

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.263/Nag./2024
(Assessment Year : 2017-18)

Police Karmachari Sahakari
Pat Sanstha Gondia
Manohar Chowk, Police Line
Gondia 441 601 PAN – AABAP3528J

..... Appellant

v/s

Income Tax Officer
Ward-2, Gondia

..... Respondent

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 03/02/2025

Date of Order – 05/02/2025

ORDER

PER K.M. ROY, A.M.

The appeal by the assessee is emanating from the impugned order dated 30/01/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In its appeal, the assessee has raised following grounds:-

"1. On the facts and in law, Ld. CIT(A) erred in confirming order u/s 143(3) passed by Ld. A.O as valid though the same was bad in law.

2. On the facts and circumstances of the case and in law, Ld. A.O erred in disallowing the deduction claimed by the appellant without mentioning the clear and legal reason for the same and thus Ld. CIT(A) also erred in confirming such order as valid.

3. *On the facts and in law, Ld. A.O erred in disallowing the deduction claimed by the appellant only on the basis of whims and surmises, without following the settled principle of consistency.*

4. *The appellant craves leave to add, alter, vary, omit, amend or delete one or more of the grounds of appeal before, or at the time of hearing of the appeal so as to enable your honour to decide this appeal according to law."*

3. To support his prayer for condoning the delay of 30 days in filing the appeal before the Tribunal, the learned Counsel for the assessee furnished an affidavit, the contents of which are reproduced below:–

"I, Subhash Shyamrao Raut, Authorized Signatory of Police Karmachari Sahakari Pat Sanstha Gondia, aged 38, resident of, behind Datta mandir, Chhota Gondia, Gondia-441601, state on solemn affirmation as under:

That the cause for delay in filing the Appeal against the Order of learned CIT(A), NFAC ('the learned CIT(A)') dated 30/01/2024 is as follows:

A. That the order passed by the learned CIT(A) is dated 30/01/2024 which was uploaded on the IT portal. That the due date for filing Appeal was within 60 days from receipt of the aforesaid order i.e 30/03/2024.

B. That the Assessee has filed appeal on 29/04/2024. Thus, there has been a delay of 30 days in filing the Appeal by the Assessee.

Sufficient explaining Cause the delay in filing the Appeal

C. That, the Assessee case could not represent his case before learned CIT(A). The notices and the order passed by the CIT(A) were sent to email IDs that belonged to erstwhile consultant and certain staff members of the appellant society. Unfortunately, these individuals failed to inform the management of the Assessee society about the receipt of these communications. Thus, notices of hearing were not received by the Assessee. The Assessee was not aware of CIT(A) order passed dated 30/01/2024.

D. It is submitted that the Assessee's taxation related compliance matters were primarily looked after by member Shalu Chhatrapal Maragaye, who unfortunately passed away on 23/11/2023. A copy of the death certificate is enclosed for reference. Due to her demise, there was a period of transition wherein the Assessee had to reorganize its internal compliance structure, update email credentials, and appoint a new representative to handle taxation matters.

E. After the unfortunate demise of the concerned person, it took some time to identify and retrieve official communications, change registered email addresses, and appoint a new consultant to handle tax-related matters. The

delay was neither intentional nor due to negligence but arose due to unavoidable circumstances beyond the control of the Assessee.

F. Subsequently, the assessee society became aware of the notices and the resultant demand only upon receiving physical copies of demand notices from the Income Tax Department. At this point, the management promptly took necessary steps to obtain the

order, review it, and prepare for filing an appeal.

G. Accordingly, the Assessee society engaged a new consultant for handling tax- related matters. It was only then, the new consultant informed the Assessee about passing of adverse order by learned CIT(A) dated 30/01/2024. During the transition period, the communication gap caused by the change in consultants led to further delay in discovering the order and initiating action to file an appeal.

H. Considering all the factors, there was an inadvertent delay of 30 days in filing the appeal. There was no malafide intention and the Assessee always wanted to contest the addition made in the assessment order. Therefore, the Assessee prays that the delay of 30 days be kindly condoned.

I. In view of above it is submitted that there was a bonafide lapse in delay in filing the appeal before your Honour.

Hence, there is an unintentional delay in filing the appeal before your Honour. By delaying the filing of appeal, no undue benefit or advantage is taken by the Assessee. Accordingly, in the interest of justice, the Assessee wishes to challenge the assessment order passed by the learned CIT(A) by way of appeal filed before your Honour with a request for condonation of delay.

In view of this, it is prayed that the delay of 30 days may kindly be condoned in order to render the justice."

4. There is sufficient and reasonable cause for condoning the delay, accordingly we do so.

5. Before us, Shri Abhay Agrawal, Counsel appearing for the assessee invited our attention to the relevant portion of the impugned order passed by the learned CIT(A) which is reproduced below for ready reference:–

"5.2. APPELLANT'S SUBMISSION:

The appellant did not make any specific submission in this regard. However, he filed the statement of facts in Form-35 as under:

The assessee is a co-operative society engaged in the business of banking with its members. Assessee is eligible for deduction u/s. 80P of IT Act. Assessee filed its return of Income u/s. 139(1) of the Act on 25.03.2018 declaring total income of Rs. NIL after claiming deduction of Rs. 72,09,175/- u/s. 80P of the Act. That without acknowledged the facts that and circumstances of the case the Ld. AO disallowed claim of deduction of Rs. 72,09,175/-made u/s. 80P of the Act which is unjustified, arbitrary and deserves to be deleted."

5.3 DECISION

5.3.1. The appellant's claim is of eligibility for deduction u/s 80P(2)(a)(i). Even in the assessment proceedings, apart from filing the financial statements, no other material is noted on record. To claim the said exemption, the appellant must fulfill the following:

(a) be a registered cooperative society under the relevant state Act

(b) be doing the specified activity of providing credit to its members. Business with non-members even if it is the specified activity is not eligible for deduction as held by the Apex Court in case of Mavilayi Service Co-operative Bank, Calicut (2021) 431 ITR 1 (SC).

(c) entire income should be from the specified activity of credit to members. Income from other sources are not liable for the said deduction as held in case of Totgars Co-operative Sale Society Ltd. vs. Income-tax Officer (SC) (2010)188 Taxman 282 wherein the Apex Court held that interest income from deposits with banks cannot be held to income from business for the appellant. As held in case of Principal Commissioner of Income-tax, Hubballi v. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 and Gujarat HC in case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. (2022) 140 taxmann.com 60, interest income from any entity (including cooperative banks) apart from just cooperative societies is not eligible for deduction u/s 80P.

5.3.2. The appellant has failed to provide any proof of fulfilling the above conditions.

When an exemption is claimed, the burden lies on the party claiming the exemption to provide the proof for its eligibility to the same. It is a well settled law that the burden of proving that the income is not taxable lies upon the assessee Parimisetti Seetharamamma Vs CIT 57 ITR 532 (SC), CIT Vs Ramakrishna Deo 35 ITR 312 (SC). Further, the Supreme Court in respect of Commissioner of Customs Vs Dileep Kumar & Company in Civil Appeal Number 3327/2007 has held that exemptions have to be interpreted very strictly and onus of proving the eligibility for an exemption rests on the assessee. With appellant not having discharged the said onus, there lies no burden on revenue to prove its case. Hence, the disallowance of AO u/s 80P is upheld."

6. We have carefully analysed the facts. Para-5 of the assessment order is reproduced infra:-

05. Considering the above facts on record, the total income of the assessee is computed as under:-

Income from Business & Profession	₹ 7,20,93,175
Income from Other Source	₹ Nil
Gross Total Income	₹ 72,09,175
Deduction under Chapter VI-A (Disallowance made under sec. 80P)	₹ 72,09,175
Total income shown by the assessee	₹ 72,09,175
Assessed Income	₹ 72,09,175

7. Once gross total income is income from business and profession, the nature of activity of the assessee is never shrouded with doubt, it is a natural corollary that concomitant deduction under section 80P(2)(a)(i) of the Act has to be extended. The learned CIT(A) has trudged on a wrong path by discussing about certain issues which were never in the realm of assessment. Consequently, we overturn the impugned order passed by the learned CIT(A) by allowing the grounds raised by the assessee.

8. In the result, appeal by the assessee stands allowed.

Order pronounced in the open Court on 05/02/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 05/02/2025

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Nagpur; and*
- (5) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur