

आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.259/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2017-18)**

Nunna Primary Agricultural Co-op Vs. Income Tax Officer
Credit Society Ltd. Ward-3(5)
D.No.6-56, Nunna Village Vijayawada
Vijayawada Rural
Krishna District
[PAN : AABAN2838D]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri I Kama Sastry, AR
प्रत्यर्थी की ओर से / Respondent by : Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing : 07.02.2024
घोषणा की तारीख/Date of Pronouncement : 20.02.2024

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1056387531(1) dated 21.09.2023, arising out of order passed u/s 144 of the Income Tax Act, 1961 (in short 'Act') dated 25.12.2019 for the Assessment Year (A.Y.) 2017-18.

2. Brief facts of the case are that as per the information in the possession of the Department, the assessee deposited cash of Rs.36,42,500/- on 10-11-2016 i.e during demonetization period, in it's account number 064522050000394 held with the Krishna District Central Co-operative bank, Satyanarayanapuram. As the assessee did not file it's return of income before the due date u/s. 139(1) of the Act, a notice u/s. 142(1), calling for return of income was issued on 24.11.2017 and served on the assessee on 29.11.2017. However, the assessee has not complied with the notice and failed to file return of income even by 31.03.2018 i.e., the last date to file valid return of income. Hence, the Assessing Officer (AO) issued notice u/s 142(1) of the Act dated 20.09.2019 and served on the assessee on 24.09.2019, calling for information for assessing the income of the assessee for the A.Y.2017-18. In response, the assessee has furnished the information stating that the assessee, society is having 5579 members during F.Y. 2016-17 and it has been providing credit facility to fulfil the primary needs of its members i.e., sanction of crop loan, supply of fertilizers etc. Out of the deposits collected from it's members and the income earned is out of activities / services rendered among the members of the society. The assessee has also furnished Trading Account, Income & Expenditure Account &

Balance Sheet as on 31.03.2017. On verification of the information furnished and evidences filed, the AO observed that the assessee has not filed the return of income for the AY 2017-18 as per the provisions of section 139 of the Act. However, in the submissions made during the assessment proceedings, P&L account filed, the assessee claimed that the entire profit earned of Rs. 48,36,915/- is deductible u/s 80P of the Act on the profits earned out of its activities. On perusal of the submissions made by the assessee, the AO held that the claim made is not acceptable in view of the provisions of Section 80A(5) of the Act as no return of income is filed and the provisions of Section 80A(5) are clearly applicable since the assessee failed to make the claim of deduction u/s. 80P(2)(a)(i) of the Act. Hence, the AO completed the assessment, passed assessment order u/s 143(3) r.w.s. 144 of the Act dated 25.12.2019 and brought to tax the net profit shown by the Assessee in the P & L account for the period under consideration amounting to Rs. 48,36,915/- as income from business for the A.Y 2017-18.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee *in-limine* as per the provisions of section 249(4)(b) of the Act.

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

1. *In the facts and circumstances of the case and as per law the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre is not justified in dismissing the appeal of the assessee in limine under section 249(4)(b) of the Income-tax Act, 1961.*

2. *In the facts and circumstances of the case and as per law the Ld. Income-tax Officer, Ward-3(5), Vijayawada is not justified in disallowing the claim for deduction under section 80P:*

i. Being beyond the scope of the reasons for which the case of the assessee is selected for scrutiny and without obtaining the approval of the competent higher authority as mandated.

ii. Though the return of income has not been filed by the assessee but the claim for deduction under section 80P having been made before the AO during the course of the assessment proceedings and acknowledged in the assessment order.

3. *All the above grounds of appeal are mutually exclusive and without prejudice to one another.*

4. *The appellant craves leave to add to; alter; amend; delete all or any of the above grounds of appeal.*

5. At the outset, the Ld.AR brought to our notice that the Ld.AO denied the exemption claimed u/s 80P of the Act on the ground that the assessee has not filed the return of income within the due date of filing the return of income. Aggrieved by the said order, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) erroneously dismissed the appeal of the assessee *in-limine*, saying that the assessee has not paid tax on the admitted income. He further submitted that the assessee has not

admitted any income and he filed the return of income as Nil. Hence, the question of admitted income does not arise. He, therefore, pleaded to set aside the order passed by the Ld.CIT(A) and remit the matter back to the Ld.CIT(A) with a direction to dispose of this appeal on merits.

6. Per contra, the Ld.DR relied on the order passed by the Ld.CIT(A) and pleaded to uphold the order passed and dismiss the appeal of the assessee.

7. I have heard both the parties and perused the material available on record. It is an admitted fact that the assessee has not admitted any income and after receipt of the notices, he filed the return of income, showing the income as 'Nil', but the AO denied the exemption claimed u/s 80P to the assessee on the ground that the assessee has not filed the return of income within the due date and he relied on the provisions of section 80A(5) of the Act. I am of the view that there is no admitted income from the assessee society, hence, the question of payment of tax on admitted income does not arise. Therefore, I am of the considered view that the Ld.CIT(A) is not correct in dismissing the appeal of the assessee *in-limine* u/s 249(4)(b) of the Act. Hence, I set aside the order of the Ld.CIT(A) and remit the matter to the file of the Ld.CIT(A) with a

direction to dispose of this appeal on merits after giving opportunity of being heard to the assessee. The assessee is also directed to adhere to the notices issued by the department and cooperate with the proceedings of the Ld.CIT(A).

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

Order pronounced in the open court on 20th February, 2024.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 20.02.2024
L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Nunna Primary Agricultural Co-op Credit Society Ltd., D.No.6-56, Nunna Village, Vijayawada Rural, Krishna District
2. राजस्व/The Revenue – The Income Tax Officer, Ward-3(5), CR Building, 1st Floor Annex, MG Road, 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