

आयकर अपीलीय अधिकरण, पणजी न्यायपीठ, पणजी

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI, BENCH PANAJI

श्री ललित कुमार, न्यायिक सदस्य एवं डॉ मीठा लाल मीना, लेखा सदस्य के समक्ष ।
BEFORE SHRI LALIET KUMAR, JM AND DR. MITHA LAL MEENA, AM

ITA No.85/PAN/2018

(AY: 2012-2013)

Kakati Prathamik Krishi Pattia Sahakari Sangh Niyamit, Kakti Tal/Dist Belagavi PAN No.AAAAK 1503	Vs	ITO, Ward-1(2), Belgaum
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Pravin P. Ghali, CA
राजस्व की ओर से /Revenue by	:	Shri Sourabh Nayak, Sr.DR
सुनवाई की तारीख / Date of Hearing	:	08/10/2021
घोषणा की तारीख/Date of Pronouncement	:	08/10/2021

आदेश / O R D E R

Per Bench :

This an appeal filed by the assessee against the order passed by the CIT(A), Gulbarga, dated 29.12.2017 for the assessment year 2012-2013.

2. At the outset, the Id. AR of the assessee submitted that the Id. CIT(A) has passed the order ex parte qua the assessee. He argued that assessee is a cooperative society registered under the State Cooperative Society the main object of the society is to accept to deposits and provide financial accommodation to the members of the society therefore, it has claimed that the society was entitled deduction u/s80P (2)(a) (i) as it is being a cooperative society providing credit facilities to its members only. The Id. Counsel contended that the Id. CIT(A) has erred by not allowing the interest paid on loans on the fixed deposits which was taken for providing loans to its members. In support of its contentions he placed reliance on the

judgment of Hon'ble Apex Court in the case of Citizen Cooperative Society, citation TS 324 – HON'BLE SUPREME COURT-2017 dated 16.08.2017 and the Mavilayi Service Cooperative Bank Ltd. & Ors vs. CIT, Civil Appeal Nos. 7343 to 7350/2019 dated January 12, 2021.

3. The Id. DR stand by the order of the Id. CIT(A) he submitted that the Apex Court in the case of M/s Totga Cooperative Sales Society Ltd. Is applicable to the facts of the case as there were no payable to the creditors who supplied agriculture produce to the society and the amount payable to the creditors was being invested in respected banks.

4. We have heard the rival contentions and perused the material available on record. We find that the CIT(A) rejected the contentions of the assessee holding that assessee failed to explain why the assessee's case was not covered by the judgment of the Apex Court in the case of Citizen Cooperative Society [TS-326-Supreme Court-2017], dated 16th August, 2017. It is seen that the submission filed by the assessee before us were not examined by the Id. CIT(A) and passed in order ex parte qua the assessee which is against the principles of natural justice and cannot be approved.

5. In view of the introduction of sub section 4 to section 80P of the Act the AO while examining the claim made by the society for such deduction cannot be allowed merely looking at class of society as per certificate of registration issued under the Central or State Societies Act since each assessment is a separate assessment, the intention of legislature is a no manner defeated by not allowing deduction u/s 80P why reason of sub

section 4 thereof as per the decision of Apex Court in the case of Mavilayi Service Cooperative Bank Ltd. (supra).

6. Considering the facts and circumstances of the case, we are of the considered opinion that the ex parte order passed by the Id. CIT(A) is required to be relooked and examined afresh by him in the light of the decision of Hon'ble Apex Court in the case of Citizen Cooperative Society and Mavilayi Service Cooperative Bank Ltd. (supra). In our view, this is a fit case to send back to the Id. CIT(A) to pass afresh order addressing the grievance of the assessee after considering the documentary evidences filed with the support of citations applicable as above. We direct the Id. CIT(A) to grant adequate opportunity to the assessee society and adjudicate the matter within the period of receipt of this order.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 08/10/ 2021.

Sd/-

(डॉ मीठा लाल मीना)
(DR. MITHA LAL MEENA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(ललित कुमार)
(LALIET KUMAR)

न्यायिक सदस्य / JUDICIAL MEMBER

पणजी/Panaji; दिनांक Dated 08/10/2021

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **पणजी** / DR,
ITAT, Panjaji
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, पणजी/ITAT, Panaji