

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1427/Chny/2023
निर्धारण वर्ष/Assessment Year: 2018-19

Nilgiri Dist. Plantation Workers Co-op. Thrift & Credit Society J188, Rokby, Coonoor, The Nilgiris-643 102.	v.	The ITO, Ward-1, Ooty, Christo Building, II Floor, State Bank Road, Ootacamund-643 001.
[PAN: AABAN 4395 D]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Ms.N.V.Lakshmi, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Dr.D.Praveen, JCIT
सुनवाईकीतारीख/Date of Hearing	:	15.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	25.06.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, dated 04.10.2023, for the Assessment Year (hereinafter in short 'AY') 2018-19.

2. At the outset, it is noted that there is a delay of '3' days to file this appeal and assessee has filed condonation application, which we have



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perused and finding the contents given therein give rise to reasonable cause, we are inclined to condone the delay and proceed to hear the appeal.

3. The main grievance of the assessee is against the action of the Ld.CIT(A)/NFAC only partly allowing the claim of deduction u/s.80P(2) of the Income Tax Act, 1961 (hereinafter in short 'the Act') claimed by the assessee

4. The brief facts of the case are that the assessee is a co-operative credit society, providing credit facilities to its members in the course of its business. The assessee filed its return of income on 19.09.2018 declaring total income at 'NIL'. The AO in the assessment order had categorized by the income of assessee under three (3) heads as mentioned in the Profit & Loss Account, as under:-

(1) Interest received & Accrued (from Members):	Rs.9,70,49,054/-
(ii) Release of Reserves:	Rs.6,21,229/-
(iii) Miscellaneous Income received & accrued:	Rs.1,70,51,917/-
During the course of submissions, the assessee has described the Miscellaneous Income received & accrued as per following details:-	
(a) Interest earned from Nirgiris District Central Co-op. Bank	Rs.1,34,69,481/-
Fixed Deposit = Rs.1,00,51,002/- Revolving Fund = Rs.34,08.454/- Staff Security Deposit = Rs. 10,025/-	
(b) Other Miscellaneous Income	Rs.35,82,436/-



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5. And the AO allowed the claim of assessee partly by accepting that assessee being a Credit Society the income attributable to its business of providing loan to its members qualify claim of deduction u/s.80P(2)(a)(i) of the Act, i.e. in respect of Rs.9,70,49,054/-.

6. However, the AO didn't allow the claim of assessee regarding deduction from investment interest income i.e. Rs.1,34,69,481/- which according to the AO was investment income from Co-operative Bank, which claim can't be allowed u/s.80P(2)(d) of the Act.

7. Further, the AO partly allowed the claim of deduction in respect of Rs.35,82,436/- (Miscellaneous loan) by allowing Rs.50,000/- deduction as per sec.80P(2)(c) of the Act.

8. And the AO thus framed the assessment order on 08.04.2021, by disallowing total deduction claimed u/s.80P(2) of the Act, amounting to Rs.1,23,93,154/- and assessed income at Rs.1,23,93,154/-.

9. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A)/NFAC who partly allowed the appeal by holding as under:

7.1. The appellant is a co-operative credit society providing credit facilities to its members in the course of business. The appellant filed its return of income on 19-09-2018 declaring total Income Nil. During the assessment proceedings, assessing officer had disallowed the interest earned from deposits kept with co-operative society namely Nilgiri District Central Co-operative Bank u/s.80P(2)(d) of the Income Tax Act vide order u/s.143(3) of the Income Tax Act, 1961 dated 08.04.2021.



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7.2. Appellant has earned income of Rs.1,34,69,481/- and miscellaneous income of Rs.35,82,436/-. This miscellaneous income consists of Rs.22,91,010/- being appraiser fees Rs.5,68,510/- being charges collected from issue of application form and Rs.7,22,916/- being charges for issue book, cheque book etc. However, bifurcation of interest received from members and that from associated/nominal members in this figure is not given by appellant as well as AO. Also, figure of interest received from deposits and saving account with cooperative societies/banks and that from scheduled commercial banks is not given by AO nor by the appellant.

7.3. From the facts of the case, it is clear that appellant is registered as cooperative society with Govt. of Tamil Nadu. Also it's not regulated by Banking Regulation Act. In view of this and similar factual background higher appellate authorities have hold that:-

Cooperative Credit Society will be eligible for deduction u/s.80P(2)(a)(i) for the income from business of providing credit facilities to its members. However, same will not be available for interest income from business of providing credit facilities to associated/nominal members.

7.6. In view of above mentioned facts, legal provisions and following decisions in above mentioned cases, I hereby direct AO that appellant should be granted deduction u/s.80P(2)(a)(i) for the income earned from activity of providing credit facilities to its members. However, same will not include income earned from activity of providing credit to Associate/nominal members. Further, appellant will get deduction u/s.80P(2)(d) on the interest received from deposits/savings account kept with other cooperative societies/ banks which are not governed by RBI Banking Regulation Act. However, such deduction will not be available to interest received from scheduled commercial banks. While giving appeal effect, AO will allow these deductions looking into respective amounts/figures from appellant's books of accounts.

7.7. In respect of miscellaneous receipts of Rs.22,91,010/- being appraiser fees Rs.5,68,510/- being charges collected from issue of application form and Rs.7,22,916/- being charges for issue book, cheque book etc. it is held that since these activities are necessarily connected to activities of providing credit facilities to members, the income from such activities is held to be business income for the purpose of deduction under section 80P(2)(1)(a), however, such deduction of these miscellaneous receipts will be "available only towards such amounts received from primary members only and will not be available for miscellaneous receipts received from associate members/nominal members.

10. Aggrieved, the assessee is in appeal before us.

11. We have heard both the parties and perused the material available on record. Firstly, we note that the assessee has raised a legal issue challenging the jurisdiction of the AO to have passed assessment order



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dated 08.04.2021 u/s.143(3) r.w.s.143(3A) & 143(3B) of the Act and submitted that after 01.04.2021, the AO could not have passed assessment order under these sections and for such a proposition, cited the decision of the Hon'ble Delhi High Court in the case of Gurgaon Realtech Ltd. v. NFAC, Delhi reported in [2021] 127 taxmann.com 726 (Delhi), wherein, similar challenge was raised against the order of the AO which was examined by the Hon'ble Delhi High Court; and the Hon'ble High Court was pleased to set aside similar order of the AO by holding as under:

9. We have considered the submissions made by the learned counsel for the parties.

9.1. To our minds, if the challenge to the assessment order is made on the ground that it was passed without jurisdiction, then, notwithstanding the fact "6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by that an appeal was filed, albeit, only to ensure that the limitation is not crossed, is not an impediment in proceeding ahead with the matter. In this particular case, the reason that we are proceeding ahead with the matter, is that, we are persuaded by the arguments advanced by Mr. Vohra that the impugned assessment order dated 15.04.2021 could not have been passed under Section 143(3A) and 143(3B) after March 31, 2021, having regard to the provisions of Section 143(3D) of the Act. For the sake of convenience, the said provisions are extracted below:

"Section 143. Assessment (3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) so as to impart greater efficiency, transparency and accountability by--

(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;



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(b) optimizing utilization of the resources through economies of scale and functional specialization;

(c) introducing a team-based assessment with dynamic jurisdiction.

(3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2021,

(3D) Nothing contained in sub-section (3A) and sub-section (3B) shall apply to the assessment made under sub-section (3) or under section 144, as the case may be, on or after the 1st day of April, 2021.]"

9.2. Besides this, Mr. Vohra is also right in his contention that the CBDT notification dated 31.03.2021, to which, we have made a reference hereinabove, also says, in effect, the same thing, i.e., that after 01.04.2021, the assessment order could have only have been passed in consonance with the provisions of Section 144B of the Act.

10. In view of the foregoing reasons, we are inclined to set aside the impugned assessment order dated 15.04.2021 as also the notice of demand issued under Section 156 of the Act and the notice for initiating penalty proceedings issued under Section 274 read with Section 270A of the Act.

10.1. That being said, the respondent/revenue will have liberty to proceed with the assessment process, albeit, under the provisions of Section 144B of the Act. Needless to add, if a show cause notice-cum-draft assessment order is served on the petitioner, an opportunity would be given to the petitioner to file its response/objections to the same. Furthermore, if there is a variation proposed in the income of the petitioner, an opportunity of personal hearing will also be accorded. In sum, the procedure prescribed under Section 144B of the Act will be followed by the respondent/revenue.

12. Since we note that assessment order has been passed by the AO by order dated 08.04.2021 u/s.143(3A) & 143(3B) of the Act, we are of the opinion that he could not have passed such an order after 31.03.2021 having regard to the provisions of Sec.143(3D) of the Act. We rely on the decision of the Hon'ble Delhi High Court in the case of Gurgaon Realtech Ltd. (supra) and are inclined to set aside the assessment order dated



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08.04.2021. However, we make it clear that the Revenue will be at liberty to proceed against the assessee for the relevant assessment year in accordance to law if law permits.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 25th day of June, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 25th June, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF