

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 448/RJT/2024
Assessment Year: (2019-20)

Shree Pipardi Seva Shakari Mandli Ltd. 2, Bus Stand ke pass, Rupavati, Pipardi. B.O.Surendra Nagar-360 005	Vs.	Assistant Director of Income-tax, Centralized Processing Centre (CPC), Bengaluru-560 500
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAOAS 7598 C		
(Appellant)		(Respondent)

Appellant by	Ms. Bhumika Kapadiya, A.R.
Respondent by	Shri Sanjay Pungal, CIT. DR
Date of Hearing	20/02/2025
Date of Pronouncement	07/05/2025

आदेश / ORDER

PER: DINESH MOHAN SINHA, JM:

This is an appeal filed by the assessee arises against the order of the Learned Commissioner of Income Tax (Appeal)/ Addl/JCIT(A)-1, Jaipur [in short “the Ld. CIT(A)”] dated 24/04/2024 for the Assessment Year (AY) 2019-20. Grounds of appeal raised by the assessee are as follows:

“1. The Learned Commissioner (Appeals), NFAC, Delhi erred in law and in facts in dismissing the appeal as non-maintainable without condoning the delay in filing the appeal.

2. The Learned Commissioner (Appeals), NFAC, Delhi erred in not adjudicating the appeal on merits and thus failed to appreciate that deduction of Rs.17,86,130/- claimed u/s 80P could not have been denied by CPC u/s 143(1) of the Act.

3. It is therefore, prayed that the CIT(A), NFAC not having dealt with any of the grounds of appeal in the right earnest the matter may be resorted to the file of the CIT(A), NFAC.

4. Your appellant reserves his right to add, amend, alter, and/or withdraw any ground of appeal at the time of hearing of the appeal.”

2. At the outset, it is noticed that appeal of assesses is barred by 1310 days delay before filing Ld.CIT(A) who has not admitted the appeal with the provisions of Section 249(2) of the Act. The Ld. AR of the assessee submitted that the assessee has moved a petition requesting the Bench to condone the delay in filing appeal before Ld.CIT(A) and directed the Ld. CIT(A) to adjudicate the issue in accordance with law. Th contents of the petition for condoning the delay are reproduced below:

“1. The appellant has received intimation u/s 143(1) of the Income Tax Act, 1961 on 06/03/2020 and rectification application fled u/s 153 was rejected on 10/08/2020. The appellant was required to file appeal within 30 days i.e., on or before 09/09/2020 for which the appellant contacted his consultant to file an appeal. after which the appellant was under bona fide belief that the consultant had already filed an appeal.

2. Due to lockdown declared by the Government for Covid-19 Pandemic, and certain administrative issues and frequent changes in Chief Accountant coordination/follow up with Chartered Accountant who is looking after income tax return filing process could not be made. Affidavit in this regard will be filed whenever required. Till now, the appellant never got demand notice from the Department.

3. The appellant came to know about the outstanding demand and non filing of appeal by the previous consultant, when the demand notice for the AY 2022-23 was issued to him on 10/03/2024 approached new consultant CA Bhumika Khadawala for filing appeal against the impugned for AY 2022-23. At that time, their consultant has informed them for the impugned outstanding demand raised on account of disallowance of claim u/s 80P and non filing of appeal by the previous consultant.

4. Therefore, appeal is in fact delayed by 1310 days. However, in view of Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020* (Original Order dated 15-03-202) vid final order dated 08/03/2021 cut-off date has been declared as 15/03/2021 meaning thereby that in computing the period of limitation for any suit, appeal, application or proceeding the period from 15/03/2020 till 14/03/2021 shall stand excluded”. (Now extend

up to 28/02/2022 as per SC order). Held that in cases where the limitation expiring during the period between March 15, 2020 till February 28, 2022, the actual balance period of limitation remaining, all the persons shall have a limitation period of 90 days from March 1,2022. Further, where the actual balance period of limitation remaining w.e.f. March 01,2022 is greater than 90 days, that longer period shall apply. In my case time limit as prescribed in Supreme Court order given below expired on 27/05/2022 and the present appeal is filed on 11/04/2024. Hence, there is delay of 686 days which may please be condoned. Affidavit in this regards shall be submitted whenever required.

5. The appellant never had the mala fide intention to disregard any notice of the Income Tax Department. The appellant would like to rely upon judgment of Hon'ble Supreme Court in the case of N. Balakrishnan, where it was held that rules of limitation were not meant to destroy the rights of parties. Further, there was no mala fide or deliberate delay in filing the present appeal and in the interest of substantial justice, the delay in filing the present appeal may be condoned and appeal be admitted for adjudication."

On considering the contention of Ld. AR of the assessee and the fact that there was delay of only 1310 days in filing appeal before CIT(A). The Ld. AR of the assessee submitted that assessee is not going to be benefited by filing the appeal late before L.CIT(A). The consultant on whom the appeal was outsourced could not inform about any of notice nor the fact regarding impugned order being uploaded on the portal was shared with the assessee, hence, there was huge delay in filing the appeal had occurred because the assessee engaged tax consultant and the e-mail id belonging to his consultant to handle assessee's case. Due to unintentionally forgot to take necessary action about notices and unadmitted the appeal by Ld.CIT(A).

3. On the other hand, Ld. CIT-DR for the Revenue has raised objection on the prayer of assessee for remitting the matter back to the file of ld. CIT(A) and would submit that the assessee's approach was casual during the appellate proceedings and the assessee has failed to comply with the notices issued by the ld. CIT(A). Thus, assessee does not deserve any further opportunity. Even if, the Bench is of the opinion

that assessee deserves any further opportunity, matter may be restored back to the file of Ld. CIT(A) only subject to cost of Rs.5,000/- should be imposed. The Ld. AR of the assessee is making prayer for restoration of matter to the file of Assessing Officer, so that demand may become nil.

4. We have considered the submissions of both the parties and perused all the relevant material available on record. Now, before us, the Ld.AR of the assessee has explained the delay in filing appeal before Ld.CIT(A) by filing delaying submission in the application for condonation of delay. Therefore present appeal is, in fact, delayed by 1310 days before Ld.CIT(A). The Ld.AR of the assessee relied on the *suo motu* Writ Petition (Civil) No.3 of 2020 (original order dated 15.03.2020) vide final order dated 08.03.2021 cut-off date has been declared as 15.03.2021 meaning thereby that in computing the period of limitation for any suit, appeal, application or proceeding the period from 15.03.2020 till 14.03.2021 shall stand excluded” (Now extended up to 28.02.2022 as per SC order). Held that in cases where the limitation expiring during the period between March 15, 2020 till February 28,2022, the actual balance period of limitation remaining, all the persons shall have a limitation period of 90 days from March 01,2022. Further, where the actual balance period of limitation remaining w.e.f. March 01,2022 is greater than 90 days, that longer period shall apply. Ld. AR of the assessee submitted that time limit as prescribed in Supreme Court’s order given below expired on 27.05.2022 and the present appeal is filed on 11.04.2024 before Ld.CIT(A) is come to delay of 1310 days. However, Ld. CIT(A) did not condone the delay of 3 years from the actual date of assessment order. The assessee in Form-35 has mentioned that there is delay in filing appeal due to unavoidable reasons.

The Ld. CIT(A) not condone the delay and dismissed appeal as unadmitted. Therefore, considering the overall facts of the case and the submission of Ld. AR of the assessee a cost of Rs.5,000/- (Rupees five thousand only) shall be deposited with the Prime Minister Relief Fund, within 15 days from the date of receipt of this order. Under these peculiar circumstances, suggested that assessee was interested in contesting the matter / appeal on merit. Hence, delay in filing appeal before Ld. CIT(A) is condoned.

5. Brief facts of the case are that assessee is a co-operative Credit Society and engaged in business of providing credit facility to its members. During the year under consideration A.Y 2019-20 assessee's turnover of Rs.20,93,390/- from sale of agricultural produce, interest income of Rs.1,03,82,761/- earned from credit facility provided to its members, dividend income of Rs.5,43,532/- and net profit of Rs.16,56,131/-. The assessee-company filed its return of income for AY.2019-20 on 28/10/2019 declaring nil income though assessee-company declared business income of Rs.17,86,131 after making disallowance of Rs.1,00,000/- on account of provisions for payment of gratuity not allowable u/s 40A(7) and Rs.30,000/- on account of any sum paid by the assessee an employer not allowable u/s 40A(9). The assessee ha claimed deduction u/s 80P of the income-tax to the tune of Rs.17,86,131/-. The assessee also filed tax audit report, Form-3CB/3CD on 28.10.2019 due to inadvertent mistake at the time of filing Form-3CB/3CD, the deduction u/s 80P of Rs.17,86,131/- could not be reported in serial No.33 of Form-3CB which leads to variation in the claim made by the assessee in its ITR and Form-3CB. The AO has disallowed deduction claimed by the assessee while issuing intimation u/s 143(1) of the Act by stating the reason that "Deductions under Chapter-VIA

will not be allowed unless respective schedules are filled properly. The assessee filed rectification request u/s 154 of the Act on 13.07.2020 which was rejected by AO on 10.08.2020 without any specific reasons.

6. Aggrieved by the order of AO the assessee carried the matter before the ld. CIT(A). The ld. CIT(A) noted the following reasons:

“4.1 On perusal of Form-35, it is seen that the intimation u/s 143(1) of the Act was passed on 06.03.2020, while the appeal was filed on 11.04.2024, which is beyond the statutory time limit provided for filing of the appeal. As per section 249(2)(c) the appeal shall be presented within 30 days of the following date on which the intimation of the order sought to be appealed against is served. However, the appellant filed appeal beyond the time limit with delay of more than 03 years.”

The ld. CIT(A) dismissed the appeal of assessee on following reasons:

“Considering the above discussion and facts, the appeal filed is not in conformity with the provisions of Sec.249(2)(c) of the Act, and there is no sufficient cause for condonation of the delay in filing of the appeal, the present appeal is dismissed as not maintainable.”

7. Further aggrieved by the order of Ld.CIT(A) assessee filed present appeal before the Tribunal. The Ld. AR of the assessee further submits that assessee filed rectification application u/s 154 of the Act 13.07.2020 and which was rejected by AO. Thereafter assessee contracted its consultant to file appeal before Tribunal and was under *bona fide* belief of the consultant had already filed appeal and till date appellant never got demand notice from the Department. The Ld. AR of the assessee stated that assessee came to know about outstanding demand for AY 2022-23 was issued on 10.03.2024. The assessee approached before new consultant, CA Bhumika Khadawala for filing appeal against impugned for AY 2022-23 who noticed that demand raised on account of disallowance claim of u/s 80P and non-filing of appeal by the previous consultant. On merit, the ld CIT(A) also held that the assessee is not interested in pursuing his appeal. Resultantly, the

addition made by Assessing Officer was confirmed. The Ld. AR of the assessee submits that there was reasonable cause for condonation of delay. In fact, the assessment was completed u/s 143(1) of the Act. The Ld. AR of the assessee submitted that dismissal the appeal of assessee in an *ex parte* proceeding by Ld.CIT(A) without giving fair and reasonable opportunity of hearing to the assessee. The ld. AR of the assessee prayed that the matter may be restored back to the file of ld. CIT(A) for deciding the issue on merit and she undertakes on behalf of assessee to be more vigilant in future in complying the notices issued by the ld. CIT(A). The Ld. AR for the assessee filed e-mail ie CABHUMIKA@MAIL.CA.IN for future correspondence through electronic mode.

8. So far as merits of the case is concerned, we find that Ld.CIT(A) has passed the order *ex parte* proceedings. Keeping in view the peculiar facts of the case, we find from perusal of the order of the ld. CIT(A) that the order of ld. CIT(A) is not as per mandate of Section 250(6) of the Act. It is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interests of justice, we restore the matter back to the file of Ld. CIT(A) for *de novo* adjudication after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to remit the matter back to the file of the Ld. CIT(A) to condone the delay in filing appeal before Ld.CIT(A) to admit the appeal and adjudicate the issue afresh on merits. The assessee is also directed to be more vigilant in future and not to take any adjournment without any valid reason. The assessee is also directed to submit all the documents, evidences and

replies as soon as possible without any further delay. In the result, grounds of appeal raised by the assessee are allowed for statistical purposes only.

9. In the result, this appeal of the assessee is allowed for statistical purposes.

Order is pronounced on 07/05/2025 in the open court.

Sd/-
(Dr. A. L. SAINI)
लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER
राजकोट /Rajkot
दिनांक/ Date: 07/05/2025
DKP Outsourcing Sr.P.S
आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
 - प्रत्यर्थी/ The Respondent
 - आयकर आयुक्त/ CIT
 - आयकर आयुक्त(अपील)/ The CIT(A)
 - विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट