

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

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

ITA No.236/Bang/2024
Assessment Year : 2018-19

Purse-seine Fishermen's Primary Service Co-op. Society Ltd., Fisheries Road, Kota, Udupi District – 576 221. PAN : AAEAP 3014 E	Vs.	The Income Tax Officer, Ward 1 & TPS, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Mahesh R Uppin, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of hearing	:	11.03.2024
Date of Pronouncement	:	04.04.2024

ORDER

PER SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi on 29/12/2023 in DIN No.ITBA/NFAC/S/250/2023-24/1059205725(1)for the assessment year 2018-19 with the following grounds of appeal:-

“1. Whether on the facts and circumstances of the case, the First Appellate Authority was justified in dismissing the appeal as infructuous ignoring the fact that the impugned Rectification order dt. 13-08-2021 culminated with the original Assessment Order dt. 2603-2021 and appeal was rightly preferred against the latter order (Rectification Order) in consonance with the principle of 'Doctrine of Merger'.

2. Whether both the authorities below are right in denying benefit of deduction under Section 80P of the Act against the interest on investments of Rs. 6,38,531/- earned from deposits made in Co-op. Banks.

3. Both the authorities below passed the impugned Orders contrary to established principles laid down by the Hon'ble Supreme Court and jurisdictional High Court. “

2. The brief facts of the case are that the assessee is engaged in the business of supply diesel and fishing equipment to its members. The assessee filed return of income on 06/10/2018 on the gross total income of Rs.1,62,32,812/- and total income of Rs.3,82,380/- after claiming deduction of Rs.1,58,50,432/- u/s 80P of the Act. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of the assessment, it was noticed that the assessee has received interest income of Rs.5,67,554/- as interest on time deposit and Rs.70,977/- interest on savings bank account from different banks and the assessee claimed deduction u/s 80P(2) of the Act and the same was denied by the AO. The AO discussed the issues and completed the assessment u/s 143(3) of the Act and assessed income at

Rs.10,20,910/- While computing tax the income was considered at Rs. 1,62,32,810/- and demand was generated at Rs.77,53,634/-.

3. The assessee filed rectification application and it was noticed that in the computation sheet, the total income was adopted at Rs.1,62,32,812/-. The AO rectified the mistake u/s 154 and passed order on 13.08.2021 assessing the income at Rs.10,20,910/-.

4. The assessee filed appeal before the CIT(A) vide Form No.35 dated 13/09/2021 showing at Sl. No.2, the details of the order appealed against is as under:-

- a. Section and sub-section of the
Income-tax Act, 1961 - 154
- b. Date of Order - 13-Aug-2021
- c. Date of service of Order/
Notice of Demand - 14-Aug-2021

5. However, the ground taken by the assessee was with respect to the disallowance u/s 80P(2) of the Act u/s. 143(3) order. The Id.CIT(A) dismissed the appeal of the assessee stating the appeal filed by the assessee is infructuous because the AO has already rectified the order u/s 154 of the Act in which, there was a mistake while passing order u/s 143(3) of the Act.

6. Aggrieved from the above order, the assessee filed appeal before the ITAT challenging the grounds noted supra.

7. The ld.AR reiterated the submission made before the lower authorities, and submitted that the CIT(A) has not adjudicated the issue on merits of the case as per grounds of appeal and dismissed the appeal of the assessee. There was mistake in Form No. 35 and it was noted in column 02 order under section 154. Therefore, he requested that the matter may be sent back to the CIT(A) for fresh consideration.

8. On the other hand, the ld.DR strongly relied on the orders of the lower authorities and submitted that the assessee has filed appeal against the rectification order passed by the AO dated 13/08/2021, which is clear from Form No.35, therefore, the CIT(A) has rightly dismissed the appeal of the assessee. Since the assessee has given wrong information, he objected for giving chance to the assessee.

9. In the rejoinder the ld.AR of the assessee submitted that the grounds of the appeal taken by the assessee in Form No.35 is on the merits of the addition made by the

AO for denying deduction u/s 80P(2) of the Act on the interest received on time deposit and savings bank account from different banks. Whereas, the CIT(A) has not gone through on the grounds of appeal. Therefore, as per the appeal of the assessee, the appeal should be restored for fresh consideration/decision by the CIT(A).

10. Considering the rival submissions, we note that the case was selected for scrutiny and AO completed the assessment u/s 143(3) of the Act on 26/03/2021 by denying deduction u/s 80P(2) of the Act on the interest received by the assessee on time deposit and interest on savings bank account to the tune of Rs.6,38,531/- and the order was passed on 26/03/2021. The AO made mistake while computing tax in consequence of assessment order u/s 143(3) which was rectified by the AO on 13.08.2021. Against the above order, the assessee, if it wants to file appeal before the CIT(A) the appeal should have filed appeal within the date of 30 days from the date of receipt of the order passed by the AO. However, we note from the Form No.35 at Sr.No. 02 the information given by the assessee is with regard to the rectification order passed by the AO u/s 154 of the Act on 13/08/2021 and date of service of order/notice of demand is on 14/08/2021 but the grounds taken by the assessee are disallowance of

deduction claimed. However, the AO has accepted the rectification application therefore, there was no need to file appeal against the acceptance by the AO for rectifying the mistake u/s 154 of the order, if the assessee wants to file appeal, it should have filed appeal against the order passed u/s 143(3) of the Act dated 26/03/2021, therefore, the appeal filed by the assessee against the order u/s 154 is infructuous. However, we note from the grounds of the appeal taken before us, these grounds are not emanating from the findings of the CIT(A). In such circumstance, the assessee is at liberty to file appeal before the CIT(A) against the assessment order u/s 143(3) of the Act dated 26.03.2021. Hence, we dismiss the appeal of the assessee in above terms.

11. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 4th day of April, 2024

Sd/-

(GEORGE GEORGE K)
Vice President

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated : 04.04.2024.
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