

**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. 14/Bang/2024
Assessment year : 2017-18

Sri Vrashabhanath Alphasankhyatar Pattin Sahakari Sangh Niyamith, 1, A.J. Dhanashetti Building, Station Road, Mahaveer Circle Area, Indi – 586 209. PAN : AAIAS 3602B	Vs.	The Income Tax Officer, Ward 2, Bijapur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Prasanna N. Urala, Advocate
Respondent by	:	Shri G. Manoj Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	21.03.2024
Date of Pronouncement	:	21.03.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the ex parte order dated 27.09.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 27.09.2023.

2. At the outset, we note that the appeal is time barred by 37 days and the assessee has filed affidavit dated 03.02.2024 of the CA M.N. Tapashetti stating that he underwent Angioplasty Stenting during the

period 10.6.2023 to 12.6.2023 and was under medical supervision for four to five months and was advised rest. Due to these reasons he was unable to attend professional work and there was delay of 37 days in filing appeal before the ITAT. Therefore condonation of delay is requested for.

3. After hearing both the parties, it is observed that there are sufficient reasons for the delay and following the judgment of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, delay in filing the appeal before the Tribunal is condoned.

4. The brief facts of the case are that the assessee filed return of income on 01.11.2017 declaring NIL income after claiming deduction under Chapter VIA amounting to Rs.32,51,428. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee submitted reply and the AO noted that assessee has regular members and contributed share capital of Rs.12,38,200 and has associate members contributed share capital of Rs.65,72,100. The assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 (KCS Act) and deriving income from providing credit facilities to the members. The assessee has nominal, associate and regular members. The assessee claimed deduction u/s. 80P(2)(a)(i) of the Act of Rs.32,51,428 and income has been received from regular members and Associate/nominal members. The AO noted that assessee has two class of members A Class and B Class and

rights of members are not equal. Apart from granting loans to A & B class members, the society has lent loan to the general public(Non-members) by making them members who are the members of the society as per balance sheet of the society as they do not fall under either of "A" Class or "B" Class members of the society and the assessee has violated the provision of Karnataka Co-operative Society Act. & Rules. The assessee has violated the principle of mutuality relying on the judgment of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd. and doing banking business. He also noted that assessee has received interest on investments with co-operative banks. The AO relied on the judgment of the Supreme Court in the case of Citizen Co-operative Society Ltd. in CA No.10245/2017, order dated 8.8.2017 and deduction u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act was denied.

5. The AO further noted that assessee has paid pigmy commission of Rs.8,22,333 and debited towards audit fee of Rs.55,000 in the Profit & Loss account, however the assessee has failed to deduct TDS on such payments. Therefore 30% of Rs.8,77,333 (8,22,333 + 55,000) was disallowed u/s. 40(a)(ia) of the Act.

6. The AO also noted that during the demonetisation period, the assessee has deposited cash of Rs.69,02,000 in its account with Union Bank of India and Vijapur DCC Bank, Indi Branch in SBNs of Rs.500 & Rs.1,000 which was not legal tender. Relying on the Gazette Notification No.2652 dated 8.11.2016 issued by Govt. of India and

other Notification/Directions issued by RBI, the AO treated the cash deposits in bank accounts as unexplained money after giving benefit of cash balance of Rs. 6,27,109/- as on 08.11.2016.

7. Aggrieved by the assessment order, the assessee filed appeal before the First Appellate Authority (FAA). The FAA issued various notices to the assessee on different dates, however there was no response from the assessee's side. Accordingly the FAA dismissed the appeal without going into the merits of the case. Against this, the assessee is in appeal before the ITAT.

8. The Id. AR submitted that assessee filed appeal before the FAA. Later on the case was migrated to NFAC in terms of Notification No.76 of 2020 in S.O 3296(E)dated 25.11.2020 issued from CBDT & notices were issued. The assessee did not receive any notice issued by the FAA, therefore could not respond to the proceedings. He undertook that if a chance is given, the assessee will comply all the notices issued by FAA and substantiate its case.

9. The Id. DR opposed to giving another chance to the assessee since the assessee did not respond to the notices issued by the FAA.

10. Considering the rival submissions, we note that during the assessment proceedings the AO has made additions as noted above. The case was migrated to NFAC in terms of Notification noted supra. The FAA issued various notices, but it was not responded and the FAA dismissed the appeal of the assessee ex parte. Therefore, considering

the prayer of the assessee, in the interest of justice, we deem it fit to provide one more opportunity to the assessee to substantiate its claim. Accordingly we restore the entire issues in appeal to the CIT(Appeals) for de novo consideration and decision as per law, after reasonable opportunity to the assessee. The assessee is directed to provide the correct email id, communication address with mobile number and comply with the notices issued. The assessee is also directed not to seek unnecessary adjournment for early disposal of the cases.

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

Pronounced in the open court on this 21st day of March, 2024, as per Rule 34 of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(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.