

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

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

ITA No.1027/Bang/2023
Assessment Year : 2017-18

M/s. Kundapura Vyavasaya Seva Sahakari Sangha Niyamita, Head Office, Kundeshwara Temple Road, Kundapura, Udupi District – 576 201, Karnataka. PAN : AAAAK 3448 D	Vs.	ITO, Ward – 1, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Akshay, CA
Revenue by	:	Shri. V. Parithivel, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.01.2024
Date of Pronouncement	:	23.01.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 18.11.2022, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. There is a delay of 324 days in filing this appeal. Assessee has filed a petition for condonation of delay accompanied by affidavit of CEO of assessee society stating there in the reasons for belated filing of this appeal. The reason stated for belated filing of appeal is that assessee was under the bonafide belief that appeal need to be filed only subsequent to order giving effect to the impugned

order of the CIT(A). The learned AR submitted that all the issues raised before the Tribunal are covered by the various judicial pronouncements and therefore for substantial justice, the delay may be condoned and the matter may be decided on merits.

3. The learned DR strongly objected to the condonation of delay in filing this appeal.

4. We have heard the rival submissions and perused the material on record. Admittedly, there is a delay of 324 days in filing this appeal. Assessee is a co-operative society operating in Kundapur. It is stated in the affidavit of the CEO of the assessee society that the management was under the bonafide belief that appeal need to be filed only pursuant to the order giving effect to the impugned CIT(A)'s order. We find that appeal has been filed before the Tribunal within a reasonable period from the order of AO giving effect to the impugned order of CIT(A). The Hon'ble Apex Court in the case of N. Balakrishnan vs M. Krishnamurthy reported in AIR 1998 (SC) 3222 had held that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. We are of the view that in facts of the instant case, there is reasonable cause for condoning the delay. Hence, we condone the delay in filing this appeal and proceed to dispose the case on merits.

5. Brief facts of the case are as follows:

Assessee is a primary co-operative society registered under the Karnataka Co-operative Societies Act, 1959. It is providing credit facilities to its members. For the Assessment Year 2017-18, the return of income was filed on 27.10.2017

declaring total income of Rs.1,46,620/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 13.08.2018. Assessment was completed under section 143(3) of the Act vide order dated 13.11.2019. In the Assessment Order, AO made the following disallowances / additions:

Sl. No.	Particulars	Amount	Reason for disallowance by AO
1.	Deduction u/s 80P	51,72,452	Violation of Principles of Mutuality
2.	Interest income from Banks & Co-operative society	48,33,774	Disallowance u/s 80P(2)(d)
3.	Provision for Interest Expenses	78,87,620	Held that Interest to be allowed only on a cash basis, thereby disallowing the Interest Provision
4.	Provision for various expenses & NPA	16,00,308	Disallowance of provision for expenses, holding it to be an unascertained Liability

6. Aggrieved by the Order of Assessment, assessee filed appeal before the First Appellate Authority. The CIT(A) partly allowed the appeal of the assessee. The CIT(A), following the judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, reported in 431 ITR 1, directed the AO to grant deduction under section 80P(2)(a)(i) of the Act, amount to Rs.51,72,452/- (Sl. No.1 above). The other issues viz., whether interest income received from co-operative bank is entitled to deduction under section 80P(2)(d) of the Act, provision for various expenses and NPA, provision for interest expenses, etc., were not adjudicated by the CIT(A) (though specific grounds were raised before him).

7. Aggrieved by the Order of CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book enclosing therein the case laws relied on, statement of computation of income for the Assessment Year 2017-18, CBDT Circular No.37/2016 dated 02.11.2016, etc. The learned AR, as regards the claim of deduction under section 80P(2)(d) of the Act, submitted that assessee is entitled to deduction by relying on the Order of the Bangalore Bench of the Tribunal in the case of Raythara Sahakari Sangha Ltd., Vs ITO in ITA No.685/Bang/2023. Alternatively, it was submitted that assessee is entitled to the cost of funds if the interest income is assessed under the head "Income from Other Sources". In this context, the learned AR relied on the judgment of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd., Vs. ITO reported in (2015) 58 taxmann.com 35 (Karnataka). As regards the disallowance of provision for interest expenses, the learned AR, relying on Rule 22 of Karnataka State Co-operative Societies Rule, submitted that interest expenditure is to be accounted on accrual basis. Alternatively, it was submitted that enhanced income is entitled to deduction under section 80P of the Act. In this context, the learned AR relied on the CBDT Circular No.37/2016 dated 02.11.2016 and order of Bangalore Bench of the Tribunal in the case of Shreerama Credit Co-operative Society Ltd., Vs. ACIT in ITA No.436/Bang/2023 (order dated 20.07.2023).

8. Learned DR supported the order of the AO and CIT(A).

9. We have heard the rival submissions and perused the material on record. The issues raised before the Tribunal read as follows:

- The eligibility of interest and dividend income from Co-operative banks for deduction under Section 80P(2)(d) of Rs.48,33,774/-.
- Disallowance of provision for interest expenses of Rs.78,87,620/-.
- Disallowance of provisions for various expenses of Rs.16,00,308/-.

10. We find that CIT(A) has not adjudicated the issues though specific grounds were raised before him. The AO also disallowed the claim of deduction under section 80P of the Act primarily holding that assessee had violated the principles of mutuality since it was dealing with nominal members and not with regular members. The contentions that are raised now before ITAT were never subject matter of examination by the AO. In the interest of justice and equity, the above three issues that are raised before the Tribunal are restored to the files of the AO. The AO is directed to afford a reasonable opportunity of hearing to the assessee before a decision is taken in the matter. Assessee shall file the necessary documents / evidence in support of its case. It is ordered accordingly.

11. In the result, appeal filed by 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

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 23.01.2024.

/NS/*

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|---------------|------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR,ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.