



BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

AND

HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 1191 & 1192/PUN/2024
Assessment Year : 2018-19 & 2020-21

Shri Gajanan Gramin

Bigar Sheti Sahakari Patsanstha Ltd.

Old Post Lane, Ajara S.O.

Ajara, Kolhapur-416505

PAN: AAKAS8083N.

..... **Appellant**

V/s

The Income Tax Officer,

Ward-(1), Kolhapur.

..... **Respondent**

Appearances

Assessee by : None for the Assessee

Revenue by : Mr Akhilesh Srivastava ['Ld. DR']

Date of conclusive Hearing : 04/09/2024

Date of Pronouncement : 04/09/2024

ORDER

PER G. D. PADMAHSHALI, AM;

These twin appeals of the assessee impugned separate DIN & Order No. ITBA/NFAC/S/250/2024-25/1064137711(1) & 1064138099(1) both dt. 16/04/2024 passed by the first appellate authority ['Ld. NFAC/ CIT(A)' hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] passed which in turn confirmed the order of assessment passed u/s 143(3) of the Act by the National e-Asstt Centre, Delhi ['Ld. AO' hereinafter] for assessment year 2018-19 & 2020-21 ['AY' hereinafter];



2. This bunch was called up for hearing twice; none appeared at the behest of the appellant assessee, on the primary briefing from the Revenue and having regard to order-sheet entries we deem it to advance ex-parte u/r 24 of ITAT-Rules, 1963 and adjudicate the limited issue.

3. The case records and lower adjudication proceedings reveals that facts involved in this bunch of appeals and issue dealt therein are common & identical therefore on the request of Ld. DR these twin appeals for the sake of brevity & convenience are heard together for being disposed-off by common & consolidated order.

4. Briefly stated common facts of these twin cases are that, the assessee is a credit co-operative society registered under the provisions of Maharashtra State Co-operative Societies Act and engaged in acceptance of deposit and providing credit facilities to its member. The return of income [‘ITR’] filed by the assessee u/s 139(1) of the Act was subjected to a scrutiny and consequential assessments were framed u/s 143(3) of the Act denying thereby claim of 80P(2) deduction to the assessee owing to non-production of evidential documents.



5. The assessee assailed the denial of 80P(2) deduction in separate appeal before first appellate authority on 25/04/2022 that is admittedly with a delay of 675 & 146 days. The reasons beyond aforesaid delays were explained but it did not inspire the Ld. NFAC, in the event both the appeals were dismissed *in limine* by relying on the catena of decisions.

6. Aggrieved assessee filed these twin appeals with as many as five common argumentative grounds which collectively challenges the action of Ld. First appellate Authorities on violation of principle of natural justice and seeks to remand the matter back to the file for de-novo adjudication.

7. Without touching the merits of the case we have heard the Ld. DR on the limited issue of *ex-parte* dismissal of appeal by the Ld. NFAC and subject to rule 18 of ITAT-Rules 1963 perused material placed on record, considered the facts in the light of settled legal position.

8. We noted that against the order of assessment for AY 2018-19 was passed on 09/04/2021 and for AY 2020-21 was on



20/09/2022. Two separate appeals against aforesaid assessment orders were filed before the Ld. NFAC on 25/04/2023 admittedly with a delay of 675 days & 146 days. The appeal admittedly was filed accompanying therewith a petition for condonation of delay stating therein that the electronic/soft copies of orders were communicated by the Revenue to an email address belonging to erstwhile tax consultant who did not forward the same to the assessee and further no physical/hard copies of the orders were received by it from the Revenue. However these reasons did fail to form 'sufficient cause' in view of the Ld. NFAC therefore rejected to entertain the appeal on a technical ground of assessee's failure to prove the reasonable/sufficient cause beyond the said delay.

9. We have note that, any period of delay in following between dt. 15/03/2020 to dt. 28/02/2022 in view of the direction of Hon'ble Apex Court rendered in MA-21/2022 stands excluded from the period of limitation. Therefore actual & effective delay as calculated & confirmed by the Ld. DR were less than days computed/pleaded by the appellant assessee before the Ld. NFAC.



10. At the outset, after vouching sufficiency of reasons beyond undeliberate delay in instituting these separate appeals before the Ld. NFAC, we after placing reliance on '*Vijay Vishin Meghani Vs. DCIT & Anr*' reported 398 ITR 250 (Bom) and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' reported at 167 ITR 5 (SC), in the larger interest of justice deem it fit to condone the same holding as 'none should be deprived of an adjudication on merits unless it is found that the litigant deliberately delayed the filing of appeal.'

11. We are of the view that, the appellate remedy or forum is created by the statute is to rest the dispute and not to accelerate for higher forum, therefore having regard to present facts and circumstances, placing reliance on recent judgement of Hon'ble Supreme Court rendered in '*Raheem Shah & ANR Vs Govind Singh & Ors*' [CIVIL APPEAL NO.4628 OF 2023], we are heedful to state that, while dealing with tax litigation, the Ld. NFAC being a quasi-judicial authority was expected to adopt justice oriented approach rather resorting to iron-cast technical one wherein the Ld. NFAC came to dismiss the appeal of the assessee *in limine* on a hyper-technical ground without putting the assessee to notice.



12. In view hereof, without offering any comments on the merits of the case, we deem it fit to set-aside the impugned orders and remit the files to the Ld. NFAC with a direction deal therewith on merits *de-novo* in accordance with applicable law and pass a speaking order in terms of section 250(6) of the Act. Needless to state the Ld. NFAC shall accord not more than three opportunities to the assessee in each case separately to explain its claim with such evidential material as may be necessary. The grounds of appeal accordingly stands allowed.

13. In result these two appeals of the assessee are ALLOWED FOR STATISTICAL PURPOSES.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday, 04th day of September, 2024

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 04th day of September, 2024

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr. CIT Concerned.

4. The CIT(A)/NFAC Concerned.

5. DR, ITAT, 'SMC' Bench, Pune

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER