

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोरड, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 712/KOL/2022

Assessment Year: 2015-16

Enayetpur S K U S Ltd.....Appellant
[PAN: AAAAE 3390 E]

Vs.

ACIT, Circle-3(1), Malda.....Respondent

Appearances:

Assessee represented by: Siddarth Agarwal, A/R.

Department represented by: P.P. Barman, Addl. CIT.

Date of concluding the hearing : January 23rd, 2024

Date of pronouncing the order : April 15th, 2024

ORDER

Per Manish Borad, Accountant Member:

The present appeal is filed by the assessee against the order of ld. CIT(A), NFAC dt. 30.06.2022 passed for AY 2015-16.

2. Before we proceed to decide the appeal on merits it is pointed out by the Registry that the appeal of the assessee is delayed by 105 days and is accompanied with a petition for condonation of

delay in filing an appeal along with the notarised affidavit of the manager of the appellant Society stating the reasons of delay.

2.1. In the said affidavit filed in support of the condonation of delay, the appellant Society has contended as under:

“1. That I am the manager of M/s Enayetpur SKUS Ltd. As such, I am competent to swear this affidavit on behalf of the said firm.

2. That the order passed by the Ld. CIT(A) dated 30.06.2022 for AY: 2015-16 against the assessment order passed u/s 143(3) was received in assessee’s mail id, but no physical copy was served.

3. That the said appellate order was overlooked by us since we are not in habit of accessing the mails on regular basis.

4. That on or around 28.11.2022 when Sri Kousik Gupta, tax consultant of the assessee accessed the income tax portal to ascertain the status of case of the assessee, thereupon he noticed that an appellate order had already been passed on 30.06.2022.

5. That then we contacted Advocate Sri Subash Agarwal for filing an appeal on 29.11.2022 and the appeal was accordingly prepared by him and the same was deposited in the office of the Hon’ble Tribunal on 12.12.2022 with a delay of around of 106 days.

6. That the facts stated in paras 1 to 5 are true to the best of my knowledge and belief.”

3. The ld. Counsel appearing on the behalf of the assessee submitted that the considering the facts and circumstances stated in the petition the delay of 105 days may be condoned based on the stated facts.

4. On the other hand, the ld. D/R objected to the petition and stated that appellate order was passed by CIT(A) NFAC and appellant Society was aware of the proceedings being carried out in faceless regime and also participated in the appellate proceedings by filing its written submissions through online mode.

It must be in their knowledge that under faceless appellate system no order is served physically by National Faceless Appeal Centre (NFAC in shorty) and it is served online on the assessee's IT portal only and a copy of the same is sent to the registered mail address of the assessee. He thus stated that the plea taken by appellant Society be rejected and delay in filing the appeal should not be condoned.

5. We have heard the rival contentions and also gone through the submissions made by both the parties. So far as the delay in filing of instant appeal, it is a fact that NFAC has delivered the order through online system and that appellant Society is working in remote area and its office bearers are not in the habit of checking their mails on regular basis. The decision of Hon'ble Supreme Court in the case of *N Balakrishnan vs. M. Krishnamurthy* 1998 (9) TMI 602 - Supreme Court, 1998 (7) SCC 123, wherein the Hon'ble Supreme Court has observed as under:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused reason of legal injury..... The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate..... 13 It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation.....”

6. In light of the judgment referred above, we find that the intention of the assessee is not *malafide* and the circumstances stated appears to be *bonafide* which cannot be ignored in order to impart justice. In view of the above facts, circumstances of the case and the judgment of Hon’ble Supreme Court (*supra*), the delay in filing appeal by the appellant Society is condoned and appeal is admitted for the decision on merits.

7. The grounds of appeal as taken by the appellant Society are as under:

“1. a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the action of the AO in denying the deduction of Rs. 31,31,032/- claimed by the assessee under 80P of the Act.

b) For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the action of AO in denying that primary object or principal business of the assessee is to provide financial accommodation to its members for agricultural purpose or for purposes associated with agricultural activities.

2. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

8. The facts as culled out from the records are that the assessee is a Primary Agricultural Credit Society and return of income filed on 30.03.2017 declaring NIL income after claiming deduction u/s 80P of the Act. Case selected for scrutiny under CASS and the assessment order finally passed u/s 143(3) dt. 28.12.2017 whereby the AO has withdrawn the deduction claimed by the appellant Society u/s 80P at Rs. 31,31,032/- for the reason that it is not a co-operative Society meant for its members and it has also provided credit facilities to non-members. The AO also observed that it has failed to establish that its primary object is to provide financial assistance to its members for agricultural purposes or for purposes connected with agricultural activities. In first appeal, ld. CIT(A) dismissed the appeal of assessee Society by concurring the findings given in the assessment order without making any comments upon the submissions made by the appellant Society during the appellate proceedings.

9. Before us the ld. counsel for the appellant Society submits that the assessee is a Society registered under the West Bengal Co-Operative Societies Act, 2006 and is a Primary Agricultural Credit Society ("PACS" in short) and engaged in providing financial assistance to its members for agricultural activities. The ld. A/R draw our attention to object clause No. 2 which supports this contention, the said object reads as under:

"2. To prepare short, medium and long term agricultural and non-agricultural loans to members."

10. He submitted that the assessee Society is a PACS and is entitled to deduction in terms of the provisions of section 80P(4) of the Act. It is further argued by ld. A/R that appellant Society is providing credit facilities to its members and also provided the details of the persons to whom credit facilities was provided and stated that lower authorities were wrong in observing that the appellant Society had provided credit facilities to non-members. Since the appellant Society is PACS and is providing credit facilities to its members, according to ld. A/R it has rightly claimed the deduction u/s 80P and requested for the restoration of the same. He further placed reliance on the judgement of hon'ble Supreme court in the case of *The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Anr.* in civil appeal Nos. 7343-7350 of 2019 dt. 12.01.2020 and filed the copy of the same before us.

11. Per contra, the Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities.

12. We have heard the rival contentions and perused the records placed before us. The effective issue before us is that whether the assessee is eligible for deduction u/s. 80P of the Act on the income earned from providing credit facilities to its members and profit from trading activity of fertilizers sale and income from other related activities. First, we must see the provisions as contained in section 80P of the Act which reads as under:

“Deduction in respect of income of co-operative societies.

80P. [Deduction in respect of income of co-operative societies. [Inserted by Act 20 of 1967, Section 33 and Schedule III (w.e.f. 1.4.1968).]

(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:-

(a) in the case of a co-operative society engaged in-

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

[(iii) the marketing of the agricultural produce of its members, or]

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, or

(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

the whole of the amount of profits and gains of business attributable to any one or more of such activities:

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

(1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government;

(b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to-

(i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits or vegetables, as the case may be; or

(ii) the Government or a local authority; or

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

the whole of the amount of profits and gains of such business;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,-

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees] and

(ii) in any other case, fifty thousand rupees

Explanation. - In this clause, "consumers co-operative society "means a society for the benefit of the consumers;]

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

Explanation. - For the purposes of this section an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under section 80-HH or section 80-HHA or section 80-HHB or section 80-HHC or section 80-HHD or section 80-I or section 80-IA or section 80-J, the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under section 80-HH, section 80-HHA, section 80-HHB, section 80-HHC, section 80-HHD, section 80-I, section 80-IA, section 80-J and 80-JJ.

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation. - For the purposes of this sub-section,-

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

13. Section 80P(2)(i) of the Act, provides that where co-operative Society is engaged in providing credit facilities to its members, the whole of the amount is entitled for the deduction u/s 80P. In the present case though the assessee has provided the list of persons to whom the credit facilities were provided but failed to establish to the satisfaction of the Id. AO that all such persons are its members. Further from the perusal of the financial statements also it appears that appellant Society has income from trading activity and some other income also.

14. The hon'ble Supreme court in the case of *The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Anr. (supra)* has observed as under:

“45. To sum up, therefore, the ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word “agriculture” into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are cooperative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.”

15. In view of the facts of the case also by respectfully following the judgement of Hon'ble Apex court in the case of *Mavilayi Services Coperative bank ltd. (supra)* where the hon'ble court opined that even if the credit facilities were provided for non-agricultural purposes to its members, the Society is entitled for the benefit u/s 80P(2)(i) of the Act. Accordingly, we are of the view that the appellant Society is eligible for deduction u/s 80P(2)(i) of the Act but to the extent of the income which has been earned from the facilities extended to its members only. As observed by us, that the appellant Society has failed to satisfy the lower authorities whether those credit facilities were provided to its members only and not to non-members, therefore, assessee is directed to file the necessary details to the AO and the AO is directed to allow deduction u/s 80P(2)(i) to the assessee for the income earned through/from its members as per the directions given hereinabove but needless to mention that assessee should be provided reasonable and proper opportunity of being heard.

16. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 15th April, 2024.

Sd/-

[Rajpal Yadav]
Vice President

Sd/-

[Manish Borad]
Accountant Member

Dated: 15.04.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Enayetpur S K U S Ltd., C/o Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata-700 069.**
- 2. ACIT, Circle-3(1), Malda.**
- 3. CIT(A)-NFAC, Delhi.**
- 4. CIT-**
- 5. CIT(DR), Kolkata Benches, Kolkata.**

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata