pendency of the Appeal for 2011-12. Moreover, the new Secretary, was also inexperienced

with income tax issues as he lacked knowledge about assessment and appellate proceedings under the IT Act.

8. Subsequently on 23.12.2022, the National Faceless Appeal Centre (NFAC) issued deficiency notice to email address of the Appellant which was received in the 'Spam Folder' of the Appellant's e-mail. Hence the Appellant was unable to reply or upload the submissions as the Deficiency Notice went unnoticed by the Appellant.
9. On 13.01.2023, the NFAC issued a hearing notice to the Petitioner asking them to upload the submissions on or before 30.01.2023 and the same was sent to the Petitioner email address namely janahitha6@gmail.com. Unfortunately, the email went to the spam folder of the Appellant's account and the same went unnoticed by them.
10. The CIT(A), NFAC on 30.01.2023 dismissed the appeal of the Appellant in-limine on the ground that the defects were not rectified as the appeal was found beyond time and without any cogent reason. Once again the Appellate order that was sent by the CIT(A) was received in the spam folder of the Appellant's email ID which went unnoticed.
11. During August 2023, the Appellant society had its Board elections and all the office bearers were busy in campaigning and they had totally lost sight of the Appellate proceedings. Copy of calendar of events issued by the Chief Election officer is enclosed as **ANNEXURE – C** to this petition.

On 14.09.2023, the Appellant received the notice dated 30.08.2023 towards recovery of arrears for the AY 2011-12 and at this point the Appellant came to know that there was an order passed under section 250 of the Act dt. 30.01.2023.

13. On 20.10.2023, the CIT(A) NFAC passed an order for the AY 2017-18 where in the Appeal of the Assessee was allowed in part and by virtue of which the Appellant was due for some refund. Copy of the order passed under section 250 of the Act for AY 2017-18 is enclosed as **ANNEXURE – D** to this Affidavit.
14. The Appellant society had taken a decision to not contest in further appeal before the Hon'ble ITAT for the AY 2011-12 as the refund of AY 2017-18 would get adjusted to the demand of AY 2011-12. Thereafter, the Appellant pursued before the JAO to pass OGE to the CIT(A) order for AY 2017-18 by way of personal appearances. Thereafter on 7th March 2024 the Appellant society filed one more letter requesting the JAO to pass the OGE in light of the observations of the CIT(A). Copy of the Letter filed on 07.3.2024 is enclosed as **ANNEXURE – E** to this Affidavit.
15. In the meanwhile, on 27.04.2024, the JAO issued recovery notice under section 226(3) to the Appellant's bankers attaching any type of account held in the name of the Appellant. Copy of the Notice issued under section 226(3) of the Act is enclosed as **ANNEXURE – F** to this Affidavit.
16. Further on 09.05.2024, the Appellant once again filed a letter to the JAO requesting to pass OGE for the AY 2017-18 whereby the refund receivable would cover the outstanding demand for AY 2011-12. Copy of the Letter dated 9th May 2024 is enclosed as **ANNEXURE – G** to this Affidavit.
17. Aggrieved by the aforesaid proceedings, the Appellant is being forced to file this appeal where in there is a delay of 436 days.

18. It is submitted that; the delay is unintentional and due to bonafide reasons beyond the control of the Appellant.
19. It is further submitted that, the Appellant has a good case on merits and is confident that he would succeed in the Appeal.
20. Therefore, it is humbly prayed that the delay of 436 days may please be condoned to meet the ends of justice.

5. The ld. DR relied on the order of lower authorities and submitted that assessee should have filed the appeal within due date as per section 249(2) of the Act. However the assessee filed appeal with delay of 3342 days before the FAA and 436 days before the ITAT. The reasons stated by the assessee are not acceptable. The return was processed on 16.2.2012 and communication sent to the assessee, but the assessee is denying receipt of such communication. He further submitted that as per Form 35 at sl.no.2(b)&(c) the date of order and service of order is 16.2.2012, therefore intimation was served on 16.2.2022 and the contention raised through affidavit is wrong. The ld. FAA also gave opportunity to the assessee for explaining the reasons for delay and time was granted for 15 days and there was no such explanation received from the assessee. Therefore, he strongly objected for admitting the appeal as well as stay petition filed by the assessee.

6. Considering the rival submissions, we note that the assessee is a co-operative society registered under Karnataka Co-operative Societies Act, 1959 and the main object of the assessee is to provide credit

facilities to its members. It filed return of income claiming deduction under Chapter VIA of Rs.9,54,696 u/s. 80P(2)(a)(i) of the Act which was denied by the CPC and return was processed on 16.02.2012. Appeal was filed before the FAA with delay of 3342 days and 436 days before the ITAT. However, the assessee has filed affidavit dated 25.6.2024 explaining the reasons for the delay before the FAA and ITAT. We have gone through Form 35 and note that date of service of intimation is 16.2.2012 and at para 14 of Form 35 assessee has mentioned “*we will file a detailed application by way of an Affidavit at the earliest*”. During the course of proceedings before the FAA the assessee did not file any affidavit explaining the reasons for delay. However, the assessee has filed detailed reasons through affidavit before the ITAT. The FAA has given notice for explaining the reasons and allotted time for 15 days from 23.12.2022, but the assessee did not file any affidavit. Since the reasons for the delay have been filed before us for the first time, we are of the view that the delay in filing the appeal before the FAA should be decided at the level of the First Appellate Authority (FAA). Accordingly, we remit this issue back to the file of FAA for fresh consideration with a direction to dispose of the appeal within six months from the date of receipt of this order after giving reasonable opportunity to the assessee. Since the income tax department has issued notice u/s. 226(3) of the Act, the assessee is directed to cooperate with the proceedings before the FAA. We make it clear that we have not condoned the delay in filing the appeal at any stage.

7. During the course of hearing with the consent of both the parties, it was pronounced that the stay petition filed by the assessee becomes infructuous.

8. In the result, the appeal of the assessee is allowed for statistical purposes and stay petition is disposed of accordingly.

Pronounced in the open court on this 27th day of August, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th August, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.