

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.35/Bang/2023
Assessment Year : 2017-18

M/s. Brahman Pattin Sahakari Sangh Niyamit, CTS No.2472, Near Mallikarjuna Gudi, Ramadev Galli Jamakhandi, Bagalkota District – 587 301, Karnataka – 587301. <b>PAN : AABAB 8253 A</b>	Vs.	ACIT, Circle – 1, Bijapur.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Shri.Ganesh R. Gale, Standing Counsel

Date of hearing	:	20.02.2023
Date of Pronouncement	:	23.02.2023

**ORDER**

This is an appeal filed by the assessee against the order passed by the National Faceless Appeal Centre (NFAC), Delhi, dated 29.12.2019, vide order No.ITBA/AST/S/143(3)/2019-20/1022803585(1). The assessee raised the following grounds of appeal :

1. *The learned CIT(A), NFAC has erred confirming the order of the Assessing Officer which is opposed to law and facts of the case.*
2. *The learned CIT(A) NFAC erred in upholding order of Assessing Officer with regard to interest earned from nominal members of Rs 4.02,789/- which is against the*

*Supreme Court principle laid down in the case of **The Mavilayi Service Coop Bank Ltd & Others Vs CIT (2021) 431 ITR 01 (SC).***

3. *The learned CIT(A) NFAC erred in upholding order of Assessing Officer that proportionate interest earned from funds of Rs 45,397/- is not eligible for deduction u/s 80P(2)(a)(i) by not assigning any reason much against the jurisdictional High Court cases of*

*(i) **Tumkur Merchants Souharda Credit Cooperative Ltd 230. Taxman 309(Kar)***

*(ii) **Guttigedarara Credit Cooperative Society Ltd Vs Income Tax Officer (Kar) (2015) 377 ITR 0464.***

2. The brief facts of the case are that assessee filed return of income for the Assessment Year 20171-8 on 27.10.2017 declaring gross total income of Rs.16,31,464/-, after claiming deduction under Chapter VI-A of Rs.16,31,464/- and the taxable income was shown as Nil. The case was selected for scrutiny to verify the deduction claimed by the assessee u/s 80P(2)(a)(i) of the Act. Accordingly, the statutory notices were issued to the assessee. The assessee filed reply in response to the notices issued by the AO. The society is registered under Karnataka Co-operative Societies Act, 1959 as co-operative society. There was a total receipt for the year of s.1,47,01,005/- including interest received on investment of Rs.4,18,021/-. The AO noted that the expenses towards earning of income of Rs. 4,18,021/- cannot be ascertained, accordingly, he calculated proportionately disallowance of expenditure @ 10.86% of the income received from investment of funds in BDCC Bank which was worth of Rs.45,397/-. The AO however noted that there

are a different types of members in the society and all have no right for voting and the assessee failed to satisfy testing of mutuality at the time of making payment to the members as some members may not be the members of the society. Accordingly, he held that the interest received from associate members are not entitled for deduction under section 80P(2)(a)(i) of the Act and the same is disallowed of Rs.4,02,789/-. He further noted that there was a cash deposited during the demonetization of Rs.35,91,500/- for the period from 10.11.2016 to 12.11.2016. These cash deposits were made out of Rs.12,81,503/- from the closing cash balance and daily collection from the members. The assessee also submitted detailed list of the members of the society who have deposited cash during the above period and no addition was made on this issue. Accordingly, the total income of the assessee determined at Rs.4,48,186/- and AO allowed deduction under section 80P(2)(c)(ii) of the Act of Rs.50,000/-. Assessee's income was determined at Rs.3,98,186/-.

3. Aggrieved by the above order, the assessee filed appeal before the CIT(A). During the course of appellate proceedings, the CIT(A) issued six notices through ITBA on the registered email but no response was submitted by the assessee to any of the notices. Even the assessee did not respond through any written submission for compliance of such notices. Accordingly, the CIT(A) decided the issue ex-parte. The CIT(A) also decided on merits regarding

addition of Rs 3,98,186/-. He also observed that before the CIT(A) assessee did not substantiate his case with any credible evidence.

4. Aggrieved from the above order, the assessee filed appeal before the Tribunal.

5. None was present on behalf of the assessee at the time of hearing, therefore, the case was heard qua the learned DR. The learned DR submitted that the CIT(A) gave many opportunities but he did not respond to any of the notices and lower authorities have rightly decided the issue in favour of the Revenue after relying on the judgment of Citizens Co-operative Society Vs. ACIT (Civil Appeal No.10245 of 2017 dated 08.08.2017). There were ample chances given by both the authorities below but the assessee could not substantiate his case. Considering the order of the lower authorities and submission of the learned DR and grounds of appeal taken by the assessee, I noted that the assessee received interest on investments in BDCC Bank on RFD of Rs.4,18,021/- of which the assessee claimed deduction under section 80P(2)(a)(i) of the Act whereas the AO has disallowed proportionate adjustments as calculated by him in his order. Since the case was not properly presented before the lower authorities & also noted that in the grounds of appeal, the assessee has quoted three judgments which are as under:

- *The Mavilayi Service Coop Bank Ltd & Others Vs CIT (2021) 431 ITR 01 (SC).*
- *Tumkur Merchants Souharda Credit Cooperative Ltd 230. Taxman 309(Kar)*
- *Guttigedarara Credit Cooperative Society Ltd Vs Income Tax Officer (Kar) (2015) 377 ITR 0464.*

6. Considering the grounds of appeal raised by the assessee & interest of justice , the case is remitted back to the AO for a fresh consideration in the light of the above three judgments and the assessee is directed to file necessary documents in support of his claim and not to seek unnecessary adjournments for early disposal of the case. Needless to say that reasonable opportunity of being heard to be given to the assessee. The Ao will decide the issue as per law.

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

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(LAXMI PRASAD SAHU)**  
**Accountant Member**

Bangalore,  
Dated: 23.02.2023.  
/NS/Vms

Copy to:

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|-------------------------|---------------|
| 1. Appellants           | 2. Respondent |
| 3. CIT                  | 4. CIT(A)     |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr. P. S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so .....
8. Date on which the file goes to the Bench Clerk .....
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk .....
11. The date on which the file goes to the Assistant Registrar for signature on the order .....
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....
13. Date of Despatch of Order. ....
14. Dictation note enclosed.....