

**THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
&  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**I.T.A. No.114/Mum/2022 (A.Y. 2015-16)**

**I.T.A. No.115/Mum/2022 (A.Y. 2016-17)**

Shri Venkatesh Multi State Co-operative Society Ltd. Main Road Bodhegoan Shevgaon, Ahmednagar-414503 <b>PAN AAIAS3846B</b>	Vs.	ACIT2(1) Asst. Commissioner of Income Tax, Central Circle 2(1) Mumbai-400052
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Pratik Sandhar
Department by	Shri Hemantkumar Chimanlal Leuva
Date of Hearing	29.09.2022
Date of Pronouncement	10.10.2022

**ORDER**

PER AMARJIT SINGH (AM) :-

The present appeals for A.Y. 2015-16 and A.Y. 2016-17 filed by the assessee is directed against the order passed by the Ld. CIT(A)-48, Mumbai which in turn arises from the order passed by the A.O. u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2015-16 and 2016-17. The assessee has raised the following grounds before us:

**Grounds of Appeal**

*1. On the facts and in the circumstances of the case and in law the CIT(A) erred in passing an ex-parte order without taking cognizance of the fact that the notice of hearing was not served on the appellant and that the appellant was not*

*aware of the date of hearing. Therefore the appellant may be granted an opportunity to represent the matter before the Id. CIT(A)*

*2. On the facts and in the circumstances of the case and in law and without prejudice to Ground No. 1 the Assessment Order is invalid and bad in law.*

*3. On the facts and in the circumstances of the case and in law and without prejudice to the above grounds of appeal the Assessment Order passed u/s 143(3) r.w.s. 153A is bad in law in as much as a survey action u/s 133A was carried out at the premises of the appellant and therefore no assessment under the provisions of section 153A of Income Tax Act 1961 could be made in the case of the appellant*

*4. On the facts and in the circumstances of the case and without prejudice to Ground No. 1 to 3 the Assessing Officer has grossly erred in making addition of Rs. 358,93,74,619/- in respect of cash deposits received from customers by the appellant society*

*5. On the facts and in the circumstances of the case the and without prejudice to Ground No. 1 to 3 the Assessing Officer has erred in making addition of Rs 358.93,74,619 ignoring the fact that the said receipts are not the income of the appellant society but the appellant society has merely provided the services of RTGS/NEFT in respect of such cash deposits, and therefore addition in the hands of the appellant society is unjustified.*

*6. On the facts and in the circumstances of the case and without prejudice to Ground No. 1 to 3 the Assessing Officer has erred in ignoring the fact that the appellant society has merely provided the services for RTGS/NEFT of its member's money and earned a commission @ 0.01% which in all fairness has already been included in the income tax return of the appellant society and therefore no separate addition in respect of said cash deposits or the commission earned is called for in the facts of the case.*

*7. On the facts and in the circumstances of the case and without prejudice to the above grounds of appeal the Assessing Officer failed to appreciate the fact that out of total cash deposits of Rs. 358,93,74,619/-, the customers have withdrawn the amount of Rs. 120,32,77,470/- and therefore addition if any could only be sustained to the extent of net cash deposits of Rs. 238,60,97,149/*

*8. On the facts and in the circumstances of the case and without prejudice to the above grounds the Assessing Officer has grossly erred in not taking cognizance of the fact that the appellant society is a co-operative society eligible for deduction us 80P and the said cash deposits being related to services provided to the members of the appellant society are eligible for deduction u/s 80P of Income Tax Act 1961.*

*9. The above grounds of appeal may kindly be allowed to be altered, amended, modified, deleted etc in the interest of natural justice.*

2. These two appeals filed by the assessee are arisen out of the common order of the Ld. Pr. CIT(A). Since these appeals are based on common issue on identical facts therefore for the sake of convenience both these appeals are adjudicated together by taking the ITA No. 114/M/2022 as a lead case and its finding will be applied Mutatis muntandis to the ITA No. 115/M/2022.

3. The fact in brief is that the search and seizure action u/s 132 of the act was taken place in the case of the assessee and other related persons of the group on 27-04-2017. Thereafter, a notice u/s 153A of the act was issued on 06-09-2019. In response to the notice issued the assessee filed a return of income on 17-10-2019 declaring total losses of Rs. 55,07,629/-

4. The assessee was a registered co-operative society under the Multi State Co-operative Society's Act 2002. The assessee was engaged in the business of finance and engaged in accepting the deposits and lending loans for its members. Assessment under 143(3) r.w.s.153A was finalised on 26-12-

2019. The A.O. stated that during the course of search and survey action it was found that the assessee was indulged in accepting cash deposits claimed to be made by various suspicious entities from Mumbai and Nagpur Branch. It was also stated that the most of these entities/individuals have never filed their return of income and were not doing any business activities on their addresses extracted from PAN data. The A.O. also observed that the most of the cash depositors had not filed their Know Your Client (KYC) documents while opening their accounts or the said documents were not verified. The A.O. further stated that during the course search assessment proceeding summons under section 131 of the Act were issued to the depositors on the known address. However the summonses were returned unserved with remark of postal authority "Not Known". The A.O. also referred the statement of key person of the society Shri Krishna Prabhakar Masure in which he mentioned that the assessee society used to get commission for deposits of cash made by the customer at the rate of 0.10%. The A.O. had also mentioned the statement of other officer bearers and staff that they had admitted and explained the process of cash deposits and subsequent process of transfer of funds to different entities. The A.O. has also stated that most of the cash amount was transferred to various other suspicious entities through RTGS/NEFT. During the course of assessment the assessee had failed to prove genuineness of the transaction in accordance with the provision of section 68 of the Act, therefore, the A.O. had made addition u/s 68 of the Act to the amount of Rs.358,93,74,619/- and added to the total income of the assessee. The A.O. had also made addition

of commission income of Rs.35,89,375/- at the rate of 0.10% on the aforesaid deposited and added to the total income of the assessee.

5. The aggrieved assessee had filed appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee by reiterating the facts stated by the Ld. A.O. since the assessee had failed to make any compliance before the Ld. CIT(A).

6. During the course of appellate proceedings before us the Ld. Counsel at the outset contended that during the course of appellant proceeding before Ld. CIT(A) the assessee could not make any compliance because three notices issued by the Ld. CIT(A) for attending the hearings were not served on the assessee. In respect of first notice the Ld. Counsel had submitted that assessee had requested for the adjournment. Therefore, the Ld counsel submitted that one more opportunity be provided to the assessee before the Ld. CIT(A) for adjudicating the appeal of the assessee on merit. On other hand the Ld. D.R. has supported the order of the lower authorities.

7. Heard both a side perused the material on record. Without reiterating the facts as elaborated above it is undisputed facts that during the course of appellate proceeding before Ld. CIT(A), assessee had neither attended the hearing nor filed any detail. The Ld. CIT(A) pointed out that three notices of hearings were issued to the assessee however no reply had been filed from the side of the assessee.

The Ld. Counsel submitted that aforesaid notices were not served on the assessee. Even the date of serving of these notices upon the assessee were not referred by the Ld. CIT(A) in his order. In the light of the above facts and circumstances we restore this case to the file of the Ld. CIT(A) to decide de novo on merit as contemplates in section 250(6) of the Act after affording opportunity to the assessee. The assessee is also directed to make proper compliance before the Ld. CIT(A) during appellate proceedings without any default. Therefore the appeal of the assessee is allowed for statistical purpose.

7.1. Applying the findings of the ITA No. 114/M/2022 as supra on similar facts and identical issue, mutatis mutandis the other appeal vide ITA No. 115/M/2022 is also restored to the file of Ld. CIT(A) for deciding a fresh as directed above.

Therefore, both the appeals are allowed for statistical purpose.

Order pronounced in the open court on 10.10.2022.

**Sd/-**

**(Pavan Kumar Gadale)**

**JUDICIAL MEMBER**

**Sd/-**

**(Amarjit Singh)**

**ACCOUNTANT MEMBER**

Mumbai;  
Dated : 10 /10/2022

ANIKET RAJPUT (STENOGRAPHER)

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant  
Registrar)  
ITAT, Mumbai

No.	Details	Date	Initials	Designation
1	Draft dictated on			Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Kept for pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			