IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA Nos.163 to 170/Bang/2022
Assessment Years : 2013-14 to 2015-16

M/s. Madanthyar Primary Agricultural Credit Co-operative Society (previously known as Madanthyar Service Co-operative Bank Ltd.,), No.397, Madanthyar Post, Belthangady Tq., Madanthyar -574 224. **PAN : AAAJM 0312 M**	Vs.	DCIT, CPC-TDS, Ghaziabad.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Prathibha R, Advocate
Revenue by	:	Mrs. Susan D. George, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.05.2022
Date of Pronouncement	:	17.05.2022

O R D E R

Per Bench :

These are a batch of 8 appeals filed by Assessee against 8 orders all dated 30.4.2021 passed by National Faceless Appeal Centre (NFAC), Delhi, relating to assessment years 2013-14 to 2015-16.

2. The Assessee filed statement of tax deducted at source (TDS) for various quarters in Form No.26Q for different quarterly years in FY 2012-13 to 2014-15 (relevant to AY 2013-14 to 2015-16). The statement was

processed by CPC TDS, Bengaluru. There was a delay in filing the above TDS statement and therefore the AO by intimation u/s. 200A of the Income-Tax Act, 1961 ["the Act"] levied late fee u/s. 234E of the Income-Tax Act, 1961 ["the Act"]. Under Sec.234E of the Act, if there is a delay in filing statement of TDS within the prescribed time then the person responsible for making payment and filing return of TDS is liable to pay by way of fee a sum of Rs.200/- per day during which the failure continues. Section 234E of the Act inserted by the Finance Act, 2012 w.e.f. 1.7.2012. reads as follows:-

> "Fee for default in furnishing statements.
>
> 234E. (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of **section 200** or the proviso to sub-section (3) of **section 206C**, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.
>
> (2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.
>
> (3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.
>
> (4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-

section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

3. Aggrieved by the aforesaid orders, the Assessee filed appeals before the CIT(A). The Assessee's contention before CIT(A) was that the provisions of section 234E of the Act was inserted by the Finance Act, 2012 w.e.f. 1.7.2012. Section 200A of the Act is a provision which deals with how a return of TDS filed u/s.200(3) of the Act has to be processed and it reads as follows:-

Processing of statements of tax deducted at source.

200A. (1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

(*a*) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the statement; or

(*ii*) an incorrect claim, apparent from any information in the statement;

(*b*) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(*c*) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(*d*) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (*b*) and clause (*c*) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

(*e*) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (*d*); and

(*f*) the amount of refund due to the deductor in pursuance of the determination under clause (*d*) shall be granted to the deductor:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.— For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(*i*) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(*ii*) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable

by, or the refund due to, the deductor as required under the said sub-section."

4. Clause (c) to (f) of section 200A(1) was substituted by the Finance Act, 2015 w.e.f. 1.6.2015. The Assessee contended that AO could levy fee u/s.234E of the Act while processing a return of TDS filed u/s.200(3) of the Act only by virtue of the provisions of Sec.200A(1)(c), (d) & (f) of the Act and those provisions came into force only from 1.6.2015 and therefore the authority issuing intimation u/s. 200A of the Act while processing return of TDS filed u/s.200(3) of the Act, could not levy fee u/s. 234E of the Act in respect of statement of TDS filed prior to 1.6.2015. The Assessee, thus, challenged the validity of charging of fee u/s. 234E of the Act. The Assessee relied on the decision of the Hon'ble High Court of Karnataka in the case of *Fatehraj Singhvi v. UOI [2016] 73 taxmann.com 252* wherein the Hon'ble Karnataka High Court held that amendment made u/s. 200A providing that fee u/s. 234E of the Act could be computed at the time of processing of return and issue of intimation has come into effect only from 1.6.2015 and had only prospective effect and therefore, no computation of fee u/s.234E of the Act for delayed filing of return of TDS while processing a return of TDS u/s.234E of the Act could have been made for tax deducted at source for the assessment years prior to 1.6.2015.

5. The CIT(A) found that the appeals filed by the Assessee were belated. The CIT(A) called upon the Assessee to explain reasons for the delay. The Assessee in its reply submitted that it had applied to the Commissioner, Income Tax (TDS), Goa, under section 119 of the Act to waive the fees levied. No reply was received in response. Hence, there was

a delay in filing the appeal against the order levying interest under section 234E of the Act.

6. The CIT(A) noted that the notice under section 250 of the Act was issued on 04.12.2020 called upon the Assessee to file submissions on or before 17.12.2020. Further, notices were issued on 02.03.2021 and 08.04.2021. The appeal before the CIT(A) was instituted by the Assessee on 03.06.2019. The CIT(A) proceeded to decide the appeals of the Assessee ex-parte for the following reasons:

> *"Notices u/s. 250 of the I. T. Act were issued to the appellant on 02/03/2021 and 08/04/2021 requiring it to submit documentary evidences like copy o documents submitted before CIT(TDS), Goa, supporting it's claim that the delay was on account of pending application under section 119 of the Act. However, the appellant failed to respond to both the notices. The last date for submitting the details as per the latest notice was 24/2021. There is no response from the appellant in this regard till date."*

7. The CIT(A), thereafter, refused to condone the delay for the following reasons:

> *"5.1 On the issue of delay in filing the appeal, the appellant has claimed that, the delay was on account of pendency of it's application under section 119 of the Act. The appellant was requested to submit evidences in support of it's claim. However, it has failed to respond to both the notices. There is no response from the appellant it this regard till date. Since the appellant has failed to submit any evidence in support of it's claim and has also failed to provide any reason for non-submission of the evidence, there is no other option but to assume that the claim made by the appellant is incorrect. Thus, the appellant has failed to establish that there was reasonable cause for the delay in filing of the appeal with an inordinate delay of 2055 days."*

8. The CIT(A) made reference to several decisions for the proposition that each day's delay has to be explained. Thereafter, the CIT(A) concluded

that the Assessee did not establish that there was sufficient cause for the delay in filing the appeals. Accordingly, the appeals of the Assessee were dismissed by the CIT(A).

9. Aggrieved by the order of the CIT(A), the Assessee has preferred the present appeals before the Tribunal. In ground No.2 raised by the Assessee before the Tribunal, the Assessee has submitted that it was unable to respond to the notices due to Covid pandemic and no staff were attending to the office work. It is therefore been contended that there is a reasonable cause for non-attendance before the CIT(A) and therefore action of the CIT(A) in proceeding to decide the appeal ex-parte cannot be sustained. Learned DR on the other hand reiterated the stand of the Revenue as reflected in the order of the CIT(A). We have given a very careful consideration to the rival submissions.

10. The Registry has noted a delay of 255 days in filing the appeals. The impugned orders are dated 30.04.2021. The appeals against these orders were filed on 11.03.2022 whereas they ought to have been filed within 60 days from date of service of the order which is 30.04.2022. In Misc. Application No. 665/2021 in Suo motu Writ Petition (Civil) No. 3 of 2020, In Re: Cognizance for Extension of Limitation. the Hon'ble Supreme Court on 27th March, 2021 decided to extend the period of limitation of filing cases in various legal fora with effect from 14.03.2021 until further orders in view of hardships faced by litigants due to the alarming Covid-19 situation. It was directed vide order dated 23rd March, 2020 that the period of limitation in filing petitions/ applications/ suits/ appeals/ all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March,

2020 till further orders. Thereafter, on 8th March, 2021 it was noticed that the country is returning to normalcy and since all the Courts and Tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end. Finally, in computing the period of limitation for any suit, appeal, application or proceeding irrespective of the limitation prescribed under the General law or Special Laws, whether condonable or not, the period from 15.03.2020 to 14.03.2021 shall stand excluded. The Hon'ble Supreme Court on 27th March, 2021 has restored the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. The Apex Court acceding to the request made by SCAORA passed an order on 27 April 2021 restoring the extension of the period of limitation until further orders. In September 2021, the Election Commission of India filed an application seeking modification of the order extending limitation with respect to election petitions raising concerns on the difficulty of preserving EVMs and election papers indefinitely. The Apex Court on 9 September 2021 held that it would consider recalling the suo motu order with respect to all cases, and not just the election petitions. Accordingly, the Apex Court on 23 September 2021 recalled the limitation extension w.e.f. 2 October 2021. However, the Apex Court was mindful in stating that the recall order was subject to the uncertainties pertaining to the third wave of Covid-19 pandemic. As India witnessed a sharp rise in the Covid-19 cases in January 2022, the Hon'ble Supreme Court decided to restore the limitation extension. As per the order of the Apex Court dated 10 January 2022, the period from 15 March 2020 to 28 February 2022 would

stand excluded for the purpose of limitation. The Hon'ble Supreme Court of India passed the following directions while deciding a miscellaneous application filed by the SCAORA:

- *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, the longer period shall apply.*
- *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

11. Hence, there is no delay in filing of these appeals. In so far s the grievance of the Assessee regarding the action of the CIT(A) in proceeding to decide the appeals ex-parte, we are of the view that the same is not sustained. It is therefore clear that even the Hon’ble Supreme Court has taken cognisance of the pandemic situation and extended the period of limitation. It is clear from the order of the CIT(A) that the notices in

question were issued during the covid period and the Assessee's contention that it could not respond to the notices in view of the pandemic situation has to be accepted as a reasonable cause. In the given facts and circumstances, we are of the view that the Assessee deserves an opportunity of being heard before the CIT(A). Accordingly, the orders of the CIT(A) are set aside and the issue remanded to the CIT(A) for a decision afresh after affording Assessee opportunity of being heard. The Assessee is directed to co-operate in the proceedings before the CIT(A) and furnish the required information and enable the CIT(A) to decide the appeals in accordance with law. Appeals of the Assessee are accordingly treated as allowed for statistical purposes.

12. In the result, the appeals of the Assessee are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(CHANDRA POOJARI)	**(N.V. VASUDEVAN)**
Accountant Member	**Vice President**

Bangalore,
Dated: 17.05.2022.
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Copy to:

1.	Appellants	2.	Respondent
3.	CIT	4.	CIT(A)
5.	DR	6.	Guard file

By order

Assistant Registrar,
ITAT, Bangalore.