

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'A' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBERS

ITA No.455/PUN/2023
(A.Y. 2011-12)

Gaganvihar Sahakari Gruhrachana Sanstha Maryadit, S.No. 612, Hissa No.7, Gangadham Chowk, Bibwewadi, Pune. PAN: AAATG 6733 G	vs	ITO, Ward-5(5), Pune.
Appellant		Respondent

Assessee by	:	Shri Pramod S. Shingte, CA
Revenue by	:	Shri Ramnath P. Murkude, DR
Date of hearing	:	06/07/2023
Date of pronouncement	:	11/07/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 16.01.2023 for A.Y.2011-12 as per the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Id.AO erred in making an ad of Rs. 65,000/- on account of expenditure on fencing on compound wall, by incorrectly assuming that same is debited to income expenditure account without realizing the fact that the said amount is added to the total income in the final computation appellant prays for the deletion of disallowance.

2. On the facts and in the circumstances of the case and in law, the Id. AO erred in making an ad of Rs. 2,72,502/- being into income earned from non-co-operative banking institutions without realizing the fact that it was part of maintenance fund and your appellant was entitled to settle the deficit arising out of maintenance charges against such interest income."

2. At the outset, it is observed that the present appeal is time barred by 34 days and the assessee had filed condonation petition and an affidavit explaining the reasons for delay. We have perused the contents of the affidavit and the condonation of delay petition and it is seen that the delay caused was due to circumstances beyond the control of the assessee and, such delay was neither deliberate nor intentional on the part of the assessee. The Id.DR also agreed that the delay may be condoned. Considering the facts, the delay of 34 days in filing the appeal is hereby condoned and the matter is heard on merits.

3. In this case, assessment was completed u/sec. 147 r.w.s. 143(3) of the Act dated 05/12/2018. That, against the assessment order, assessee preferred rectification petition u/sec. 154 which was disposed of on 24/09/2019 on technical ground that there was no mistake apparent from record in the assessment order. Therefore, the assessee's request for rectification of the disallowances/additions made in the assessment order was rejected. That, against this order u/sec. 154, the assessee preferred appeal before the Id. CIT(A) and the first appellate authority, as evident in his order, had summarily disposed of the appeal of the assessee dismissing the same stating that since the additions were made on debatable issues, it cannot be rectified u/sec. 154 and, hence, the Assessing Officer (AO) had rightly rejected the rectification petition preferred by the assessee u/sec. 154

of the Act. There was no adjudication by the Id. CIT(A) on the merits of the addition.

4. The first grievance of the assessee in this appeal is with regard to the addition of Rs. 65,000/- as debited in the income and expenditure account on account of fencing of boundary wall. The assessee-society is an AOP and is a co-operative housing society. It is registered under Co-operative Society Act vide registration No. P.N.A.(1)HSG/(TC) 71014/2002-2003 dated 11/02/2003. The accounts of the society are audited under MCS Act. Audit report is on record. The AO examined the details filed by the assessee and he observed that an expenditure of Rs. 65,000/- had been debited in the income and expenditure account for fencing wall. The AO observed that since it is a capital expenditure, no deduction should be allowed. During the scrutiny proceedings, Id.AR provided no explanation on this and, hence, the same was added to the total income of the assessee-society.

5. At the time of hearing before us, Id.AR submitted that admittedly the assessee-society is not doing any business and it is merely a co-operative housing society, therefore, it is functioning on the principle of mutuality and there is no profit element embedded in any of the transaction carried out. The expenditure that has been debited for fencing wall of Rs. 65,000/- is for fencing the boundary wall which does not have a permanent enduring effect and it is definitely perishable and subject to natural wear and tear, therefore it cannot be

said that it is a capital expenditure. Ld.DR supported the findings of the revenue authorities. We are of the considered view that this fencing done on the boundary wall is open to the perils of nature and definitely does not have a permanent enduring effect and, therefore, cannot be termed as a capital expenditure. The assessee is doing no business activities and it is a co-operative housing society where principle of mutuality would apply. We direct the AO to delete this addition from the hands of the assessee. Ground No.1 of the assessee's appeal is allowed.

6. Ground No.2 as evident from para 6 of the assessment order, the AO contemplates that the assessee-society had earned interest income of Rs.2,72,502/- which cannot be allowed as deduction u/sec. 80P(2)(d) of the Act since the funds were invested in nationalized banks i.e. Bank of Maharashtra & Oriental Bank of Commerce and not in co-operative bank. The entire disallowance u/sec. 80P(2)(d) was made by the AO saying that this deduction is not allowable to the assessee. We have perused the return of income filed by the assessee for the relevant year and it is observed that the claim of deduction u/sec. 80P(2)(d) is not emanating from the return of income, meaning thereby, the assessee has never claimed any deduction u/sec. 80P(2)(d) of the Act. As earlier observed, the Id. CIT(A) has not dealt with on the merits of both the additions made by the AO and had simply said that since the issues were debatable, it was not a subject

matter of rectification u/sec. 154 and had thus dismissed the appeal of the assessee. But here we find that since the assessee has never claimed deduction u/sec. 80P(2)(d) it was beyond the jurisdiction of the AO to travel beyond the scope of return of income filed by the assessee and in the first place since deduction u/sec. 80P(2)(d) was never claimed in the return of income, the AO necessarily cannot make addition implying the applicability of sec. 80P(2)(d) of the Act. We, therefore, direct the AO to delete this addition from the hands of the assessee. Ground No.2 of the assessee's appeal is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in open Court on 11th July, 2023.

Sd/-
(G.D. PADMAHALI)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 11th July, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "A" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.