

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.116/Bang/2020
Assessment Year: 2016-17

Thimmaiah Hanumaiah Vyavasaya Seva Shakara Sangha Niyamita Kailancha Ramanagara-562 159  <b>PAN NO : AAUPH4747H</b>	<b>Vs.</b>	The Income Tax Officer Ward-1 Ramanagar
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	N O N E
<b>Respondent by</b>	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	31.08.2020
Date of Pronouncement	:	02.09.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 27.11.2019 passed by Ld CIT(A)-3, Bengaluru and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld CIT(A) in rejecting additional evidences filed by the assessee and consequently confirming the addition of Rs.55,35,742/- relating to unexplained deposits made by the AO u/s 69A of the Income-tax Act,1961 ['the Act' for short].

2. None appeared on behalf of the assessee, even though the adjournment was granted on the earlier occasion at the specific

4. The AO examined the cash book of the Society and noticed that the above said explanations are not substantiated by the entries made in the cash book, i.e., as per cash book loans were disbursed on the very same day, when the amounts were withdrawn from the current account of the society and also the repayments received from the borrowers were deposited into the current account of the society. The cash book did not show any collection of loan amounts in advance or loan amounts remaining undisbursed. Even though the AO examined the past presidents of the society, they merely reiterated the submissions made in the confirmation letter and could not produce any material to support their claim. Accordingly, the AO proposed to assess a sum of Rs.78,14,205/- as income of the assessee. Hence the assessee filed a petition before the Ld Addl. CIT u/s 144A of the Act, who directed the AO to compute the quantum of addition after hearing the assessee. Before the AO, the assessee reiterated that the cash deposits were made out of Society's funds only in his fiduciary capacity and they do not belong to him. In the alternative, it was prayed that the peak credit balance may be added. The AO accepted the alternative prayer. However, while working out peak credit, the Assessing officer gave credit for deposits made within two months from the date of earlier withdrawal. Accordingly, he worked out the addition at Rs.55,35,742/- and assessed the same u/s 69A of the Act by applying special rates prescribed u/s 115BBE of the Act.

5. Before Ld CIT(A), the assessee reiterated his submissions made before the AO. Besides the above, the assessee also filed additional evidences in the form of confirmation letters obtained from some of the members of the society (borrowers). Hence the Ld CIT(A) called for a remand report from the AO. In the remand report, the AO reported that the explanations given by the assessee are not corroborated with the entries available in the cash book of the society

book of the society, in our view, has been made without properly understanding the modus operandi explained by the assessee.

9. We notice that the assessee has substantiated his explanations by furnishing confirmation letters from two of the past presidents of the society. Subsequently, before Ld CIT(A), the assessee has furnished confirmation letters from some of the member borrowers also. Even though the Ld CIT(A) has called for a remand report from the AO on the additional evidences, yet he did not admit them finally.

10. In our considered view, the letters furnished by the two past presidents and also the letters given by member borrowers assume great significance in the facts of the present case, since they support the modus operandi explained by the assessee. According to the assessee, he has used his bank account to temporarily park the funds belonging to the society/members, on behalf of the society/members, in order to adhere the due dates of repayment and/or to accommodate borrowers. Hence, in our considered view, the veracity of the explanations given by the assessee needs to be examined. For that purpose and also, in the interest of substantial justice, we are of the view that the additional evidences furnished by the assessee need to be admitted. Accordingly we admit them.

11. We are of the view that the additional evidences and also the confirmation letters given by two of the past presidents require fresh examination by examining the veracity of modus operandi explained by the assessee. Hence what is required to be examined is the veracity of the modus operandi and also whether the deposits made by the assessee really represent funds belonging to the society/members or not. These aspects can be examined by considering the additional evidences, examining the member/borrowers, if required, collecting the details of members from whom funds were received, corroborating the withdrawals with the entries made in the books of society etc.