

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.273/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2017-18)**

The Vijayawada Electricity Employees Vs. Income Tax Officer
Co-operative Credit Society Ltd. Ward-2 (1)
Office of the Assistant Engineer Vijayawada
Operation, KG Market Section
Beside VMC Building
APCPDCL, Vijayawada
[PAN : AA EAT3589Q]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri P.Srinivasa Prasad, AR
प्रत्यर्थी की ओर से / Respondent by : Shri Madhkar Aves, Sr.AR

सुनवाई की तारीख / Date of Hearing : 14.12.2023

घोषणा की तारीख/Date of Pronouncement : 22.12.2023

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeal) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No., ITBA/NFAC/S/250/2023-24/1055474842(1) dated 28.08.2023 for the Assessment Year (A.Y.)

2017-18 arising out of assessment order passed u/s 144 of the Income Tax Act, 1961 (in short "Act") dated 30.11.2019.

2. Brief facts of the case are that the assessee is a co-operative credit society assessed to income tax. On the information related to cash deposits of Rs.80,62,000/- made during the demonetization period, the Assessing Officer(AO) had issued notice u/s 142(1) of the Act to the assessee. In response to the notice, the assessee had submitted that entire information about the cash deposited during the demonetization period along with names and addresses of the members on account of loan repayment, share capital and thrift deposits. The AO had called for additional information in support of cash deposits made during the demonetisation period. In support of the claim, the assessee had filed the list of members from whom the cash was received. The AO had treated the entire amounts received from the members during demonetisation period amounting to Rs.80,62,000/- as unexplained money of the society u/s 69A of the Act. Further, the assessee had filed return of income in response to notice u/s 142 (1) on 27.11.2019, declaring an income of Rs.35,60,020/- and claimed deduction u/s 80P for the entire amount. The AO disallowed deduction u/s 80P and made addition of Rs.35,60,020/-, net profit shown by the assessee as income of the assessee stating that

the belated return filed beyond the time limit provided u/s 139(11) or 139(4) or time specified in notice u/s 142(2) or 148 of the Act cannot be considered as return of income for deduction u/s 80P of the Act. The AO completed the assessment u/s 144 of the Act on 30.11.2019 without considering the information and return of Income submitted by the assessee and raised a demand of Rs.1,12,87,188/-.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) sustained the disallowance made by the AO and dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds :

1. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in dismissing ground No.2 without appreciating the fact that the members of the society are employees of State Government of Andhra Pradesh and they are identifiable.

2. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in dismissing ground No.3 without a word being said about the case law relied upon by the appellant and not considering the latest case law of the Kerala High Court on the subject of deduction u/s 80P of the I.T.Act.

3. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in dismissing ground No.4 without appreciating the fact that the list of members comprises of 164 persons and obtaining PAN from all of them will take time.

4. *For these and other reasons that may be urged at the time of hearing the appellant prays that the addition made by the AO and sustained by the Commissioner of Income Tax (Appeals) of Rs.1,16,22,020/- may be deleted.*

5. The only contention of the Ld.AR is that the assessee did not have any undisclosed income and the revenue authorities ought to have considered the explanation and evidences submitted by the assessee before passing the orders. The assessee filed paper book and filed all the documents as proof of having filed all the evidences before the revenue authorities. The Ld.AR further submitted that in response to the notice u/s 144, the assessee had filed the list of cash receipts received by the society in the nature of loan repayments, recurring deposits, share capital and thrift deposit receipts during the demonetization period, But the same was not considered by the AO and the AO should have put efforts to conduct independent enquiries and collected information from the members as they are all employees of Electricity Board identifiable. With regard to exemption claimed u/s 80P, the Ld.AR relied on the decision of Hon'ble Kerala High Court in the case of Chirakkal Service Cooperative Bank Ltd. (2016) 384 ITR 490 (Ker) wherein it was held that "in cases where returns have been filed, the question of exemptions or deductions referable to section 80P would definitely have to be considered and

granted if eligible. The Ld.AR submitted that the assessee society filed its return of income for the year under consideration on 27.11.2019 i.e. before the order u/s 144 was passed on 30.11.2019. The Ld.AR further submitted that the AO and the Ld.CIT(A) passed orders on mere assumption and presumption which is unwarranted and unsustainable in the eyes of law and deserves to be quashed and the addition of Rs.1,16,22,020/- is liable to be deleted. He, therefore, pleaded to quash the orders passed by the revenue authorities and allow the appeal of the assessee.

6. Per contra, the Ld.DR contended that sufficient opportunities were given to the assessee to substantiate its case, but the assessee did not avail the opportunities. He, therefore, submitted that the Ld.CIT(A) is justified in sustaining the disallowance made by the AO. He, therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

7. We have heard both the parties and perused the material available on record. As is evident from the orders of the lower authorities, the AO made the addition of Rs.80,62,000/- as unexplained cash deposits u/s 69A of the Act as the information furnished by the assessee is incomplete and not satisfactory to prove the genuineness of the cash deposits made

and disallowed deduction u/s 80P and made addition of Rs.35,60,020/-, net profit shown by the assessee by stating that the belated return filed beyond the time limit u/s 139(1) or 139(4) or time specified in notice u/s 142(2) or 148 of the Act cannot be considered as return of income for deduction u/s 80P of the Act. The contention of the assessee society was that the AO has not given sufficient time to file the information to the satisfaction of the AO. However, inspite of the urgency shown by the AO, the assessee society did manage to upload the information called for on 25.09.2019. Before us, the assessee society filed the details of cash deposits made by it's members and pleaded for one more opportunity before the AO to examine the details filed by it. Keeping in view the foregoing facts and circumstances of the case, we are inclined to remit the matter back to the file of the AO to verify the information furnished by the assessee by affording another opportunity of being heard to the assessee to substantiate it's case and pass order denovo. The assessee is also directed to adhere to the notices issued by the revenue authorities and cooperate with them by providing information sought with credible material evidences. Accordingly, all the grounds filed by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 22nd December , 2023.

<p>Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER Dated : 22.12.2023 <i>L.Rama, SPS</i></p>	<p>Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिक सदस्य/JUDICIAL MEMBER</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee– The Vijayawada Electricity Employees Co-operative Credit Society Ltd., Office of the Assistant Engineer Operation, KG Market Section, Beside VMC Building, APCPDCL, Vijayawada
2. राजस्व/The Revenue – The Income Tax Officer, Ward-2 (1), Vijayawada
3. The Principal Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam