

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, BENGALURU**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
And
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1315/Bang/2019
(Assessment Year : 2012-13)

M/s Malnad Areca Marketing Co-operative Society Ltd., APMC Yard, Shivamogga	Vs.	ACIT, Circle-1, Shivamogga
PAN No.AAAJM0788P		
(Appellant)	..	(Respondent)
Appellant by :		Shri Rakesh, CA
Respondent by :		Smt. R. Premi, JCIT

Date of Hearing	03-03-2020
Date of Pronouncement	04 -03-2020

ORDER

PER PRADIP KUMAR KEDIA – AM

The captioned appeal has been filed at the instance of the assessee against the order of the AO dated 15-05-2019 giving effect to the order of the ITAT in ITA No. 49/Bang/2018 dated 07-12-2018.

2. As per its grounds of appeal, the assessee has assailed the order of the AO giving the appeal effect arose in pursuance of the appellate order rendered by the Tribunal on the question of applicability of sec.80P(2)(a)(i) of the Act on interest earned by the assessee Society.

3. Without going into the merits of the case, we notice at the outset that the assessee has challenged the act of the AO before the Tribunal towards order giving appeal effect wherein deduction under sc.80P has been denied to the assessee.

4. In this regard, we find that the assessee has approached the Tribunal incorrectly instead of the first appellate authority.

5. The order giving appeal effect is an appealable order under sec.246A of the Act because the order passed by the AO giving effect to the decision of the appellate authority is as much an assessment order as the one passed by him under sec.143 of the Act. We thus find that the appeal effect order passed by the AO allegedly in contravention of the appellate order of the ITAT is an appealable order before the CIT(A) under sec.246A of the Act. Consequently, exercise of statutory right by assessee to prefer appeal directly before Tribunal without placing its grievance before the CIT(A) is not maintainable under the scheme of the Act. Consequently, the appeal of the assessee arising from the order of AO cannot be entertained.

6. However, we may hastened to add that the assessee shall be entitled to pursue the remedy by way of appeal against the order of the AO giving effect to the appeal in question before the CIT(A) in accordance with law. The CIT(A) shall not reject the appeal of the assessee on the grounds of bar of limitation as attributable to the error in pursuing the remedy wrongly before the Tribunal instead of CIT(A).

7. In the result, the appeal of the assessee is dismissed as infructuous.

This Order pronounced in Open Court on 4th March, 2020.

Sd/- sd/-

(N.V.VASUDEVAN)
VICE PRESIDENT

Place: Bengaluru

Dated:

*am

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Copy of Order Forwarded to:-

1. Revenue
2. Assessee
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Bengaluru .
6. Guard file.

By order

Asst. Registrar

