

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

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

ITA No.1119/Bang/2023
Assessment year : 2017-18

Shree Jagadguru Mouneshwar Pattin Sahakari Niyamit, Opp. Bus Stand, Kerur, Badami, Bagalkot. 587 206. PAN : AALAS 7428L	Vs.	The Income Tax Officer, Ward 1, Bagalkot.
APPELLANT		RESPONDENT

Appellant by	:	Shri Prasanna N. Urala, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	21.02.2024
Date of Pronouncement	:	14.05.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 20.11.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18.

2. The brief facts of the case are that the assessee is a co-operative society registered under Karnataka Co-operative Societies Act, 1959. For the AY 2017-18 assessee has not filed return of income. It was noticed that assessee made cash deposits in its bank account during demonetisation period and as no return of income was filed, the case

was selected for scrutiny under Operation Clean Money (OCM) to verify the genuineness of cash deposits made. Notices u/s. 142(1) was issued to assessee. As there was no response, reminder letters dated 16.09.2019 and 04.11.2019 were issued and final show cause notice was issued on 27.11.2019 proposing to make addition of cash deposits of Rs.34,73,000 as unexplained money u/s. 68 of the Act. The assessee replied on 02.12.2019 stating that assessee is eligible for deduction u/s. 80P for cash deposits during demonetisation period and contended that it was only acting as agents of Urban Bank and DCC Bank and the members had repaid their loan amounts and further that A/c. No.1210029 does not belong to assessee. The deposits of Rs.18,46,500 are made in its account No. 100105.

3. The AO observed that the assessee did not file return of income u/s. 139(4) or in response to notice u/s. 142(1) dated 06.02.2018. As per section 80A(5), deduction can be claimed only after filing return within specified time limit. Hence deduction u/s. 80P of Rs.28,92,878 was denied and brought to tax.

4. Regarding the cash deposits during demonetisation period, the AO further noted that as per RBI letter dated 08.11.2016 and Govt. of India Gazette Notification dated 08.11.2016 the assessee was not a designated authority authorized by RBI to collect such SBNs(Specified Bank Notes) and these SBNs collected after 08.11.2016 had no value and becomes unexplained in the hands of the assessee since the assessee's bank account was credited by the deposit amount.

Though proof may be provided by the assessee to show that it was members money, the members ought to have deposited the same into their bank accounts to make the old notes count as allowed by RBI. Ordinary public (members of society) were only allowed to use old notes in SBNs in exceptional circumstances for payment to Central/State Govt. School / college fee, utility bills, medicines, milk, fuel & LPG as per directions of Govt. of India. They were allowed to deposit currency accumulated upto 07.11.2016 into their bank accounts to convert into legal tender. Other than these exceptions, such notes had no value. Hence the AO accepted that assessee's deposits were only Rs.18,46,500 and treated it as unexplained cash credit u/s.68 and taxed it u/s. 115BBE of the Act.

5. Aggrieved the assessee filed appeal before the First Appellate Authority (FAA) and filed additional documents / evidence. The FAA called for remand report. In the remand proceedings, the assessee stated that the cash deposits are received from members only and deposited into their loan accounts resulting in reducing the balance of members loan account and details were also furnished like members Aadhar, PAN, address, denomination of cash deposits in SBNs, etc. After considering these details and the remand report, the FAA accepted cash deposits of Rs.2,20,000 in bank account on 08.11.2016 and rest amount of Rs.16,26,500 was treated as unexplained money. Deduction u/s. 80P was also denied since the assessee failed to file return of income.

6. Aggrieved from the above order, the assessee filed appeal before ITAT.

7. The Id AR reiterated the submissions made before the revenue authorities and filed paperbook pages 1 to 88. The Id. AR submitted that assessee accepts cash from members only on 10th to 13th & 14th Nov. 2016 and the said amount was deposited in the loan account of members. After the directions issued by RBI, accepting cash in SBNs from members was completely stopped. He also referred to pages 13 to 16 of PB showing details of datewise cash accepted by the assessee from its members with Aadhar, election card for proof of members and denomination of currency. These details were furnished before the FAA and the assessee discharged its liability cast u/s. 68 for proving the cash credit and therefore addition should not be made in the hands of assessee.

8. Further in respect of deduction u/s. 80P(2)(a)(i), the assessee submitted that assessee is assessed to income tax for the first time and new to the income tax provisions. He relied on two decisions of the coordinate Bench in case of Prathamika Krishi Pattina Sahakara Sangha in ITA No.614/Bang/2021 and Sri Bhageeratha Pattina Sahakara Sangha Niyamitha in ITA No.646/Bang/2021 and submitted that filing of return of income for claim of deduction u/s. 80P is not mandatory. The provisions of section 80A(5) was directory in nature. He also referred to section 80AC for the relevant AY and submitted there was no provision for compulsory filing of return for claiming

deduction u/s. 80P as held by the Tribunal in the case of Prathamika Krishi Pattina Sahakara Sangha in ITA No.814/Bang/2021.

9. On the other hand, the Id. DR relied on the order of lower authorities and submitted that the assessee was not authorized to accept SBNs during the demonetisation period and assessee accepted SBNs on 10, 11, 12 & 14 Nov. 2016 which is violation of Notification of RBI and GOI during the demonetisation period. Such currency had no value and assessee got the benefit in legal manner through depositing cash in its bank account.

10. Regarding deduction u/s. 80P, the Id. DR relied on the order of lower authorities and submitted that assessee is not eligible for deduction u/s. 80P(2)(a)(i) because assessee has not filed return of income and relied on ITA No.969/Bang/2023 for AY 2017-18 dated 02.01.2024 in which the coordinate Bench has followed the Hon'ble Kerala High Court judgment in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT [2023] 152 taxmann.com 347 (Kerala) in which it has been held that if the assessee did not comply the provision for filing return of income, then assessee is not eligible for deduction u/s. 80P of the Act.

11. Considering the rival submissions, we noted that the assessee is a credit co-operative society dealing with members only. During the demonetisation period, the members of the assessee deposited cash in SBNs in their accounts maintained with the society. The assessee has produced the datewise cash receipts from members and KYC of the

members. As per Notification of RBI and Govt. of India dated 08.11.2016 the assessee was not authorised to accept cash deposits in SBNs and the AO had made addition u/s. 68. We note that the assessee has filed details of cash deposits from members in their accounts with society along with KYC details and assessee has discharged the liability by providing details of members. Similar issue has been decided by the coordinate Bench of the Tribunal in the case of Sritherumalleshwara Co-op. Society in ITA No.187/Bang/2024 dated 27.03.2024 in which it has been held as under:-

“6. Considering the rival submissions, we noted that the assessee is a co-operative society and accepted cash from members during the demonetization period which was deposited in Vijaya Bank, Hiriyyur Branch out of which Rs.14,32,000 has been added by AO u/s. 69A and taxed u/s. 115BBE of the Act. We note that during the course of assessment proceedings, the assessee did not file return of income after receiving notice as well as u/s. 139 or 142(1). The assessee had submitted details of cash depositors which is placed at page 1 of PB. It is clear from the details that the assessee has accepted cash from 43 members. A similar issue has been decided by the coordinate Bench in ITA No.329/Bang/2023 for AY 2017-18 dated 24.08.2023 in which it has been held as under:-

“7. We have considered the rival submissions. The assessee is a credit co-operative society dealing with the members only. During the demonetisation period the members of the society have deposited cash in pigmy a/c, SB A/c, loan a/c. etc. The assessee has produced a list of depositors and the amount deposited by members with denominations of currency. The assessee has accepted the deposits from its members from 9.11.2016 to 14.11.2016. As per Gazette Notification of RBI & Govt. of India dated 08.11.2016, the assessee was not authorized to accept cash deposits in SBNs. The AO observed that the assessee was not authorized to receive or collect money in SBNs of

Rs.1,000 and Rs.500 which were not in legal tender w.e.f. 09.11.2016 and such transactions on or after 09.11.2016 cannot be entered in cash book. The cash deposits made by the members of the society had no value as such. The Assessing Officer issued show-cause notice by observing that the impugned amount should be treated as income of the assessee u/s 69A of the Act., however the AO made addition u/s 68 of the I.T. Act. The assessee has satisfied the requirement of section 69A of the Act and the AO did not give further opportunity to the assessee for addition u/s 68 of the I. T. Act. During the assessment proceedings, assessee filed the details of list of depositors and loanees who made cash deposits. The AO accepted that it was money deposited by the members and noted that the assessee had brought the entries in its books of account, therefore section 68 will apply and accordingly treated it as income u/s. 68. There is no doubt that the assessee has satisfied the identity of the deposits, who are members of the society and genuineness of the transactions because the amounts have been deposited in the members accounts only. If the AO had any doubts that the assessee has not satisfied the ingredients of section 68, he could have asked further details from the assessee, but the AO has not done the same, which clearly shows that the assessee has discharged its duty to satisfy the requirement of section 68. We further note that the SBNs have been deposited in the members accounts, accordingly, the assessee did not get any extra benefit as observed by the AO in his order at para No. 06 which was treated as income us 69A of the Act. In view of this, the provisions of section 68 is not applicable in the present facts of the case and the AO without discussing in detail has made addition u/s. 68 which is not proper. Therefore the addition is deleted.”

7. The details submitted by the assessee was not doubted by the AO. Since in this case the Id. DR submitted that this requires verification, we remit this issue to the AO for verification of the details of cash deposits submitted by the assessee and decide as per law following the above coordinate Bench decision in ITA No.969/Bang/2023 (supra). The assessee is directed to furnish all

the details and substantiate its case without seeking any unnecessary adjournment for early disposal of the case.”

12. Following the above decision, we remit this issue in the above terms to the AO.

13. Further, in respect of deduction u/s. 80P(2)(a)(i), we note that assessee has not filed the return of income for the impugned assessment year in spite of opportunity granted by the AO. Accordingly deduction has not been allowed by the revenue authorities. This issue has been decided by the Tribunal in ITA No.187/Bang/2024 (supra) order dated 27.03.2024 in which it has been held as under:-

“ 8. The Id. AR submitted that deduction u/s. 80P should not be denied to the assessee on the business profit earned during the year. In this regard, we noted that the assessee did not file return of income u/s. 139 as well as after opportunity given by the AO. We do not find any substance in the submissions of the Id. AR and we hold that without filing return of income the deduction u/s 80P is not to be allowed to the assessee as held by the co-ordinate bench in ITA No.969/Bang/2023. The relevant part is as under:-

“9. It is clear from the above section that for claiming deduction under Chapter VIA under the head, “Deductions to be made in computing total income”, which covers section 80P also, the assessee has to file return of income. However, the assessee did not file return of income at all and therefore the assessee is not eligible for deduction u/s. 80P of the Act. The Hon’ble Kerala High Court in the case of Nileshtar Rangedkallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT [2023] 152 taxmann.com 347 (Kerala) has held as under:-

- “11. On a consideration of the rival submissions and on a perusal of the statutory provisions, we find that a reading of section 80A(5) and Section 80AC of the IT Act as they stood prior to 1-4-2018, when the latter provision was amended by Finance Act 2018, would reveal that the statutory scheme under the IT Act was to admit only such claims for deduction under section 80P of the IT Act as were made by the assessee in a return of income filed by him. That return can be under sections 139(1), 139(4), 142(1) or section 148, and to be valid, had to be filed within the due date contemplated under those provisions. Under section 80A(5), the claim for deduction under section 80P could be made by an assessee in a return filed within the time prescribed for filing such returns under any of the above provisions. The amendment to Section 80AC with effect from 1-4-2018, however, mandated that for an assessee to get a deduction under section 80P of the IT Act, he had to furnish a return of his income for such assessment year on or before the due date specified in section 139(1) of the IT Act. In other words, after 1-4-2018, even if the assessee makes his claim for deduction under section 80P in a return filed within time under sections 139(4), 142(1) or section 148, he will not be allowed the deduction, unless the return in question was filed within the due date prescribed under section 139(1). Thus, it is clear that the statutory scheme permits the allowance of a deduction under section 80P of the IT Act only if it is made in a return recognised as such under the IT Act, and after 1-4-2018, only if that return is one filed within the time prescribed under section 139(1) of the Act. As the return in these cases, for the assessment years 2009-10 and 2010-11, were admittedly filed after the dates prescribed under sections 139(1) and 139(4) or in the notices issued under section 142(1) and section 148, the returns were indeed non-est and could not have been acted upon by the Assessing Officer even though they were filed before the completion of the assessment.
12. There is yet another aspect of the matter. The requirement of making the claim for deduction in a return of income filed by the assessee can be seen as a statutory pre-

condition for claiming the benefit of deduction under the IT Act. It is trite that a provision for deduction or exemption under a taxing Statute has to be strictly construed against the assessee and in favour of the Revenue. Thus viewed, a failure on the part of an assessee to comply with the pre-condition for obtaining the deduction cannot be condoned either by the statutory authorities or by the courts.”

9. Respectfully following the above judgment, we hold that the assessee is not eligible for deduction u/s. 80P of the Act.

10. During the course of hearing, the Id. AR relied on the coordinate Bench decision in the case of Prathamika Krishi Pattina Sahakara Sangha Ltd. (supra) dated 13.06.2022 which will not support the case of the assessee because the Hon’ble Kerala High Court, which is a higher forum, in a later judgment dated 14.03.2023 has dealt with this issue as noted above. Therefore the issue raised by the assessee regarding deduction u/s. 80P is dismissed.”

14. Following the above decision, we dismiss the ground raised by the assessee regarding deduction u/s. 80P (2).

15. Ground Nos.1 and 6 are general in nature.

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

Pronounced in the open court on this 14th day of May, 2024, as per Rule 34 of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

Sd/-

(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 14th May, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.