

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM

BEFORE
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI S. BALAKRISHNAN, ACCOUNTANT MEMBER

आ.अपी.सं / ITA Nos. 271, 272, 273 & 274/Viz/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)

Girijan Co-op Marketing Society Limited,
Gumma Lakshmipuram,
Vizianagaram Dist.
[PAN : AAATG9427B]

Income Tax Officer,
Ward-1,
Viziagaram.

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri GVN Hari, AR

राजस्व द्वारा/Revenue by: Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख/Date of hearing: 04/12/2024

घोषणा की तारीख/Pronouncement on: 09/12/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the orders dated 08/04/2024 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("learned CIT(A)"), in the case of Girijan Co-op Marketing Society Limited ("the assessee"), assessee preferred these appeals.

2. Since all these appeals are inter-connected and the core issue involved therein is identical, all these appeals are clubbed, heard together and disposed of in this consolidated order.

3. At the outset, we noticed from the record that there is a delay of 24 days in filing all the four appeals. With respect to the belated filing of these appeals before the Tribunal, the assessee has filed affidavits dated 23/07/2024 wherein the assessee has stated that Sri V. Krishna Prasada Rao, Manager and Authorized Signatory of the assessee, was not well during the relevant period and therefore, the assessee filed the present appeals before the Tribunal with a delay 24 days. The assessee has also produced Medical Certificate to substantiate its claim. On a perusal of the reasons advanced by the assessee ie., the illness of the Manager and Authorized Signatory of the assessee, as well as on a perusal of the Medical Certificate furnished before us, we are of the considered view that the assessee was prevented by a reasonable and sufficient cause in filing the present appeals before the Tribunal beyond the prescribed time limit. Hence, we hereby condone the delay of 24 days in filing the appeals and proceed to adjudicate the appeals on merits.

ITA No.271/Viz/2024 (AY 2016-17)

4. Brief facts of the case are that the assessee is an Association of Persons ("AoP") and has not filed its return of income for the AY 2016-17. During the assessment proceedings, learned Assessing Officer ("learned AO") observed that there was a reason to believe that income chargeable to tax has escaped assessment. Therefore, after recording the reasons and obtaining the approval from the competent authority, the learned AO reopened the assessee's case U/s. 147 of the Income Tax Act, 1961 ("the Act").

5. Accordingly, notice U/s. 148 of the Act was issued but the assessee did not respond to the notice nor filed the return of income. Further, notices U/s. 142(1) of the Act were issued to the assessee on various dates and requested to furnish the details of cash deposits and the source

for such deposits made during the year. However, the assessee did not respond to the notices. Therefore, considering the assessee's continuous non-compliance to the notices issued U/s. 142(1) of the Act, based on the material available on record, the learned AO determined the business income of the assessee-society @ 12% of the total deposits of Rs. 1,59,98,804/- which worked out to Rs. 19,19,856/-.

6. Thus, the learned AO assessed the total income of the assessee at Rs. 19,19,856/- and passed the assessment order *ex-parte* U/s. 147 read with section 144 read with section 144B of the Act, dated 28/03/2022. Further, while passing the assessment order, learned AO has also initiated the penalty proceedings U/s. 271(1)(c), 271B and 271A of the Act. Aggrieved, the assessee preferred an appeal before the learned CIT(A) belatedly with a delay of 481 days.

7. Before the learned CIT(A), the assessee made submissions explaining the reasons for not filing the appeals within the prescribed time limit and sought for condonation of delay. In condonation of delay petition, the assessee submitted that since the assessee-society is a Primary Cooperative Marketing Society, operating for welfare of the Scheduled Tribes in the area of Gumma Lakshmipuram, Vizianagaram, the assessee was under *bona fide* belief that the income of the assessee is exempted from tax U/s. 10(26B) of the Act and therefore, the assessee is not required to file any return of income U/s. 139 of the Act. Further, it was also submitted that most of the employees of the assessee-society are Tribals and they are not computer savvy. Therefore, the assessee-society could not respond to the notices issued by the learned CIT(A). The assessee was unaware about completion of the assessment till the issuance of notice U/s. 154 of the Act. By explaining all these reasons which contributed to the delay of 481 days in filing the appeal before the learned CIT(A), the assessee sought for condonation of delay.

8. The learned CIT(A) did not consider the submissions of the assessee with respect to condonation of delay of 481 days and dismissed

the appeal as unadmitted. Aggrieved by the order of the learned CIT(A), the assessee is in appeal before the Tribunal.

9. At the outset, the learned Authorized Representative (“learned AR”) submitted that the learned CIT(A) has dismissed the appeal of the assessee-society without condoning the delay of 481 days in filing the appeal even though the assessee has explained the reasons for filing the appeal beyond the prescribed time limit. Learned AR further submitted that without affording property opportunity of being heard to the assessee, learned CIT(A) dismissed the assessee’s appeal arbitrarily which is unsustainable in law. Therefore, it was pleaded that the matter may be remitted back to the file of the learned CIT(A) in order to provide one more opportunity to the assessee of being heard.

10. Learned Departmental Representative (“learned DR”), on the other hand, vehemently opposed to the submissions of the learned AR and argued that the onus is on the assessee to give cogent reason with documentary evidence while seeking condonation of delay which is lacking in the case of the assessee. Hence, it was pleaded that the order passed by the learned CIT(A) does not call for any interference.

11. We have gone through the record in the light of the submissions made on either side. On examining the facts of the case, we find that while dismissing the appeal of the assessee, the learned CIT(A) did not consider the submissions of the assessee with regard to belated filing of the appeal. On a perusal of the learned CIT(A) order, it appears that while seeking condonation of delay, the assessee has explained before the learned CIT(A) that the delay of 481 days was occurred due to the reason that most of the employees of the assessee-society are Tribals and they are not computer savvy. Therefore, the assessee-society could not respond to the notices issued by the learned CIT(A). There is nothing to disbelieve the statement made on behalf of the assessee that the assessee was unaware about completion of the assessment till the issuance of notice U/s. 154 of the Act. According to us, this constitutes sufficient cause, whereas, however, learned CIT(A) rejected the

assessee's submissions and denied the explanation for condonation of delay.

12 Considering the facts and circumstances of the case, we are inclined to condone the delay of 481 days in filing the appeal before the learned CIT(A) and remit the matter to the file of learned CIT(A) in order to consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the learned CIT(A) in the proceedings failing which the learned CIT(A) shall be at liberty to pass appropriate order in accordance with law and merits based on the material available on the record. It is ordered accordingly.

ITA No.272, 273 & 274/Viz/2024 (2016-17)

13. The core issue raised by the assessee in all these appeals ie., dismissing of assessee's appeals by learned CIT(A) without considering the reasons for belated filing of the appeals, is identical to that of the issue raised in ITA No. 271/Viz/2024 by the assessee which is adjudicated in the foregoing paragraphs of this order. Therefore, considering the identical facts and circumstances of the case, our decision in ITA No. 271/Viz/2024 *mutatis mutandis* applies to these appeals (ITA Nos. 272, 273 and 274/Viz/2024) also. It is ordered accordingly.

14. In the result, four appeals filed by the assessee are allowed for statistical purposes as indicated hereinabove.

Order pronounced in the open court on this the 9th December, 2024.

Sd/-
(S. BALAKRISHNAN)
ACCOUNTANT MEMBER
Hyderabad, Dated: 09 /12/2024
OKK

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Girijan Co-op Marketing Society Limited, GCC Office, Main Road, Gumma Lakshmiapuram, Vizianagaram District, Andhra Pradesh-535523.
2. Income Tax Officer, Ward-1, O/o. ITO, Koppu Guarana Building, Siddartha Nagar, Vizianagaram, Andhra Pradesh-535002.
3. Pr.CIT,
4. DR, ITAT, Visakhapatnam.
5. GUARD FILE.

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam