

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “A” BENCH, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Prakash Chand Yadav, Judicial Member**

ITA No. 746/Bang/2024 (Assessment Year: 2017-18)		
Sarvodaya Credit Co-op. Society Ltd. Car Street, Barkur Udupi 576210 PAN – AAEAS9576Q	vs.	The Income Tax Officer Ward -2, Udupi
(Appellant)		(Respondent)
Assessee by:	Smt. Sheetal Borkar, Advocate	
Revenue by:	Ms. Neha Sahay, JCIT-DR	
Date of hearing:	25.06.2024	
Date of pronouncement:	25.06.2024	

ORDER

Per: Prakash Chand Yadav, J.M.

This appeal filed by the assessee challenges the DIN & order No. ITBA/NFAC/S/2003-24/1061360577(1) of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 22.02.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the assessee society filed its return of income(ROI) on 06.11.2017 declaring gross total income of Rs.18,34,325/- and net income as Nil. ROI filed by assessee was selected for scrutiny, after issuing statutory notices. During the course of assessment proceedings the Id. Assessing Officer (AO) treated certain income of the assessee as income from other sources(IOS) and without giving the benefit of the expenses attributable IOS assessed the entire income under the head 'income from other sources'. The AO further added Rs. 1,90,000/- on account of the provisions made by assessee with

respect to employee's retirement fund and provision with respect to NPS fund amounting to Rs.27,57,696/-.

3. Aggrieved with the order of the AO the assessee filed appeal before the CIT(A) and inter alia argued that the AO has erred in not allowing the deduction or corresponding expenses attributable to earning of income other sources. However, the learned CIT(A) dismissed the appeal of the assessee.

4. Hence assessee has filed the present appeal. The assessee has also filed an application **dated 11.06.2024** for admission of additional grounds, praying that these ground may kindly be admitted in the interest of justice and no new facts are required to be ascertained in respect of these grounds. Considering the facts on records and arguments advanced by the assessee we admit these grounds in the light of the principle of law laid down by the Hon'ble Supreme Court in the case of *NTPC Ltd. Vs. CIT* reported in 229 ITR 383.

5. At the time of hearing the Id. Counsel of the assessee did not press any of the main grounds as appearing in from-36 starting from ground No. 1 to 9. The Id. Counsel submitted that she wish to press only the additional grounds. Additional grounds raised by assessee are as under:-

- a. *The Ld CIT(A) failed to appreciate that if interest/dividend income is treated as Income from other sources then expenditure under section 57 should be allowed as per the judicial High Court.*
- b. *The Ld CIT(A) failed to appreciate that if expenditure is allowed under section 57 of the Act then accordingly it should going to increase the deduction under section 80P(2)(a)(i).*
- c. *The Ld CIT(A) erred in sustaining the provision with regard to the addition with regard to provision of employees retirement fund to the extent of Rs 1,40,000/- and provision with regard to NPA to the extent of Rs 27,57,696/-.*
- d. *The appellant craves leave to add, alter, modify delete or substitute any or all of the grounds at the time of hearing of appeal..*

6. In the nutshell the assessee has following contentions: -

- (i) That the expenses corresponding IOS may kindly be allowed
- (ii) When the expenses corresponding to Income from other sources would be allowed the profit of the assessee would going to increase and such increased profit would be eligible for deduction of section 80P(2)(a)(i).
- (iii) Assessee made similar averments vis-a-vis the additions on account of employees' retirement fund and NPA fund.

7. We have heard the rival submissions and perused the materials available on record. We find force in the argument of the assessee counsel, we observed that It is appropriate to grant deduction u/s 80P(2)(a)(i) of the Act on the assessed income, which would enhanced due to disallowance of deduction u/s 80P(2)(a)(i) of the Act and the disallowance of the provision for interest expenses and provision for employees retirement fund. A reference can be made to decision the Hon'ble Bombay High Court in the case of **CIT Vs. Gem plus Jewellery India Ltd reported in 330 ITR 175 CIT**. The view expressed in the case of Gem Plus would apply mutatis mutandis here. Further there are so many judgments of the coordinate Benches of the ITAT wherein the same view is expressed. Accordingly, we remit this issue to the file of the AO for re-computing the deduction u/s 80P(2)(a)(i) of the Act after considering the matter in light of observations made by us. Hence, the appeal of the assessee is allowed for statistical purposes In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 25th June, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bengaluru, Dated: 25th June, 2024
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The CIT, concerned
4. The DR, ITAT, Bangalore
5. Guard File

By Order

//True Copy//

Assistant Registrar
ITAT, Bangalore