

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

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

ITA No.244/Bang/2024
Assessment Year : 2017-18

M/s Kajekar Seva Shakari Bank, Pandavarakallu, B Kajekar, Bantwal – 574 233.  <b>PAN : AAAAK 2473 Q</b>	Vs.	The Income Tax Officer, Ward-2(3), Mangalore
APPELLANT		RESPONDENT

Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of hearing	:	12.03.2024
Date of Pronouncement	:	16.04.2024

**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 dated 02/12/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1058419224(1) for the assessment year 2017-18.

2. The assessee challenged the sole and substantive issue raised on various grounds relates to challenging the ex-parte order passed by the CIT(A). The CIT(A) issued various notices to the assessee but the assessee did not reply to any of the notices. We also note from the assessment order, which is ex-parte order passed u/s 144 of the Act.

3. The assessee filled return of income on 07/11/2017 declaring Nil income. However, the claim of deduction u/s 80P of the Act was Rs.26,33,738/- and the case was selected for scrutiny on two reasons i.e

1) Deduction under Chapter VI A

2) Investments/Advances/Loans

4. The AO issued various notices but there was no response from the assessee side, only once the assessee replied on 12.11.2018, therefore, the AO completed the assessment ex-parte and disallowed the deduction claimed by the assessee u/s 80P(2) of the Act. The AO noted that the interest income received by the assessee of Rs.4,01,705/- and the income from principal business is Rs.22,32,033/- to which, the assessee claimed deduction. The AO after relying on the judgment of Hon'ble Apex Court

in the case of M/s Citizen Co-operative Society Ltd. reported in 397 ITR 1, noted that the assessee has failed the principle of mutuality and he also referred to the provision of Karnataka Co-operative Society Act 1959.

5. Aggrieved, the assessee filed appeal before the CIT(A).

6. The CIT(A) issued various notices on different dates. However, the assessee did not respond to any of the notices, therefore, the CIT(A) also decided the issue on the basis of material available before him and dismissed the appeal of the assessee.

7. Aggrieved, the assessee filed appeal before the ITAT.

8. The ld.AR of the assessee submitted that the notices issued by both the authorities were not received by the assessee except one notice, hence assessee could not respond to the notices, he prayed that the assessee has a good case and assessee is eligible for deduction u/s 80P(2)(a)(i)/80P(2)(d) of the Act, which has been denied by the assessee solely relying on the judgment of Hon'ble Apex Court in the case of Citizen CO-operative Society reported in 397 ITR 1 and the AO also disallowed the interest received on investments ,which is eligible for

deduction u/s 80(2)(a)(i)/80P(2)(d) of the Act. However, it has been treated as income from other sources.

9. On the other hand, the ld.DR strongly relied on the orders of the lower authorities and submitted that both authorities have given ample opportunities to the assessee and sufficient time were also granted and both the authorities below rightly decided the issue on merits.

10. Considering the rival submissions, we note that the AO is denied deduction u/s 80P(2)(a)(i)/80P(2)(d) of the Act and the interest received on investments has been considered as income from other sources. The AO relied on the judgment of Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd. During the course of assessment proceedings, the assessee has furnished audited balance sheet and profit and loss account. However, the assessee did not respond to the notices u/s 142(1) dated 11/11/2019, in which various details were called for and assessee also did not respond to the final show cause notice issued by the AO. Therefore, the AO noted from the documents available before him that the assessee has violated the provisions of Karnataka co-operative society Act and principle of mutuality. Accordingly, the AO noted that the assessee is not eligible for deduction u/s 80P(2) of the Act and completed the assessment. Before the CIT(A)

also the assessee also did not respond to any of the notices. 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 AO for fresh consideration. The AO 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 update the email, mobile No. and address for communication.

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

Order pronounced on the 16<sup>th</sup> day of April, 2024 in the open court.

Sd/-  
**(GEORGE GEORGE K)**  
Vice President

Sd/-  
**(LAXMI PRASAD SAHU)**  
Accountant Member

Bangalore,  
Dated : 16.04.2024.  
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