

आयकर अपील अथकरण, इंदौर यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL INDORE
BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.360 & 361/Ind/2023
(Assessment Year: 2013-14 & 2014-15)

Shree Rajendra Suri Sah Sakh Santha Myd. 1, Palika Nidhi Complex, Old Bus Stand Rajgarh, Dhar	Vs.	ITO Dhar
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AABAS6487M		
Assessee by	Shri S.N. Agrawal & Pankaj Mongra, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.10.2024	
Date of Pronouncement	28.10.2024	

ORDER

Per Vijay Pal Rao, JM :

These two appeals by the Assessee are directed against two separate orders of Commissioner of Income Tax (Appeals)-III, Indore dated 31.05.2019 & 04.12.2018 for Assessment years 2013-14 & 2014-15 respectively.

2. There is a delay of 1516 days in filing the appeal for A.Y.2013-14 & 1693 days in filing the appeal for A.Y.2014-15. The assessee has filed applications for condonation of delay which are supported by affidavits of the Chairman of the assessee society. Ld. AR of the assessee has submitted that an FIR was registered on 30.08.2019 against the President of the assessee society and consequently a complained was also filed in the office of Registrar of Cooperative Societies regarding financial irregularities. He has further submitted that as many as seven FIRs were registered against the office bearers and particularly the president of the assessee society for alleged financial irregularities committed by the office bearers. The management committee of the assessee society was then suspended by the office of Registrar of Cooperative Societies vide order dated 15.10.2019 with the direction to the office bearers of the assessee to vacate office with immediate effect as a result of which functioning of the assessee society came to a standstill. The Ld. AR has further submitted that during the re-investigation carried out by the office of the Deputy Commissioner of Cooperative Society found that no irregularities have been committed in the assessee society and consequently vide order dated 21.10.2022 the management committee of the assessee society was restored. Ld. AR has further submitted that the President of the assessee society approached the Hon'ble High Court for quashing of the FIRs and vide order dated 25.08.2023. The Hon'ble High Court in writ petition no.9623 of 2023 quashed all the seven FIRs filed against the president of the Cooperative Society. Thus, Ld. AR has submitted that due to this

abnormal development of registration of FIRs, suspension of the management committee, vacating the office by the office bearers of the assessee for a long time the function of the assessee society remain standstill for long time and only after quashing of FIRs by the Hon'ble High Court vide order dated 25th August 2023 the elections were conducted in the assessee society and a new management committee was elected to the office on 13.09.2023. Thereafter, the assessee society commenced its normal functioning and came across the fact that several orders had been passed by the Income Tax Authorities during this period. Since this fact came to the knowledge of the management of the assessee society, they consulted a senior counsel who advised them to immediately filed appeals before Tribunal against the impugned orders of CIT(A) and hence, these appeals have been filed by the society after delay of 1516 days & 1693 days for A.Ys. 2013-14 & 2014-15 respectively. He has thus submitted that there was no malafide or deliberate delay in filing these appeals and therefore, the delay may be condoned and appeals of the assessee be admitted for adjudication on merits.

2.1 He has relied upon the decision of Hon'ble Bombay High court in case of Vijay Vishan Meghani vs. DCIT 398 ITR 250 and submitted that the Hon'ble High Court has held that none should be deprived of an adjudication on merits unless the court of law or the Tribunal/Appellate Authority found that litigant deliberately and intentionally delayed filing of appeal. In the said case the Hon'ble High Court has condoned the delay of 2984 days. He has then relied

the judgment of Hon'ble Supreme Court in case of Improvement Trust vs. Ujagar Singh Civil Appeal Nos.2395 of 2008 dated 26.06.2010 and submitted that it was held that while considering application for condonation of delay each case has to be weighed from its facts and circumstances. Further while considering the cause of delay the conduct, behaviour and attitude of the litigant has to taken into consideration whether the delay is due to callous and negligent conduct of litigant or not. Ld. AR has thus submitted that unless malafindes are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. He has also relied the judgment of Hon'ble Supreme Court in case of Collector Land Acquisition Anantnag & Anr. Vs. Mst. Katiji & Ors 62 CTR (SC) 23. Thus, Ld. AR has prayed that the delay in filing these appeals may be condoned.

3. On the other hand, Ld. DR has submitted that as per the record of the CIT(A) the order of the CIT(A) for A.Y.2014-15 was served on the assessee society on 07.01.2019 however, no record is found for the service of the order for assessment year 2013-14. Thus, Ld. DR has submitted that the impugned order for A.Y.2014-15 was served on the assessee before FIRs were filed against the President of the assessee society but no steps were taken for filing the appeal. He has further submitted that there is inordinate delay and no plausible reason have been explained by the assessee for not taking steps for a long period of around 4 ½ years. Thus, Ld. DR has opposed to condonation of delay.

4. We have considered rival submission as well as relevant material on record. The impugned orders were passed on 31st May 2019 & 4th December 2018 respectively. The assessee has explained that due to suspension of the management committee and registration of the FIRs against the President of the assessee society the office of the assessee society was not functioning for long time till the FIRs were quashed by the Hon'ble High Courts vide judgment dated 25th August 2023. Thereafter fresh elections were conducted for the management committee as per order of the office of registrar of Cooperative Societies. We find that there was an allegation of financial irregularities against the management committee and particularly president of the assessee society which led to the investigation by the office of the registrar of Cooperative Societies and also filing as many as seven FIRs against the Shri Suresh Tate President of the assessee society. The Honb'le High Court judgment vide dated 25th August 2023 in writ petition no.9623 of 2023 has given the details of the FIR registered against the President of the assessee society as under:

S.no.	Date of registration of FIR	FIR no.	Police Station	Registered by
1	30.08.2019	391/2019	Rajgarh Dist. Dhar	Res. No.2
2	25.09.2019	424/2019	Amjhera Dist. Dhar	Res. No.3

3	15.10.2019	439/2019	Sardarpur Dist. Dhar	Res. No.4
4	16.12.2019	289/2019	Rajod Dist. Dhar	Res. No.5
5	04.01.2020	13/2020	Kukshi Dist. Dhar	Res. No.6
6	17.01.2020	30/2020	Kanvan Dist. Dhar	Res. No.7
7	21.07.2020	229/2020	Bag, Dist. Dhar	Res. No.8

4.1 The deputy registrar of Cooperative Societies, Dist. Dhar vide order dated 15.10.2019 suspended the management committee of the assessee society and office bearers of the assessee society were disqualified for six years to participate or holding any position in the management of this society. Thus, these facts are not in dispute that the management of the assessee society remained suspended from October 2019 till fresh elections were conducted and approved by the office of the registrar of Cooperative Societies vide order dated 13.09.2023. Therefore, for almost four years the assessee society remain non-functional due to suspension of the management which was taken over by the department of Cooperative Societies of M.P. State Government only after the seven FIRs were quashed by the Hon'ble High Court vide order dated 25th August 2023 a new

management has come into existence and office of the assessee society begins normal function. Ld. AR of the assessee has filed the record to show that the assessee has obtained copies of the impugned order from the office of the CIT(A) for filing the appeal only after the new management come into existence. Therefore, the series of events of complaint against the management of assessee society, registration of FIRs, suspension of the management for almost four years led to the delay in filing these appeals. Once the reasons explained by the assessee are factually correct then the length of delay cannot be a sole reason for declining the condonation of delay ignoring the fact that there is no malafide or deliberate act on the part of the assessee society for delay in filing these appals. There is no quarrel on the point that the expression "sufficient cause" must construed liberal in favour of the litigant approached the court belatedly so that the dispute could be decided as far as possible on merits and not on technicalities. At the same time litigant is not allowed to use the process of law to achieve an ulterior purpose in under hand way by filing the appeal belatedly. Therefore, the concept of liberal interpretation of expression "sufficient cause" would not obliterate the requirement of some reasonable cause to justify the delay specially when there is an inordinate delay. In the case in hand the assessee has explained the reason which are beyond the control of the assessee therefore, it was not possible for the assessee to file these appeals within the period of limitation when there were grave and serious developments of suspension of the management committee of the assessee society and registration of multiple FIRs

against the President of the society. Further in between there is inadvertent of Covid 2019 pandemic from March 2020 to Feb, 2022. On considering the explanation of the assessee is not found as vague or contrary to the facts and circumstances emerging from record including judgment of Hon'ble jurisdictional High court quashing the FIRs registered against the President of assessee society we are of the opinion that the reasons explained by the assessee are not falling in the category of malafide or deliberate delay on the part of the assessee to achieve an ulterior purpose or an attempt to save a limitation in under hand way. Hence, in the facts and circumstances of the case as well as the decision relied upon by the Ld. AR of the assessee we condoned the delay of 1563 days in filing of appeal for A.Y.2013-14 & 1693 days in filing the appeal for A.Y.2014-15.

5. The assessee has raised following grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, notice under section 143(2) of the Income-Tax Act, 1961 was issued from the office of non-jurisdictional Assessing Officer and consequently, entire assessment proceedings and assessment order passed under section 143(3) of the Act deserve to be quashed on this ground itself being illegal and bad in law.

2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deciding the appeal ex-parte without properly appreciating the facts of the case.

3. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer grossly erred in treating the appellant as an Association of Persons (AOP) more so when the appellant is a Co-operative society.

4. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 18,82,665/- made by

the Assessing Officer to the total income of the appellant on account of rejection of deduction claimed by the appellant under section 80P of the Income-Tax Act, 1961 without properly appreciating the facts of the case.

5. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 6, 49,270/- made by the Assessing Officer to the total income of the appellant on account of disallowance of annual general meeting expenses claimed in the P&L account by treating it as fictitious without properly appreciating the facts of the case.

6. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 12,46,750/- made by the Assessing Officer to the total income of the appellant on account of interest income in respect of excess TDS credit of Rs. 1,24,675/- reflected in Form 26AS by treating it as undisclosed interest income under section 69 of Income-Tax Act, 1961 without properly appreciating the facts of the case.

7. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 49,518/- made by the Assessing Officer to the total income of the appellant on account of disallowance of 25% of repair and maintenance of vehicle expenses of Rs. 1,98,074/- claimed in the P&L account in view of leakage and personal utilization of vehicle without properly appreciating the facts of the case.

8. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 39,733/- made by the Assessing Officer to the total income of the appellant on account of disallowance of 25% of depreciation expenses of Rs. 1,58,934/- claimed in the P&L account under section 38(2) of the Income-Tax Act, 1961 in view of leakage and personal utilization of vehicle without properly appreciating the facts of the case.

9. The appellant reserves the right to add, alter and modify the grounds of appeal as taken by it."

6. The assessee has also raised additional grounds of appeal vide application dated 18.01.2024 filed under Rule 11 r.w. Rule 27 of the ITAT, Rules. Though the assessee has mentioned in the application

as many as eight grounds however, all these grounds are not additional grounds but the same are repetition of the original grounds taken by the assessee. Ld. AR has submitted that the applications of admission of additional ground is filed for the ground no.1 as part of the form 36 is first time raised by the assessee before this tribunal and therefore, the same may be admitted for adjudication on merits.

7. We have heard Ld. AR as well as Ld. DR and carefully perused the impugned order of the CIT(A). The CIT(A) has dismissed the appeals of the assessee for both years with identical finding and reasoning. The reasons given for A.Y.2013-14 in para 2 & 3 of the CIT(A) are as under:

"2. Ground No.1 to 3: In this case, during the course of appellate proceedings, several opportunities of being heard have been given to the appellant. Details of opportunities of being heard given are as under:-

Sno.	Notice issuing date	Fixed for hearing	Way of service of notice	result
1.	28.04.2018	14.05.2018	By hand notice duly served	Neither attended nor filed any written submission
2.	28.04.2018	05.07.2018	By speed post notice duly served	Neither attended nor filed any written submission
3	17.07.2018	23.07.2018	By speed post notice duly served	Neither attended nor filed any written submission
4	26.09.2018	15.10.2018	By speed post notice duly served	Neither attended nor filed any written submission
5	12.03.2019	19.03.2019	By speed post notice duly served	Neither attended nor filed any written submission

6	22.05.2019	30.05.2019	By speed post notice duly served	Neither attended nor filed any written submission
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Considering the non-compliance as detailed above by the appellant, it seems that the appellant is not interested to pursue his appeal. Therefore, it cannot be kept pending adjudication for indefinite period. The appellant has not bothered to attend the appellate proceedings. This shows that the appellant is not interested in pursuing his appeal and/or he has no defense against the additions made by AO. If the appellant is not availing opportunities given, they cannot allege contravention of principles of natural justice as held in the case of P.N. Balasubramaniam (AP) 112 ITR 512. Therefore, the appeal of the appellant is liable for dismissal. Such view is further supported by the following judicial pronouncements:-

i) Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee and another, reported in 118 ITR 461 (relevant pages 477 and 478) wherein their Lordships have held that:-

"An appeal means an effective appeal. An appeal withdrawn is an appeal non est as judicial thinking suggests. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively prosecuting it. Mere institution followed by withdrawal would cancel the effect and result in non-prosecution and obliteration of appeal which is the same as not preferring an appeal" it) Hon'ble M.P. High Court in the case of Estate of Late Tukoftrao Holkar us. CWT, 223 ITR 480 (MP), while dismissing the reference made at the instances of the assessee in default made following observation in their order :- "If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

3. However, in the interest of natural justice, the case of appellant was examined on merit in the light of SOF and grounds of appeal. It is found that the issues raised by the appellant through various grounds of appeal have been considered by A.O during the assessment proceeding which could not be contested or rebutted during the appeal proceedings as can be seen from the fact that despite a number of opportunities, the appellant has failed to file any written submission in support of grounds of appeal. Therefore all the grounds of appeal are dismissed."

7.1 Thus, it is clear that the CIT(A) has dismissed the appeal of the assessee for non-prosecution as there was no compliance on behalf of the assessee to the various notices issued by the CIT(A). The assessee has already explained the reasons that due to trouble in the functioning of the assessee society and registration of FIRs the assessee could not attend the proceedings before the CIT(A). Accordingly, without going into merits of the grounds raised by the assessee, we are of the considered opinion that the assessee be given one more opportunity to present its case before the CIT(A). Hence the

impugned orders of the CIT(A) are set aside and the matters are remanded to the record of the CIT(A) for fresh adjudication on merits including the adjudication of the additional grounds raised by the assessee after giving an opportunity of hearing to the assessee.

8. In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court/by putting on notice board as per Rule 34 of ITAT, Rules 1963 on 28.10.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 28.10.2024

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate
Tribunal Indore
Bench, Indore