



सत्यमेव जयते



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA  
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**ITA No. 168/PAN/2025**

**Assessment Year : 2012-13**

Jai Hind Souharda Sahakari  
Sangh Niyamit,  
Bazar Road, Tal.: Hukkeri,  
Belgavi-591309  
PAN:AAAJJ0226F

*..... Appellant*

**V/s**

Income Tax Officer,  
Ward-1(3), Belgaum.

*..... Respondent*

**Appearances**

Assessee by : Mr Pramod Vaidya ['Ld. AR']

Revenue by : Ms Rijjula Uniyal['Ld. DR']

Date of conclusive Hearing : 09/12/2025

Date of Pronouncement : 16/12/2025

**ORDER**

**PER G. D. PADMAHSHALI, AM;**

The present appeal is filed by the assessee against DIN & Order No. ITBA/CIT(A)/S/250/2023-24/1061816021(1) dt. 01/03/2024 passed u/s 250 of the Income-tax Act, 1961 [for short 'the Act'] by the Addl./Jt. Commissioner of Income Tax Appeals-1, Noida [for short 'NFAC'] which in turn ascended out of order of assessment passed u/s 143(1) by the Income Tax Officer, Ward-1(3), Belgaum [for short 'AO'] in relation to assessment year 2012-13 [for short 'AY']



2. The present appeal is filed with a delay of 376 days. The petition for condonation of delay is supported by an affidavits dt. 05/06/2025 & 04/11/2025, wherein cause of delay is explained. The reasons stated therein and explained in physical hearing establishes 'sufficient cause' and thus finds merits for condonation in view of the parameters laid in '*Vijay Vishin Meghani Vs. DCIT & Anr*' reported 398 ITR 250 (Bom) and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' reported at 167 ITR 5 (SC). In view thereof in the larger interest of justice we deem it fit to condone delay in instituting the present appeal u/s 253(1) of the Act and proceed to adjudicate limited issue of *ex-parte* dismissal of first appeal by the Ld. CIT(A). Recording the same, advanced accordingly.

3. Briefly stated facts of the case are that; the assessee is a Cooperative Society established under the provisions of State Co-operative Societies Act. The assessee filed its return of income on 31/07/2012 declaring NIL income after claiming a deduction of ₹12,13,638/- u/s 80P of the Act. The case of the assessee selected for scrutiny and consequential assessment was completed by an order dt. 28/08/2014 passed u/s 143(3) of the Act wherein total income of the assessee for the year under consideration was assessed to tax at ₹13,43,638/- as against returned NIL income.



4. Aggrieved assessee approached the Ld. CIT(A). The Ld. CIT(A) issued notices on 13/09/2019, 20/01/2021, 07/02/2022, 07/02/2024 & 22/02/2024 to the assessee through ITBA portal which were neither attended nor replied. In the event of assessee's failure to respond to former notices, adduce documentary evidence in support of claims/grounds etc., the Ld. CIT(A) placing reliance on 'CIT Vs B N Bhattacharya [1977, 118 ITR 461 (SC)] dismissed the appeal *ex-parte* for non-prosecution. Further aggrieved, the assessee came in present appeal before the Tribunal.

5. Without touching merits & grounds of appeal we have heard the rival parties on former limited issue and subject to rule 18 of ITAT-Rules, 1963 perused the material placed on records and considered the facts in the light of settled position of law.

6. We noted that, during the course of first appellate proceedings the Ld. CIT(A) issued as many as five notices over a period of five years which remained unattended. In the event of failure on the part of appellant to respond other such notices coupled with absence of evidence in support of grounds raised in Form No 35 etc., the Ld. CIT(A) was constrained to proceed *ex-parte* and culminate the proceedings without going into the merits.



7. We note that, while dealing with the appeal for passing an order u/s 250(6) of the Act, the Ld. CIT(A) in view of prescription of Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act was required to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised in form no 35. The law does not empower the Ld. CIT(A) to dismiss the appeal for non-prosecution *in limine*. Since, the statute did not provide for dismissal of appeal *in limine* for non-prosecution, we find the impugned action of the Ld. CIT(A) is inconsonance with the provisions of statute which otherwise obligates disposal of the appeal on merits even in case of non-prosecution. This view of the bench finds strength in the landmark judgement of the Hon'ble Supreme Court rendered in '*Chandra Kishore Jha Vs Mahavir Prasad*' [1999, 8 SCC 266 (SC)], wherein their Hon'ble Lordships have categorically held that '*if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner*'.

8. The issue of *ex-parte* dismissal of appeal without adjudicating on merits came for consideration before the Hon'ble Jurisdictional Bombay High Court in '*CIT Vs Premkumar Arjundas Luthra HUF*'



[2016, 240 Taxman 133 (Bom)] wherein their Hon'ble lordship vide para 8 have categorically held that, the first appellate authority does not have the power to dismiss an appeal for non-prosecution. Even in case of *ex-parte* adjudication the CIT(A) must decide the appeal on merits considering all relevant facts and evidence.

9. The impugned action of the Ld. CIT(A) in view of the aforestated discussion and judicial precedents amounted to outdoing the provisions of section 251 of the Act, thus has also suffered from compliance of s/s (6) of section 250 of the Act. For the reasons without offering any comments on merits, we set-aside the impugned order and remand the same to the stage of its institution with a direction deal therewith *de-novo* on merits and pass speaking order in terms of section 250(6) of the Act.

**7. In result, the appeal is allowed for statistical purposes.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on the date mentioned hereinbefore.

**-S/d-**

**PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

Panaji/Dt.: 16th December, 2025

**Copy of the Order forwarded to :**

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|-------------------|--------------------------------|--------------------------------|
| 1. The Appellant. | 2. The Respondent.             | 3. The CIT(A)/CIT(A) Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Goa | 6. Guard File                  |

**-S/d-**

**G. D. PADMAHSHALI  
ACCOUNTANT MEMBER**

By Order,  
Sr. Private Secretary / AR ITAT, Panaji.