

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA No.219/Bang/2024
Assessment Year : 2017-18

Anugraha Vividhodesha Sahakari Sangha, 1 <sup>st</sup> Floor, Sankarshana Complex, Ujire, Belthangady – 574 240. <b>PAN – AACAA 3608 H</b>	Vs.	The Income Tax Officer, Ward – 1, Puttur.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Pratibha R, Advocate
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of hearing	:	05.03.2024
Date of Pronouncement	:	05.03.2024

**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 19/12/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1059202732(1) for the assessment year 2017-18 on the following grounds:

*“1 The learned CIT(A) erred in upholding the order of the Assessing Officer without considering the submissions made by the appellant.*

- 2. The learned CIT(A) ought to have appreciated the fact that the appellant society has not violated any provisions u/s.80P(2)(a)(i) of the Act and the same are enforced in the by-laws of the society.*

*and same was upheld by the CIT(A) without providing an opportunity, is bad in law. Hence the order passed by him is unjustified and not in accordance with the law.*

- 3. The learned CIT(A) erred in confirming the order of the AO by not considering the fact nor the judgment held that the interest earned by credit co-operative societies on deposits with banks is an income attributable to business and hence eligible for claim of deduction.*
- 4. The Id. CIT(A) erred in confirming the addition of Rs.42,00,202/- as income from other sources without providing an opportunity to the Appellant.*
- 5. The case laws relied by the CIT(A) are distinguishable.*
- 6. Without prejudice, the addition confirmed is arbitrary excessive unreasonable, and liable to be deleted in toto.*
- 7. For these and such other grounds that may be urged at the time of the hearing, the Appellant prays that the appeal may be allowed.”*

2. The brief facts of the case are that the assessee is a primary agricultural co-operative society engaged in the business of acceptance of deposits from members and lending loans to members and also providing public distribution services. The assessee filed return of income on 15/09/2017 declaring a total income of Rs.Nil after claiming deduction of Rs.20,84,485/- 80P of the Act. The

case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment, the assessee filed detailed submission as called for. The AO, from the documents submitted, examined that the claim of deduction u/s 80P(2)(a)(i) of the Act and noted as per para No. 6.14 that there are 3 classes of member, which are as under:-

- 1) A Class Members -406
- 2) B Class Members – 81
- 3) C Class Members – 498

3. Accordingly, the AO noted that as per the provision of sec. 18 of the Karnataka Societies' Co-operative Act 1959, amended w.e.f 06/09/2014, the associated members should be within 15% of the total number of members. There is violation of the provisions of the Karnataka co-operative societies' Act 1959 as well as violation of the principles of mutuality. The AO also relied on the judgments of Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd., [Civil Appeal No.10245/2017] reported in [2017] 397 ITR 1. As per the judgment of Hon'ble Apex Court, the assessee is not eligible for claim of deduction u/s 80P(2)(a)(i) of the Act and he also noted that the assessee is also not eligible for claim of deduction u/s

80P(2)(d) of the Act relying on the recent judgment of Hon'ble Jurisdictional High Court in the case of Totgar Co-operative Sales Society in ITA No.100066/2016 dated 16/06/2017 and he also made other additions. Accordingly, the total income is of Rs.42,00,202/-.

4. Aggrieved from the order of the AO, the assessee filed appeal before the CIT(A).

5. The CIT(A) issued 6 notices but there was no response from the assessee side. Accordingly, he dismissed the appeal of the assessee.

6. Aggrieved from the order of the CIT(A), the assessee filed appeal before the ITAT.

7. The ld.AR of the assessee submitted that the notices issued by the CIT(A) were not served to the assessee. Accordingly, the assessee could not respond to any of the notices issued by the ld.CIT(A). The assessee presented the case before the AO. Therefore, she requested that if a chance is given to the assessee before CIT(A), she undertook that the assessee will respond to the notices issued.

8. On the other hand, the ld. DR relied on the order of lower authorities. He objected for sending the appeal back to the file of the lower authorities.

9. After considering the rival submissions, we note that the AO has not allowed the claim of the assessee u/s 80P(2)(a)(i) of the Act by observing that the assessee has violated the sec. 18 of the Karnataka Co-operative Societies Act as well as principles of mutuality. The assessee is also not eligible for deduction u/s 80P(2)(a)(i) of the Act on the interest received from the banks. We noted from the order of the CIT(A) that the CIT(A) issued various notices on different dates but there was no response from the assessee side and the ld.AR of the assessee submitted that the notices were not served to the assessee. Considering the request made by the ld.AR of the assessee, we think it fit to send back to the file of CIT(A) for fresh adjudication. Hence, in the interest of justice, we are remitting the issue back to the file of the CIT(A) for fresh consideration to 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.

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

Order pronounced in court on 5<sup>th</sup> day of March, 2024 through virtual hearing.

Sd/-

Sd/-

**(SANDEEP SINGH KARHAIL)**  
**Judicial Member**

**(LAXMI PRASAD SAHU)**  
**Accountant Member**

Bangalore,  
Dated : 05.03.2024.  
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

Assessment Registrar, ITAT, Bangalore