

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No. 1535/Bang/2024
Assessment year : 2019-20

Udaya Souharda Credit Co-operative, No.29/11, 1 <sup>st</sup> Main Road, Mount Joy Road, Hanumanthanagar, Bangalore – 560 019. <b>PAN : AAAAU 0472H</b>	Vs.	The Income Tax Officer, Ward 5(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar, Advocate
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	22.10.2024
Date of Pronouncement	:	28.10.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the order dated 28.06.2024 of the Addl. CIT / JCIT(Appeals)-5, Mumbai, for the AY 2019-20 dismissing the appeal without condoning the delay in filing the appeal.

2. Briefly stated the facts of the case are that the assessee filed return of income on 26.09.2019 declaring gross total income of Rs.1,39,87,136 and claimed deduction under Chapter VIA declaring Nil income and claimed TDS refund of Rs.1,85,892. Return was processed u/s. 143(1) on 30.10.2020 during COVID 19 Pandemic and deduction under Chapter VIA was denied to the assessee and total income was considered at Rs.1,39,87,140. Accordingly there was a tax demand of Rs.58,28,199 after adjusting TDS.

3. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA) on 11.07.2024 with a delay of 1350 days. The assessee filed petition for condonation of delay and the reasons given by the assessee are as under:-

“a. It is submitted that the appellant was not aware of the return of income being processed and the consequential demand for the impugned assessment year as such information was not received on mail of the appellant.

b. It is submitted that the appellant received a letter from the Income Tax Officer, Ward 5(2)(1), Bangalore dt:24.08.2023 vide DIN: ITBA/Com/F/17/2023-24/1055376168(1) requiring the appellant to pay 20% of the outstanding demand for different assessment years. Copy of the letter dt:24.08.2023 is enclosed herewith for your reference.

c. Subsequent to the receipt of the intimation letter dt:24.08.2023, the Chartered Accountant of the appellant- visited the office of the learned assessing officer and informed orally that the issue with respect to which there are outstanding demand is covered in favour of the assessee by the decision of the Jurisdictional High Court for most of the assessment years. It was further informed that the appellant has deposited more than 20% of the outstanding deposit and no recovery action was warranted.

d. It is pertinent to note that the said letter did not reflect any outstanding demand for the impugned assessment year 2019-20, thus, even the department was not aware for the existing demand for the impugned year.

e. The appellant received a call from the Income Tax Officer in the last week of June 2024 to formally file a reply stating that the demand in appeal cases was not recoverable. The appellant filed the reply on 09.07.2024 reiterating the oral submissions made by its Chartered Accountant.

f. The learned assessing officer verified the reply filed with the data available in the portal and realised that there is an outstanding demand for the impugned assessment year 2019-20 and also informed the appellant about such demand.

g. The appellant thereafter approached its Chartered Accountant and only then it was realised that there is an outstanding demand for the impugned assessment year. The Chartered Accountant perused the ITR form and observed that the schedule has been correctly filled to claim deduction, under section 8013 of the Act (Refer Pg.53 of the ITR) and advised the appellant that it has a strong case on merits and advised to file an appeal and accordingly the appeal came to be filed before your Honours on 11.07.2024 resulting in a delay of 1350 days.

h. The appellant places reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT & Another Vs. ISRO Satellite Center, in ITA No. 532 of 2008 and other batch of appeal order dated 28/10/2011 has condoned the delay of 5 years in filing the appeal before the CIT[A], the relevant observation is at para 28 page 72 of the order.

i. The appellant places reliance on the decision of the Hon'ble Jurisdictional Tribunal in the case of Smt. Shakuntala Hegde, Legal Heir of Mr. Ramakrishna Hegde Vs. ACIT, in ITA No. 2785/Bang/a:K4 order dated 25/04/2006 wherein the Hon'ble Tribunal has condoned the delay of 1,331 days i.e. 3 Years, 8 Months and 22 days in filing the appeal by the assessee.

j. The appellant places reliance on the decision of the Hon'ble High Court of Madras in the case of Commissioner of

Income-tax Vs. K.S.P.Shanmugavel Nadar (1987) 30 Taxmann 133 (Madras).

k. The appellant places reliance on the decision of the Hon'ble Cochin Tribunal in the case of M/s. Midas Polymer Compounds Pvt Ltd Vs. ACIT in ITA No.288/Coch/2017 dated 25.06.2018.

l. The appellant places reliance on the decision of the Hon'ble High Court of Bombay in the case of Anatek Services Pvt Ltd Vs. Asst.Commissioner of Income-tax-10(1) in ITA No.102 of 2018 dated 11.02.2022.

m. It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the Appellant would be put to great hardship and irreparable injury per contra no hardship or injury would be caused to the Respondent if this application of Condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST.Katiji and Others (1987) 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118 ITR 507. Further the Appellant relies on another decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank & Others [2000] 9 Supreme Court Cases 733 and Commissioner of Income-tax Vs. West Bengal Infrastructure Development Finance Corporation limited (2011) 334 ITR 269 (SC).

n. It is humbly prayed that your Honours takes a lenient and compassionate view and condone the delay of 1350 days in filing the present appeal hear the same on merits for the advancement of substantial cause of justice.”

4. The Id. FAA noted that order u/s. 143(1) dated 13.10.2020 was sent to email id: [udayavithal@gmail.com](mailto:udayavithal@gmail.com) on 03.11.2023 and on the same date SMS message was also sent on the registered mobile number. The screenshot of CPC-2 portal on the same is reproduced in his order. Hence the claim of assessee that delay is due to non-receipt of the intimation order is not correct. The email-id given in Form 35

too is the same. Further, subsequently the assessee accessed e-filing portal and filed return for AY 2021-22, 2022-23 & 2023-24. Therefore the assessee's claim that it was not aware of the order u/s. 143(1) has no merit. There was no sufficient cause which prevented the assessee from filing the appeal within the limitation date. Accordingly the delay was not condoned and appeal was dismissed without adjudicating on merits. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR for the assessee reiterated the submissions before the CIT(A) for condonation of delay and submitted that the assessee did not receive intimation and it was Covid-19 period also and the organisation was working with less staff. He further submitted that as per page 67 of PB the assessee was sent a letter dated 24.08.2023 in which demand outstanding from AY 2011-12 to 2020-21 was informed, except AY 2019-20 (impugned AY). However, as per intimation generated u/s. 143(1) there was a demand raised by CPC which is not found in the said letter. Therefore assessee approached to the income tax department by letter dated 09.07.2024 and thereafter assessee came to know that intimation order u/s. 143(1) was generated by CPC and demand has been raised and, thereafter immediately assessee filed appeal on 11.07.2024. The Id. AR requested that the delay may be condoned and matter remitted to AO for fresh consideration of the claim of deduction u/s. 80P(2) of the assessee.

6. The Id. DR relied on the order of the Id. FAA and strongly submitted that the submissions of the assessee that it was not aware of intimation order u/s. 143(3) is not correct. He also submitted that as per Form 35 at sl. No.2, the date of service of order/notice of demand is mentioned as 30.10.2020.

7. Considering the rival submissions we note that assessee filed return of income declaring income of Rs.1,39,87,136 and claimed the same amount as deduction under Chapter VIA. Return was processed on 30.10.2020 and deduction was denied. The intimation u/s. 143(1) dated 13.10.2020 was sent to email id: [udayavithal@gmail.com](mailto:udayavithal@gmail.com) on 03.11.2023 and on the same date SMS message was also sent on the registered mobile number. Against the CPC order, the assessee filed appeal before the FAA on 11.07.2024 belatedly by 1350 days including the Covid-19 period. The Id. FAA observed that assessee has visited e-filing portal while filing returns for AY 2021-22, 2022-23 & 2023-24 therefore it is wrong that assessee was not aware of the intimation u/s. 143(1). The submission of the Id. AR is that intimation was processed during Covid-19 period and office was working with less staff and came to about the 143(1) order only when it was received vide letter dated 24.08.2023 from the department about the demand for various AYs which did not include the impugned AY and when the assessee approached the department it came to know of the demand for the impugned AY. Thereafter immediately appeal was filed before the CIT(Appeals) causing delay. The Id. CIT(Appeals) has not decided the

issue on merits of the case and only dismissed the appeal without condoning the delay.

8. In case of People Education & Economic Development Society Vs. ITO reported in 100 ITD 87 (TM) (Chen), it was held that;

"when substantial justice and technical consultation are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay".

9. The Hon'ble Madras High Court in the case of Sreenivas Charitable Trust reported in 280 ITR 357 held that, no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this Judgment of the Hon'ble Madras High Court (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression sufficient cause" should receive a liberal construction. Therefore, for the purpose of advancing substantial justice which is of prime importance in the administration of justice, the expression "sufficient cause" should receive a liberal construction. In opinion of this *Tribunal*, this decision of *Hon'ble Madras High Court* is applicable to the present facts of the case. A similar view was taken by

*Hon'ble Madras High Court in the case of Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad).*

10. The Hon'ble Mumbai Bench of this Tribunal in the case of *Bajaj Hindustan Ltd. v. Jt. CIT (AT)* reported in 277 ITR 1 condoned the delay of 180 days when, the appeal was filed after the pronouncement of the Judgment of the *Hon'ble Supreme Court*. It is also to be noted that the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. *Hon'ble Supreme Court* in the case of *Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi* reported in AIR 1978 SC 537 held that, non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this case, the Revenue has not filed any counter-affidavit opposing the application of the assessee, therefore, as held by *Hon'ble Supreme Court*, there is sufficient cause for condonation of delay. *Hon'ble Supreme Court* also observed that; *"It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. Condonation of delay is the discretion of the Court/ Tribunal. Therefore, it would depend upon the facts of each case. In our opinion, when there is sufficient cause for not filing the appeal within the period of limitation, the delay deserves to be condoned, irrespective of the duration/period.*

11. Following the above judgments, considering the facts of the case and in the interest of justice, we condone the delay in filing the appeal

before the CIT(Appeals), subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand Only) by the assessee and remit the issue to the Assessing Officer for fresh consideration and decision as per law. The assessee is directed to file necessary documents that would be essential and required for substantiating its case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

12. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 28<sup>th</sup> day of October, 2024.

Sd/-  
( SOUNRARARAJAN K.)  
JUDICIAL MEMBER

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 28<sup>th</sup> October, 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.