

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1021/Bang/2023
Assessment Year : 2017-18

Shree Lakshmi Mahila Souharda Credit CO-operative Ltd., 1, Shivamaruti Estate, Mylanahalli, Udukunte Post, Solur Hobli Magadi Taluk, Ramanagara District-562127. PAN : AAGAS 9937 B	Vs.	The Income-tax Officer, Ward-1, Ramanagara.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sandeep Chalapathy, C.A
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Revenue

Date of hearing	:	03.01.2024
Date of Pronouncement	:	12.01.2024

ORDER

PER SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the CIT (NFAC), New Delhi on 25/09/2023 in DIN No.ITBA/NFAC/S/250/2023-24/1056494130(1) for the assessment year 2017-18.

2. At the outset of hearing, we note that the appeal filed by the assessee before ITAT is delayed by 12 days, to which the assessee has explained vide its letter dated 18.12.2023 stating that he was unable to find good consultant and the consultants were busy in audit and time barring cases. The assessee approached M/s. MSSV & Co., CAs, to file appeal. Accordingly, the assessee has explained the reason for delay. Therefore we condone the delay.

3. The brief facts of the case are that the assessee is a co-operative society registered under Karnataka Souharda Sahakari Act, 1997 and engaged in providing banking services to its members situated in the outskirts of Bangalore. It accepts deposits and provides loan to all the female members of the society. It has filed its return of income for the assessment year 2017-18 electronically on 10/01/2018 vide acknowledgment No.360851950100118 declaring a total income of Rs.1,14,721/- and claimed deduction under Chapter VIA(80P), resultantly there was no taxable income. The return was processed on 22/04/2018. Later on, the case was selected for scrutiny and statutory notices were issued to the assessee and various details were called for from the assessee which was filed. The AO noted that the assessee accepted cash from members and deposited it into bank account during the

demonetization period, whereas the assessee was not authorized by the Circular issued by the Reserve Bank of India. Accordingly, the AO made addition u/s 68 of the Act as per the discussion made in para No.6.2 of his order of Rs.34,72,164/- and applied tax rate u/s 115BBE of the Act. The AO also noted that the assessee is not eligible for deduction u/s 80P of the Act as per the detailed discussion in para No.6.1 and disallowed entire deduction claimed by the assessee of Rs.1,14,721/-.

4. Aggrieved from the above order, the assessee filed appeal before the CIT(A). The CIT(A) noted from the Form No.35 that as per Sl.No.8 and 9, the assessee has stated 'No' in the respective columns and it establishes that, the assessee has not paid an amount equivalent to the amount of advance tax, which was payable on or before filing the return. Accordingly, the appeal of the assessee shall not be admitted as per sec. 249(4)(b) of the Act and dismissed the appeal of the assessee without adjudicating the grounds raised by the assessee in Form No.35.

5. Aggrieved from the above order, the assessee filed the appeal before the ITAT.

6. The ld.AR submitted that while filing Form No.35, the assessee wrongly mentioned 'no' in the respective column at para 8 and 9, whereas the AO has clearly mentioned in his order that the assessee filed return of income on 10/01/2018 bearing acknowledgement No.360851950100118 and claimed deduction under Chapter VIA on the entire income, therefore, there was no tax due, which was liable to be paid by the assessee. Merely filing wrong detail in the Form No.35 for dismissing appeal is not justified and all the details and Annexure were filled by the assessee. He also produced copy of the acknowledgment of the return and submitted that the tax liabilities of the assessee is Nil, therefore, there is no requirement for payment of any tax at the time of filing of return, in view of this the sec. 249(4)(b) of the Act. is not applicable and the CIT (A) had to decide the issue on merits of the case . Therefore, he requested that the matter may be sent back to the CIT(A) for fresh adjudication.

7. The ld.DR relied on the order of the lower authorities.

8. After hearing rival contentions, we note from the assessment order that the AO has clearly mentioned in regard to filing of return of income and on the basis of which, the case was selected for scrutiny and notice u/s

143(2) of the Act has been issued to the assessee and other statutory notices were also issued to which, the assessee has complied. Accordingly, the AO completed the assessment and made disallowance of deduction claimed u/s 80P of the Act and further made addition u/s 68 of the Act on the cash deposits accepted in SBNs from members . On perusal of Form No.35 at Sl.No.8 and 9, the assessee has mentioned 'No' . The assessee is not liable for payment of any tax because sec.249(4)(b) of the Act is not applicable since the assessee has filed return and as per acknowledgement of return of income dated 16/01/2018, there is no tax payable after claiming deduction under Chapter VIA of the Act, The assessee while filling Form No. 35 for appeal before the CIT (A) it has filled the column wrongly. We therefore, hold that the CIT (A) has wrongly dismissed the appeal of the assessee. Considering the request made by the ld.AR of the assessee and in the interest of justice, we are remitting the issue back to the file of the CIT(A) for fresh consideration. The CIT(A) is directed to give reasonable opportunity of being heard to the assessee and decide the issue as per law. The assessee is directed to produce the necessary documents for substantiating its case and to avoid unnecessary adjournments for early disposal of the case.

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

Order pronounced in court on 12th day of January, 2024

Sd/-

(GEORGE GEORGE K)
Vice President

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated : 12.01.2024.

Vms

Copyto:

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.