

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

S.M.C. MATTER

ITA no.134/Nag./2024

(Assessment Year : 2019-20)

VNIT Karmachari Sahakari Pat Sanstha
South Ambazari Road, Nagpur 440 010
PAN – AACAV1878L

..... Appellant

v/s

Income Tax Officer
Ward-1(5), Nagpur

..... Respondent

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 30/09/2024

Date of Order – 30/10/2024

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 15/12/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2019-20.

2. The assessee has raised following grounds:-

“Whether on the facts and in law, the order passed by learned CIT(A) u/s 250 of the Act is bad in law.

2. Whether on the facts and in law, the learned CIT(A) erred rejecting request for condonation of delay in filing appeal without issuing any prior show cause notice thereby, denying opportunity of being heard to the assessee.

3. Whether on the facts and in law, the learned CIT(A) erred in not appreciating the fact that, due date to file the appeal fell within COVID-19 period and substantial period would be excluded while calculating the delay and for balance period of delay, the assessee had provided reasonable cause.

4. Whether on the facts and in law, the learned CIT(A) erred in upholding the action of learned AO in disallowing deduction claimed u/s 80P(2)(a)(i) of Income Tax Act, of Rs. 17,66,780/- by assessee in original return of income.

5. The Assessee craves to add, alter, vary, omit, amend, or delete one or more of the above grounds of appeal before, or at the time of, hearing of the appeal, to enable the Hon'ble Tribunal to decide this appeal according to law."

3. The learned Counsel, Shri Abhay Agrawal, Advocate, appearing for the assessee, pointed that there is a delay of 22 days in filing the present appeal before the Tribunal. The assessee has filed application-cum-Affidavit explaining the delay, the contents relevant thereto, are reproduced below:-

"Sufficient Cause explaining the delay in filing the Appeal

That the order was passed by learned CIT(A) dated 15.12.2023. The copy of order was not brought to the notice of the deponent in timely manner. The deponent is not well verse with operating the account of assessee on income tax portal. The assessee relies on its tax consultant who checks the portal and carry out the compliance.

The registered e-mail ids on which the notices of CIT(A) hearing were sent was pvs.ngp49@gmail.com and ramesh_general@yahoo.com. The former email-id was of tax consultant and later email-id is not known to the deponent. Thus, neither notices nor appellate order could be brought to the notice of the deponent or any member of the assessee. The tax consultant failed to check his email-id and inform the assessee about the order. Subsequently, somewhere in the mid of January 2024 the deponent enquired his tax consultant about the status of pending appeals. The tax consultant checked the income tax portal and informed the assessee/ deponent about passing of appellant order dated 15.12.2024.

The assessee immediately thereafter, consulted a legal Counsel to file an appeal against learned CIT(A) order. The assessee briefed the counsel and provided all the relevant documents. That Counsel drafted the appeal and sent papers to the assessee for signature. The deponent was out of town for some family emergency. This took time and finally the appeal is being filed on 06.03.2024 with a delay of 22

The assessee being a credit Co-Operative Society and representing such society via Management Committee appointed by members of the

Society. The Members are not so technical and expert in surfing the Income Tax Portal on regular Basis. Further we are not in the ambit of any Income Tax Audit for which we could have higher any Professional qualified CA to do the matters on our behalf. The delay is genuine in nature as any information which is not communicated upon to assessee cannot be acted or protested. The assessee pray that, Your Honour may kindly condone the delay as we are representing our members and our society members are very low-income category and we cannot suffer the cost of such delay which is excessive. Further, learned CIT(A) has dismissed the appeal without hearing assessee's contentions. Hence Opportunity of being heard is missing. It is prayed to kindly condone the delay of filing appeal and oblige.

G. The assessee prays that, the delay of 22 days be condoned in light of aforesaid circumstances. That there was no malafide intention on assessee's part for delay in filing the appeal. In view of above it is submitted that there was a bonafide lapse in delay in filing the appeal before your Honour.

Hence, there is an unintentional delay in filing the appeal before your Honour. By delaying the filing of appeal, no undue benefit or advantage is taken by the assessee. Accordingly, in the interest of justice, the assessee wishes to challenge the assessment order passed by the learned CIT(A) by way of appeal filed before your Honour with a request for condonation of delay.

In view of this, it is prayed that the delay of just 22 days may kindly be condoned in order to render the justice."

4. After considering the submissions of the learned Authorised Representative and averments made by the assessee in its affidavit, I am of the opinion that the assessee is prevented in filing the appeal belatedly and I am satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, I hereby condone the delay of 22 days in filing the present appeal and admit the same for adjudication on merit.

5. The learned Counsel further submitted that there was a delay of 185 days (excluding COVID period) in filing the appeal before learned CIT(A) and the learned CIT(A) has dismissed the appeal of the assessee at the threshold itself i.e., by not condoning the delay. The learned Counsel referred to Para-

4.6 of the learned CIT(A) order, wherein the reasons for delay in filing the appeal has been reproduced. The learned Counsel has submitted an Affidavit executed on 27/09/2024, by the Secretary of the assessee society in support of the reasons for delay in filing the appeal before learned CIT(A). The learned Counsel submitted that the email-id registered on portal was incorrect and hence, intimation order under section 143(1) of the Act for the assessment year 2019-20 was not brought to the notice of the assessee in a timely manner. The assessee society members were not well versed with the operating system of the account of assessee on income tax portal. It was thus submitted that the order could be accessed, only subsequently the assessee could access the tax portal when the assessee enquired from his consultant. The learned counsel for assessee submitted that correct email-ID has been now updated on the system and henceforth, the assessee would make the due compliances. The learned counsel for the assessee further submitted that the intimation order was dated 05/03/2020 and due date to file an appeal fell under COVID-19 period. Therefore, extension granted by Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No(s).3/2020 In Re: Cognizance was applicable. Accordingly, post exclusion of COVID period, the delay comes to 185 days.

6. I have considered the order passed by the learned CIT(A) and copy of Affidavit filed before us explaining the reasons for delay in filing the appeal before the learned CIT(A). Therefore, having regard to the facts and circumstances and with a view to advance substantial justice, I hereby set aside the impugned order passed by eth learned CIT(A) by condoning the

delay in filing the appeal before learned CIT(A) and restore the matter back to the files of learned CIT(A) to decide the issues on merits of the case. Thus, all the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 30/10/2024

Sd/-

NAGPUR, DATED: 30/10/2024

Sd/-

**V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur