

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'SMC', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 163/CHD/2024

निर्धारण वर्ष / Assessment Year : 2018-19

The Dol Cooperative Agricultural Service Society Limited, VPO Aghwani, Tehsil Jawalamukhi, Kangra HP	Vs. बनाम	The ITO, Dharamshala
स्थायी लेखा सं./PAN No: AADAT6246M		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 13.08.2024

उद्घोषणा की तारीख/Date of Pronouncement : 16.10.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 09.11.2023 of the ld. Addl./JCIT Commissioner of Income Tax (Appeals)-5, Mumbai [herein referred to as Addl./JCIT (A)].

2. There is a delay of 41 days in filing of the appeal before the ITAT.

The Assessee has filed an Affidavit on this delay which is reproduced as under:-

INDIA NON JUDICIAL
Government of Himachal Pradesh

e-Stamp

Certificate No.	: IN:HP11154673746233W
Certificate Issued Date	: 20-Feb-2024 04:24 PM
Account Reference	: NEWIMPACC (SV)/ hp19001104/ NADAUN/ HP-HM
Unique Doc. Reference	: SUBIN-HPHP1900110418873259569758W
Purchased by	: VIVEK KUMAR
Description of Document	: Article 4 Affidavit
Property Description	: Affidavit
Consideration Price (Rs.)	: 0 (Zero)
First Party	: VIVEK KUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: VIVEK KUMAR
Stamp Duty Amount(Rs.)	: 20 (Twenty only)

सत्यमेव जयते

₹20

NOTARIAL NOTARIAL

Please write or type below this line IN:HP11154673746233W

KASHMIR SINGH
NOTARY PUBLIC
New Delhi (H.P.) INDIA
20.2.2024

Vivek

Secretary
The Dol Co-op. Agriculture Service Society Ltd.
P.O. Adhwani Teh. J. Mukhi Distt. Kangra (H.P.)

Statutory Alert:
1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding
Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate
3. In case of any discrepancy please inform the Competent Authority.

E-Stamp No. IN-HP11154673746233W Dated 20-02-2024 Rs.20/-

AFFIDAVIT

I Vivek Kumar aged 27 years Son of Shri Roop Chand Resident of Village Jijal, Post Office Adhwani, Tehsil Jawalamukhi, District Kangra, do hereby solemnly affirms as under:-

- 1 That, I am working as an Secretary in the office of the Dol Co-operative Agriculture Service Society Limited Dol Distt. Kangra H.P.
- 2 That the appeal before Hon'ble ITAT was filed on dated 11/01/2024 against the Ld. CIT (A) order dated 09/11/2023 which was received on dated 11/11/2023.
- 3 That the last date for filling the appeal before Hon'ble ITAT was 11/01/2024.
- 4 That on receiving the Ld. CIT (A) order, the order was handed over to me for taking the appropriate action in the aforesaid case.
- 5 That I kept the CIT(A) order on the drawer and forgot to file the appeal before Hon'ble ITAT.
- 6 That when it was enquired from me regarding the status of the appeal to be filled, it came to the light at that time that I have not filed the appeal against the order of the Ld. CIT (A).
- 7 Thereafter immediate step were taken to file an appeal before Hon'ble ITAT.
- 8 That due to this omission on my part there was a delay in filling the appeal by 41 days.
- 9 That the delay in filling the appeal before Hon'ble ITAT against the order of the Ld.s CIT(A) was unintentional.
- 10 That, I have read and understands and state that what is stated therein is true and correct to the best of my knowledge and belief.

Declared and verified on 20th day of February 2024 at Nadaun, H.P.

Secretary
The Dol Co-op. Agriculture Service Society Ltd.
P.O. Nadaun, H.P. Distt. Kangra (H.P.)

Vivek
Deponent

Identified By :
MONIKA THAKUR ADV. NDAUN, HP

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Nadaun, H.P.
No - 2 - 2024

3. We have considered the facts and issues mentioned in the aforesaid affidavit and we have condoned the delay. The ld. DR had no objection on this issue.

4. The appeal in this case has been filed on the following grounds :

- 1) *That the order of the learned assessing authority is against the law and facts and deserved to be quashed.*
- 2) *That the learned assessing authority was not justified in imposed tax and interest amounting Rs 344930 by disallowing deduction under chapter VI -A in respect of section 80P of the Income Tax Act 1961, as assessee is providing banking/credit facilities to its members and covered u/s sec 80P(2)(a)(I) without considering the facts of the case which is highly arbitrary, illegal, unwarranted & uncalled for.*
- 3) *That the assessee has filed rectification but same are rejected, copy of rectification made are enclosed.*
- 4) *That the learned assessing authority erred in not placing and reliance on the material placed during the proceedings.*
- 5) *That it is prayed that the order of the learned assessing authority be quashed and income tax of Rs 344930/- wrongly & illegally levied be remitted to the appellant.*

- 6) *That the appellant craves leave to amend or vary the grounds of appeal at the time of hearing or with the appeal is disposed off.*

5. The ld. Counsel of the Assessee has filed written submissions during the proceedings before us. Brief facts of the case as per the submissions filed by the Counsel of the Assessee are as under: -

1. This is a case of a Cooperative agricultural society, which is engaged in providing banking/credit facilities to its members and is located in remote village of Himachal Pradesh. The said Cooperative society had been filing the return of Income Tax year after year after, claiming deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 and the said deduction was being allowed in the earlier years. The return for the year under consideration was filed by the counsel of the assessee, since the members of the society are illiterate and while filing the return of income, the counsel of the assessee wrongly claimed the deduction u/s 80P(c)(ii) of the Income Tax Act, 1961, instead of u/s 80P(2)(a)(i) of the Income Tax Act, 1961 and the CPC in an intimation order u/s 143(1) disallowed the deduction as claimed.
2. The assessee filed an appeal before the CIT(A) and the said appeal was late before the CIT(A) and as per the order of the CIT(A), the intimation u/s 143(1) was

served upon the assessee on 25.05.2019 and the appeal was filed on 21.11.2020 and thus, it was late by 545 days. Before the CIT(A), the reasons for delay in filing of appeal were stated by the assessee as reproduced at page no. 2 of the order of the CIT(A) and it was stated that the delay was on account of COVID Pandemic and, also that, the intimation order u/s 143(1) was given to the dealing assistant for further appropriate action, but that dealing assistant, wrongly placed the same in the file and, as such, there was delay in filing the appeal before the before the CIT(A).

3. The CIT(A) in his wisdom has not condoned the delay in filing the appeal before him and the appeal being late and also according to the CIT(A), there was no sufficient cause for delay in filing of appeal and, hence, dismissed the appeal of the assessee on the issue of delay in filing of appeal.
4. The assessee had filed an appeal before Hon'ble ITAT raising following grounds of appeal:
 - 1) That the order of the learned assessing authority is against the law and facts and deserved to be quashed.
 - 2) That the learned assessing authority was not justified in imposing tax and interest amounting Rs 3,44,930/- by disallowing deduction under chapter VI-A in respect of section 80P of the Income Tax Act 1961, as assessee is providing banking/credit

facilities to its members and covered u/s sec 80P(2)(a)(l) without considering the facts of the case which is highly arbitrary, illegal, unwarranted & uncalled for.

- 3) That the assessee has filed rectification but same are rejected, copies of rectification made are enclosed.
- 4) That the assessing authority erred in not placing reliance on the material placed during the proceedings.
- 5) That it is prayed that the order of the learned assessing authority be quashed and income tax of Rs 3,44,930/- wrongly & illegally levied be remitted to the appellant.
- 6) That the appellant craves leave to amend or vary the grounds of appeal at the time of hearing or with the appeal is disposed-off.

5. During the course of hearing, the ld. Counsel of the assessee raised an additional ground of appeal vide letter dated 13.08.2024 which reads as under:

- 1) *That the ld. CIT (Appeals), has erred in not condoning the delay as per the reasons submitted by the assessee before the d. CIT (Appeals).*

6. It was argued before us that no new facts are liable to be looked into and, as such, the assessee prayed for admission for additional

ground of appeal, and after the hearing of Id. DR, the additional ground was admitted, since all the facts are borne out from the records of the Assessing Officer and CIT(A).

7. In fact, the Addl. CIT(A) in his appeal order has given the findings on this issue as under: -

“In the present case, the appellant has not adduced any reasonable cause which prevented it from filing the appeal for 545 days. Unless and until it demonstrated that there was sufficient cause that prevented the appellant from exercising its legal remedy of filing appeal within that prescribed period of 30 days, delay thereafter cannot be condoned. From the facts of the case, it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s 249(3). Thus, this clearly is a case of laches and is directly the result of deliberate inaction on part of the appellant.

In view of above, the delay of 545 days in filing of appeal in this case is not condoned as no "sufficient cause" has been shown under section 249(3) of the Income Tax Act for the appellants failure to file the appeal within prescribed period of limitation u/s 249(2) of the Income Tax Act r.w.s 5 of the Limitation Act. Since, the delay in filing of appeal has not been condoned, consequently the appeal of the appellant becomes not-est and therefore, the same is not admitted.

8. The ld. DR, on the issue of delay in filing of the appeal, has relied upon the findings given by the ld. Addl. CIT(A) and he also argued that the rejection of condonation of delay by the Addl. CIT(A) was as per the law.

9. We have considered the findings of the Addl. CIT(A) on the issue of delay in filing of the appeal as well as his findings on the condonation of delay application filed by the Assessee before him. We have also considered the arguments made by the ld. DR in the proceedings before us. We have gone through the written submissions filed by the Counsel of the Assessee before us and we have also heard the arguments of the Counsel of the Assessee on this issue. We find that it is very clear from the Affidavit filed before the ld. Addl. Commissioner of Income Tax (Appeals) that the effective delay in filing of the appeal was only 294 days because the period from 15.3.2020 to 20.11.2020 was not be considered for condonation of delay on account of Covid-19 Pandemic, as per the order of the Hon'ble Supreme Court on this issue. We find that the ld. Addl. CIT(A) has dismissed the appeal because on the legal issue of late filing, without giving any findings on the basis of material available on record and on the merits of the case. We are also of the considered view that in order to meet

the ends of natural justice, it is important to give findings on merits which has not been done in this case by the ld. Addl. CIT(A). We think that the issue and facts brought on record by the Assessee before the Addl. CIT(A) for delay in filing of the appeal should have been positively considered by the ld. CIT(A) and, therefore, we condone the delay in filing of the appeal and remand this case back to the file of the CIT(A) for deciding the issues raised by the Assessee in the grounds of appeal on merit, in accordance with law, on affording due and adequate opportunity of hearing to the Assessee. The Assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

10. In the result, the appeal of the Assessee stands allowed for statistical purposes.

Order pronounced on 16.10.2024.

Sd/-
(A. D. JAIN)
Vice President

“आर.के.”

Sd/-
(KRINWANT SAHAY)
Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar