

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-C” BENCH : BANGALORE**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.1110/Bang/2019
Assessment year : 2015-16

Shree Deval Urban Credit Co-operative Society Niyamit, Ward No.2, Munavalli Peth, ILKAL – 587125, Tal: Hunagund, Dist: Bagalkot, Karnataka. <b>PAN : AAEAS 7339 B</b>	Vs.	The Income Tax Officer, Ward – 1 & TPS, Bagalkot.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Prashanth G. S. CA
Revenue by	:	Shri. Karuppusamy, S. R. Addl. CIT

Date of hearing	:	13.06.2019
Date of Pronouncement	:	03.07.2019

**ORDER**

This appeal filed by the assessee is directed against the ex-parte order of CIT(A)-Belgavi, dated 07.03.2019 for Assessment Year 2015-16.

2. Briefly stated, the facts of the case relevant for disposal of this appeal are as under:

2.1 The assessee, a Co-operative Society providing credit facilities to its members as well as non-members, filed its return of income for Assessment Year

2015-16 on 31.03.2017 declaring NIL income after claiming deduction of Rs.20,41,198/- under section 80P(2)(a)(i) of the Income Tax Act, 1961 (in short 'the Act'). The case was taken up for scrutiny and the assessment completed under section 143(3) of the Act vide order dated 28.11.2017 wherein the assessee's income was determined at Rs.19,91,200/- in view of the Assessing Officer (AO) disallowing the assessee's claim of deduction under section 80P(2)(a)(i) of the Act. On appeal, the CIT(A), Belgavi dismissed the assessee's appeal ex-parte, *in limine*, for non-prosecution, following, *inter alia*, the decision of the ITAT, Delhi Bench in the case of Multiplan India Ltd., 38 ITD 302 (Del-Trib) and the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar Vs. CIT 233 ITR 480 (M.P.).

3. Aggrieved by the ex-parte order of the CIT(A)-Belgavi, dated 07.03.2019 for Assessment Year 2015-16, the assessee has preferred this appeal before the Tribunal wherein it has raised the following grounds:-

Sl. No.	GROUNDS OF APPEAL	Tax Effect in Rs.
1	<p>a) The orders of the authorities below in so far as these are against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.</p> <p>b) The appellant denies itself liable to be assessed on a total income of Rs.19,91,200/- as against the returned income of Rs.Nil under the facts and circumstances of the case.</p>	-
2	a) The action of the learned CIT(A) in passing an ex-parte order without giving reasonable opportunity of being heard to the appellant is against the principles of natural justice and therefore the order passed needs to be set aside on the facts of the case.	

	<p>b) The action of the learned CIT(A) in dismissing the appeal vide order dated 07.03.2019 is bad in law for the reason that the notice dated 28.02.2019 posting the appeal for hearing on 06.03.2019 was received by the tax consultant of the appellant only on 18.03.2019 under the facts and circumstances of the case.</p>	
3	<p>a) The learned assessing officer erred in denying the deduction claimed by the appellant under section 80P(2)(a)(i) of the Income-Tax Act, 1961 (the Act) of Rs.20,41,198/- under the facts and circumstances of the case.</p> <p>b) The authorities below erred in following the decision of Supreme Court in the case of Citizen Co-operative Society Ltd. vs. ACIT reported in 397 ITR 1 though the facts of the appellant's case are</p>	6,12,191/-
	<p>totally different and thus the additions made needs to be deleted on the facts of the case.</p> <p>c) The learned assessing officer is not justified in holding that the nominal/associate members of the society are not members in real sense and consequently erred in not allowing the deduction under section 80P(2)(a)(i) under the facts and circumstances of the case.</p>	
	<p>totally different and thus the additions made needs to be deleted on the facts of the case.</p> <p>c) The learned assessing officer is not justified in holding that the nominal/associate members of the society are not members in real sense and consequently erred in not allowing the deduction under section 80P(2)(a)(i) under the facts and circumstances of the case.</p>	
	<p>d) The assessing officer erred in not appreciating the fact that interest earned from deposits made in other banks, is attributable for carrying on the business activities of the appellant and therefore the appellant is eligible for deduction under section 80P(2)(a)(i) of the Act under the facts of the case.</p>	

	e) The authorities below erred in following the decision of Karnataka High Court in the case of PCIT vs. Totagars Co-operative Sale Society reported in 395 ITR 611 though the facts of the appellant's case are totally different and thus the additions made needs to be deleted on the facts of the case.	
4	The appellant denies itself liable to be levied to interest under sections 234A and 234B of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234A and 234B of the Act.	3,12,222/-
5	The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.	-
6	In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.	-

#### 4. Ground Nos.2 a) & b)

4.1 At the outset, the learned AR for the assessee urged ground Nos.2 a) & b) (supra); wherein the assessee assails the action of the CIT(A) in dismissing the assessee's appeal ex-parte, *in limine*, vide the impugned order dated 07.03.2019; without affording the assessee reasonable opportunity of being heard which is in violation of the principles of natural justice. It is contended that the impugned order dated 07.03.2019 is bad in law for the reason that the notice dated 28.02.2019 issued by the CIT(A) posting the appeal for hearing on 06.03.2019 was received by the appellant by email on 18.03.2019; long after the impugned order was passed on 07.03.2019 and it is for this reason that the assessee / learned AR could not attend the hearing fixed for 06.03.2019. It is submitted that on these grounds alone, the ex-parte order of the CIT(A) dated 07.03.2019 for Assessment Year 2015-16 is

liable to be set aside as the assessee had reasonable cause for non-appearance for the hearing fixed for 06.03.2019. It is prayed that in the light of the above facts, the impugned order of CIT(A) be set aside and the appeal be restored to his file for consideration and adjudication on merits of the grounds raised before him.

4.2 Per contra, the learned DR for Revenue supported the order of the CIT(A).

4.3.1 I have heard and considered the rival contentions / submissions and carefully perused the material on record. On a perusal of the impugned order of the CIT(A) dated 07.03.2019 for Assessment Year 2015-16, it is evident that the order has been passed, ex-parte, dismissing the assessee's appeal for non-prosecution, *in limine*, without either hearing the assessee in the matter or considering and adjudicating the grounds raised on merits. It is also observed from the impugned order that the CIT(A) states that the case on hand was posted for hearing on 25.01.2019, 04.02.2019, 27.02.2019 and 06.03.2019 and since the assessee did not comply, the order was passed ex-parte. From the details filed by the assessee in the course of hearings, it is ascertained that while the assessee did not attend the first three hearings; the notice fixed for hearing on 06.03.2019 was emailed to the assessee only on 18.03.2019, much after the impugned order was passed on 07.03.2019. Copy of which has been placed on record (2 pages). Therefore, in my view, the assessee had sufficient and reasonable cause for non-appearance for the hearing on 06.03.2019, due to impossibility of compliance. It is also unlikely that the assessee would not attend the hearings deliberately or with malafide intentions as it is fastened with tax demand of Rs.9,24,410/-.

4.3.2 In the factual matrix, as discussed above, I am of the considered view that the assessee was prevented by reasonable and sufficient cause from not attending the hearing fixed for 06.03.2019 and further the impugned order has not been adjudicated on merits. Since the ultimate object of assessment / appellate

proceedings is to bring to tax the correct income of the assessee, I am of the view that in the interest of substantial justice, the impugned ex-parte order of the CIT(A) dated 07.03.2019 is to be set aside and restore the matter to the file of the CIT(A) for examination, consideration and adjudication on merits. Needless to add, the CIT(A) shall afford the assessee reasonable opportunities of being heard and to file details / submissions required, which shall be duly considered before deciding the issues raised in the grounds of appeal. Consequently, ground Nos.2 a) & b) of assessee's appeal are allowed.

5. In view of the above finding, setting aside the impugned order of CIT(A) dated 07.03.2019 for Assessment Year 2015-16 for adjudication, the other grounds raised on merits (supra) do not call for adjudication.

6. In the result, the assessee's appeal for Assessment Year 2015-16 is allowed for statistical purposes.

*Order pronounced in the open court on this 3<sup>rd</sup> day of July, 2019.*

Sd/-  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.

Dated: 3<sup>rd</sup> July, 2019.

/NS/\*

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.