

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.606/Bang/2023
Assessment year : 2017-18

Sri Sharada Vividoddesha Souharda Sahakari Niyamitha, 1 st Floor, Badami Building, Near Gourav Lodge, LLR Road, Shivamogga-577 201. PAN – AACAS 8446 D	Vs.	The Asst. Commissioner of Income- tax, Circle – 1, Shivamogga.
APPELLANT		RESPONDENT

Appellant by	:	Shri Abhiram K.P, C.A
Respondent by	:	Shri Subramanian S, JCIT(DR)

Date of hearing	:	11.10.2023
Date of Pronouncement	:	11.10.2023

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the NFAC, Delhi dated 23/06/2023 for the assessment year 2017-18.

2. The assessee raised the following grounds of appeal:-

"1. The entire Appeal order passed by Learned CIT in so far it is against the Appellant is opposed to principle of equity and justice.

2. The Learned CIT (Appeals) is erred in confirming the addition of Rs. 80,25,150/- and levy of tax U/s. 1 15BBE of the Act.

3. The Learned CIT (Appeals), is erred in giving a finding in 6.1 of the Appellate order as under:

"During the appellate proceedings, the appellant could not produce any documentary evidences that the cash deposits of Rs. 80,25, 150/- in bank accounts was loan repayment in cash received from members. Thus, during the appellate proceedings, loan repayment by cash from the parties and deposited by the appellant in its bank accounts remained unverified in this proceedings also. Thus, I have no option but to confirm the addition of Rs. 80,25,150/-as made by the AO in the assessment order. Accordingly, the appeal of the appellant on this issue is not allowed".

4. The Learned CIT (A) ought not to have given such adverse finding even though the confirmation of letters for Rs. 79,25,150/- was filed along with written submissions filed before Learned CIT (Appeals).

5. The Learned CIT (A) ought to have accepted twelve confirmation. letters filee before CIT (A) and deleted the addition of Rs. 79,25,150/-.

6. The Learned CIT (A) ought to have accepted that the loans received back from borrowers is regular business receipt and ought not to have confirmed levy of tax U/s. 115 BBE of the Act.

7. The Appellant reserves the right to add, amend, substitute and withdrawal the grounds of appeal.

3. The assessee is registered under the Karnataka Souhardha Sahakari Act 1997 subsection 5(3) and is approved by the Registrar of Cooperatives, Karnataka State u/s 6(1) of Cooperative Society and carrying on business as commission agent for sale of arecanut and trading in cement.

4. During the course of assessment proceedings, it was noticed that the assessee has deposited a sum of Rs.2,49,56,605/- into its bank account, for which, AO called for explanation. The assessee explained that such deposits were made out of loan repayments of 49 members and it was paid in cash. On enquiry, the AO found that only 37 members confirmations were received out of 49 member and the remaining 12 members did not provide required confirmations. The AO taken receipts from such members whose confirmations were not received in respect of cash amounting to Rs.80,25,150/- and added u/s 68 of the Act.

5. Against this, the assessee went in appeal before the NFAC, Delhi.

6. The assessee furnished copies of confirmations before the NFAC, Delhi in the form of Affidavits from the remaining 12 members. However, the NFAC, Delhi stated that the assessee could not produce documentary evidences with the cash deposits of Rs.80,25,150/- received from 12 members in their bank account towards loan repayments and sustained the additions made by the AO.

7. Against this, the assessee is in appeal before us.
8. The main contention of the ld.AR is that the assessee received amount of Rs.80,25,150/- from 12 members towards re-payment of their loan amount by way of cash and no addition could be made u/s 68 of the Act.
9. The ld.DR strongly opposed the argument of the ld.AR and submitted that the order of the lower authorities should be confirmed.
10. We have heard the rival submissions and perused the materials on record. In our opinion, the assessee has filed confirmation letters before the NFAC, Delhi which were not properly verified by them. There were no confirmation letters filed by the assessee before the AO. Hence, it is appropriate to remit the issue back to the file of the AO to verify the Affidavits filed by the assessee before the NFAC, Delhi. Accordingly, this issue is remitted to the file of AO for fresh consideration to examine the issue in accordance with law.

11. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 11th **October, 2023.**

Sd/-

(BEENA PILLAI)
Judicial Member
Bangalore,
Dated, 11th Oct, 2023

Sd/-

(CHANDRA POOJARI)
Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.