

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1155/Bang/2023
Assessment Year : 2017-18

M/s. Manjunatheshwara Credit Co-operative Society Ltd., No. 20, 3 rd Main, 2 nd Block, Ring Road, Nandini Layout, Bangalore – 560 096. PAN: AAKAS1721M	Vs.	The Income Tax Officer, Ward – 6(2)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Chaithanya V Mudurubettu, Advocate
Revenue by	:	Shri Subramanian .S, JCIT DR

Date of Hearing	:	28-02-2024
Date of Pronouncement	:	28-02-2024

ORDER

PER BENCH

This is an appeal filed by the assessee against the ex-parte order passed by the NFAC, Delhi order dated 26.10.2023, DIN & Order No. ITBA/NFAC/S/250/2023-24/1057367614(1) for A.Y. 2017-18 on the following grounds of appeal:

“1. The appellant denies itself liable to be taxed on disallowance of Rs. 52,59,540/- as assessed by the learned CIT(A) as against the return income of Rs. NIL under the facts and circumstances of the case of the appellant.

2. The ld CIT(A) has erred in disallowing the claim of deduction of an amount of Rs.51,62,212/- u/s.80P(2)(a)(i) of the Act on the fact and circumstances of the case.

3. Both the Assessing Officer and CIT(A) failed to understand that the governing Act is to be followed for arriving at total income of Society and not the general taxing Act i.e., Income Tax Act under the fact and circumstances of the case.

4. The ld CIT(A) failed to appreciate the Supreme Court's judgement in Mavilayi Service Co-operative Bank Ltd., for the proposition that the Karnataka Co-Operative Societies Act, 1959 prevails over the general taxing Act i.e., Income Tax Act, 1961 under the facts and circumstances of the case. The said proposition is discussed in para 46 of said judgement.

5. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

6. In view of the above and the other grounds that may be urged at the time of hearing of the appeal, your Appellant prays that the appeal may be allowed in the interest of equity and justice.”

2. The brief facts of the case are that the assessee filed the return of income on 17.01.2018 declaring Nil income. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee filed explanations, the details of the income earned from members and others were also submitted and assessee submitted that it is a credit co-operative society registered under the Karnataka State Co-operative Societies Act, 1959 to carry on the business of providing credit facilities to its members. Therefore the assessee is eligible to claim deduction

u/s. 80P(2)(a)(i). It was also noted that the assessee has received interest from its deposits as per para 4 of the assessing officer's order of Rs.58,25,920/- on its surplus funds. The assessing officer discussing the issue and relying on the judgment of Jurisdictional High Court of Karnataka in the case of PCIT vs. The Totagars Co-operative Sale Society, Sirsi reported in (2017) 395 ITR 611 and held that the assessee is not eligible for deduction on the interest income earned from its investments kept with co-operative banks / banks. Accordingly, he restricted the deduction to the extent of Rs.51,62,212/-. He further noted that the assessee has earned Rs. 97,329/- from non-members on account of e-stamping services and it was also added into the income of the assessee and the assessed income was considered at Rs.52,59,540/-.

3. Aggrieved from the above order, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) issued notices on various dates but the assessee did not file any submissions against the notices issued and repeated non-compliance. The case was decided ex-parte and dismissed the appeal of the assessee.

4. The Ld.AR submitted that the notices issued by the assessee were not served to the assessee. Therefore the assessee could not comply the notices. The Ld.AR of the assessee undertook that if a chance is given to the assessee, he will comply with all the notices issued by the revenue authorities and he will also file necessary documents to substantiate the case.

5. On the other hand, the ld.DR relied on the order of the lower authorities and he submitted that during the course of assessment proceedings, the assessee also did not comply properly of the notices issued by the AO and also by the CIT(A). The assessee did not file the appeal within the due date as prescribed under Income-tax Act. He, therefore, objected for sending back the issue to the file of the lower authorities.

6. Considering the rival submissions, we note that the assessing officer had disallowed the deduction claimed by the assessee u/s. 80P on the interest received from the co-operative banks / banks and stamping service income of Rs. 52,59,540 (Rs.51,62,212/- and Rs.97,329/-)in which the assessee had claimed deduction. However, during the appellate proceedings before the First Appellate Authority (FAA) , the assessee did not comply of the notices and submitted that the notices were not issued/served to the assessee. Therefore the CIT(A) has passed an ex-parte order. 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 FAA for fresh consideration. The FAA 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 and further assessee is directed to update the email, mobile no. and address for communication.

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

Order pronounced on the 28th day of February, 2024, through virtual hearing.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, the 28th February, 2024.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore