

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.604/Ind/2024 (AY: 2019-20)

Indira Patthar Co. Op. Soc. Ltd, Sewakeda, Teh. Jawad, Suvakheda Neemuch (PAN: AAABI0104P)	<u>बनाम/</u> Vs.	ITO, Neemuch
(Appellant)		(Revenue)
Assessee by	Ms. Nisha Lahoti, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	09.04.2025	
Date of Pronouncement	23.04.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act (hereinafter referred to as the "Act" for sake of brevity) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/APL/S/250/2024-25/ 1066100243 (1) dated 26.06.2024 of Ld. CIT(A) passed u/s 250 of the Act which is hereinafter referred to as the "**Impugned order**". The

relevant Assessment Year is 2019-20 and the corresponding previous year period is from 01.04.2018 to 31.03.2019.

2. **FACTUAL MATRIX**

2.1 That the assessee Indira Patthar Co.Op. Soc. Ltd is registered under Karyalaya Up Registrar Sahakari Society, Zila Mandasaur, M.P.

2.2 That while return of income was filed the deduction under section **80P** was by mistake claimed under **Sub Section 80P(2)(f) of the Act** instead of claiming the same **u/s 80P(2)(a)(vi) - collective disposal of labour of its members.**

2.3 That the deduction u/s 80P was allowed to the assessee society in the **earlier assessment years** and that the same was allowed in the **subsequent year save and except the year under consideration in the instant appeal i.e. Assessment Year 2019-20.**

2.4 That according to assessee while processing the return of income for the year under consideration the Ld. A.O disallowed the deduction without giving any proper reason for the same.

2.5 That the return of income for Assessment Year 2019-20 bearing DIN No. CPC/1920/A5/2012780571 was processed u/s

143(1) of the Act for income at **Rs.45,31,707/-** and taxable amount was quantified to **Rs.14,96,960/-**. The intimation order U/s 143(1) was dated **02.12.2020**. The claim made was labelled as incorrect claim u/s 143(1)(a)(ii) and **error description was Section 80P(2)(f)**. The variation was Rs.45,31,707/-.

2.6 That the assessee being aggrieved by the aforesaid intimation order u/s 143(1) of the Act the assessee preferred a rectification applications (Number of rectification applications) on **26.01.2021** which was **rejected on 27.01.2021**, on **8.02.2021** which was **rejected on 16.12.2021**, on **2.11.2021** which was **rejected on 01.02.2024**. In rectification application filed on **01.02.2024** which was rejected on **12.04.2024** wherein it was intimated to the assessee that there is **no mistake apparent** from record in the intimation order u/s 143(1) and **hence same is rejected**.

2.7 That the assessee being aggrieved by the aforesaid intimation order **u/s 143(1) r.w.s. 154** which was **rejected on 12.04.2024** preferred an appeal u/s 246A of the Act before Ld. CIT(A) who by the "impugned order" has rejected the 1st appeal of the assessee as **time barred**. It is held that **delay of 1222 days**

is not condoned. The assessee ought to have filed the appeal u/s 249(2) within **30 days** as impugned intimation order was passed on 02.12.2020 u/s 143(1) of the Act and same was served upon the assessee as on 05.12.2020 and appeal if any was required to be filed on or before 04.01.2021. The appeal was filed on 10.05.2024 resulting in inordinate delay of **1222 days**. Since there was inordinate delay of 1222 days and that assessee **has not filed any application** for condonation of said delay despite issuance of **deficiency letters dated 10.06.2024 and 18.06.2024**. The assessee has not furnished any reply to the deficiency letters and that there is no condonation of delay application on record seeking to condone delay of 1222 days **in filing first appeal same was rejected by impugned order as there was no sufficient cause for condonation of delay.**

2.4 That the assessee being aggrieved by the "impugned order" has filed the present second appeal before this Tribunal against the impugned order and has raised following grounds of appeal in Form 36 which are as under:-

*"1. On the facts and circumstances of the case and in law the learned CIT(A) erred in not providing **appellant adequate opportunity and dismissing the appeal exparte made by the appellant. The***

Appellant prays that the EXPARTE order of CIT(A) passed without proper opportunity be directed to be quashed and set aside.

2. On the facts and circumstances of the case and in law, the learned Commissioner of Income tax (Appeals) ("CIT(A)") erred in exparte dismissing the appeal of the Assessee and thereby confirming the addition made by the Assessing Officer. The Appellant prays that the said order be set aside to the CIT(A) for hearing on merits.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the disallowance of Rs.45,31,710 under Section 80P of the Act which is prayed to be allowed.

4. The Appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal."

3. **Recording of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 09.04.2025 when Ld. AR for and on behalf of the assessee interalia contended before us that the "impugned order" is illegal, bad in law and is in violation of the principles of natural justice. It thus deserves to be set aside by this Tribunal. **No opportunity was afforded to the assessee before passing the impugned order.** It is thus an exparte order. The Ld. AR for and on behalf of the assessee society has placed on record of this Tribunal an affidavit dated 04.04.2025 the contents of which reads as under:-

*Name: Naresh Dhangar
Father's Name: Shri Mangilalji Dhangar
Address: Bhawani Chowk
Bus Stand, Suvakheda, Neemuch (MP)
PAN: AQWPN8105F
Age: 41 years*

I, Naresh Dhangar s/o Shri Mangilalji Dhangar, aged about 41 years, residing at Suvakheda do hereby state on solemn oath and confirmed by me as under-

1. That I am President in Indira Patthar Co-operative Society Limited. It is engaged in providing employment opportunities for its members and giving them appropriate wages. The return of income for AY 2019-20 was filed on 07.10.2019 reporting NIL income.

2. That the return of income so filed was processed u/s 143(1) of the Income Tax Act, 1961 (the Act) by Ld. ADIT, CPC, Bengaluru on 02.12.2020. Demand of R. 14,96,956 was raised. This demand was raised as the Ld. ADDL. CIT, CPC, Bengaluru did not give the credit of the deduction claimed under Chapter VI-A.

3. That on receipt of the above mentioned intimation passed u/s 143(1) of the Act, **we approached our legal professional. It was on his advise that the rectification applications u/s 154 of the Act were filed against the initiation so passed u/s 143(1) on various dates.**

4. That a rectification application u/s 154 of the Act was again filed on **01.02.2024**. This application was rejected on **12.04.2024** by stating that there is no mistake apparent from record.

5. That it was only after this rejection of the rectification application, it was advised that an appeal be filed.

6. That we are not well verse with the provisions of income tax law and hence had completely relied upon the legal professional so engaged by us. It was only under this guidance that we proceeded further to file an appeal before the Ld. Commissioner of Income Tax (Appeals).

7. That we completely relied on the legal professional so engaged by us for filing of the appeal. As already stated we are not well versed with the provisions of income tax law. On receipt of the order of the Ld. Commissioner of Income Tax (Appeals), we came to know that the appeal has been filed with delay.

8. It is most humbly **prayed** that we have every intention to pursue the **matter with all seriousness**. We cannot be made to suffer for the lapses on the part of counsel engaged for professional services, more particularly for a specialized subject like Income Tax.

Date: 04/04/2025
Place: Neemuch

3.2 The Ld. AR basis above affidavit prayed for leniency and stated that now she undertakes before this Tribunal that she would ensure that assessee files a suitable condonation of delay application seeking condonation of delay of 1222 days in preferring first appeal to Ld. CIT(A) if one last and final opportunity is afforded. The Ld. DR for revenue has not opposed such plea.

4. **Observations, findings & conclusions.**

4.1 We now have to decide the legality, validity and the propriety of the "Impugned Order" basis records of the case and rival submissions canvassed before us by both Ld. AR and Ld. DR.

4.2 We have carefully perused the records of the case and have minutely examined the same.

4.3 We are of the considered opinion that one more opportunity as and by way of final opportunity be afforded to assessee as last chance to explain the delay of 1222 days in preferring first appeal before CIT(A). The assessee is at liberty to file condonation of delay application which shall be heard and decided by Ld. CIT(A)

on merits. Accordingly we set aside the impugned order. Assessee shall cooperate with department and shall not seek any unnecessary adjournments.

5. **Order**

5.1 Impugned order is set aside as and by way of remand on *denovo basis*.

5.2 Appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 23.04.2025.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

दिनांक/ Dated : 23/04/2025
Dev/Sr. PS

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

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore