

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.1049/KOL/2023
Assessment Year: 2017-18**

Kulut Samabay Krishi Unnayan Samity Ltd. Monteswar, Kulut, Burdwan, West Bengal-713422. (PAN: AABAK0163G)	Vs	ACIT, Circle-1, Burdwan, Burdwan.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Shuvo Chakraborty, Advocate
Respondent by : Shri B. K. Singh, Addl. CIT

Date of Hearing : 13.06.2024
Date of Pronouncement : 26.06.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld. CIT(A)" passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2020-21 vide Appeal No. ITBA/NFAC/S/250/2023-24/1055755384(1) dated 05.09.2023.

2. The grounds of appeal raised by the assessee are reproduced as under:

"1 For that purported appellate order confirming the entire addition of cash deposits made by the appellant society on demonetization period is perverse and unjust.

2 For that non consideration of explanation buttressed by the appellant during first appeal regarding the source of said cash deposits being supported by all documental evidence including complete books of account is illegal and bad in law.

3 For that Id. NFAC while confirming said cryptic addition did not considered four important points as such firstly, AO cannot added back the said cash deposits without rejecting the books of account and where sales, purchases and closing stock has been accepted by the AO without any murmur then any addition is self contradictory disbelieving the sources and whimsical act. Secondly, both the lower and appellate authorities failed to point out any defects in the books of account. Thirdly AO has not brought out any contrary materials in the assessment order to dispel the sources of said cash deposits as argued and averred by the appellant. Fourthly, appellant being regulated registered society always under government scanner with compulsory cooperative yearly audit cannot circumvent and falsify any transactions and documents being strictly scrutinized by the audit party.

4 For that cash generation disclosed by the appellant from sales during the assessment proceeding is neither disputed or disbelieved by the assessing authority nor the appellate authority which is tantamount to implicit approval of cash deposits. Moreover it is settled law that where sales has not been disputed by AO then source of cash deposits cannot be disbelieved.

5 For that confirmation of addition on cash deposits by the NFAC is a totally non speaking order without bringing any materials to rebutt the appellant contention and documents.

6. For that appellant may modify the grounds.”

3. Though the assessee has raised six grounds of appeal but the sole issue involved in this appeal is against the confirmation by the Ld. CIT(A) of the entire addition of cash deposits made by the assessee society during the demonetization period. The assessee vide its letter dated 31.03.2024 submitted by mentioning that *“Pursuant to the direction of Hon’ble Bench in last hearing on 20.03.2024 to file tax audit reports for FY 2016-17 and 2015-16, the 6 sets of said two reports are being filed forming part of original paper book already before the Hon’ble bench for adjudication of the instant appeal and an additional ground is being field for the kind consideration of the bench which next date of hearing is fixed on 22.04.2024. So kindly place them before the bench for adjudication.”*, and raised the following additional ground of appeal:

“For that since the Appellant had not placed the documents related to pevious year 2015-16 before the AO and NFAC for comparable adjudication, therefore, it is hereby prayed before the Hon’ble Bench to admit these documents as an additional evidences for the end of justice.”

4. It was brought to his notice that the Bench did not require any documents from the assessee and in case the assessee wanted to file the same, it was required to move an application under rule 29 of the Income Tax Appellate Tribunal Rules, 1963 (hereinafter referred to as "the ITAT Rules) for admission of the same. Subsequently on 13.06.2024, after the conclusion of the hearing, the assessee filed an application under rule 29 of the ITAT Rules as under:

*"To
 The Hon'ble "A" Bench,
 Kolkata Bench, Kolkata.*

*Re: Kulut SKUS Ltd.
 ITA 1049.Kol.2023
 Sub: prayer for admission of Additional ground*

Sheweth

1) That the Appellant concern could not able to file the relevant documents pertain to FY2015-16 before the AO and CIT(A) due to mistaken legal advice by the lower tax consultant. This inadvertent mistake has necessitated to produce them before the Hon'ble Bench with a fervent prayer to admit them since these documents have great bearing on adjudication of the impugned appeal in the interest of justice.

2) That all these documents pertain to FY 2015-16 are filed before the Hon'ble Bench under Rule 29 of ITAT Rules for kind admission.

*Thanking you,
 Yours faithfully,
 Shuvo Chakraborty,
 Advocate
 ITAT, Kolkata."*

Dt. 13.06.2024

5. Since these documents were not filed either before the Ld. AO or even before the Ld. CIT(A) and there was no representation before the Ld. CIT(A) and the assessee on the basis of these documents wants to establish that the interest income was admissible for deduction u/s. 80P(2) of the Act, the same are admitted as they go to the root of the issue.

6. Brief facts of the case as culled out from the order of the Ld. CIT(A) are that the assessee is a co operative society engaged in supply of

fertilizer, pesticides and agricultural products to its members. Apart from these activities, the society was engaged in providing credit facilities to its members. The assessee filed its return of income for the A. Y. 2017 18 electronically declaring total income of Rs. NIL which was arrived at after deduction under various sub-sections of section 80P of the Act. The case was taken up for scrutiny under CASS. During the course of proceedings, the assessee produced all relevant documents as sought by the assessing officer. The order of assessment was passed on 21.12.2019. In the assessment order, the AO rejected the claim of deduction u/s. 80P claimed at Rs.19,19,016/-, analysed the cash deposited in the bank account on account of specified bank notes (SBNs) and added a sum of Rs.77 lakh u/s. 69A of the Act and made the assessment at Rs. 77 lakh after disallowing the claim of deduction u/s. 80P of the Act.

7. Aggrieved against the action of the AO, the assessee preferred appeal before the Ld. CIT(A), who confirmed the action of the Ld. AO and dismissed the assessee's grounds of appeal. Aggrieved, the assessee is in appeal before the Tribunal.

8. In the course of the hearing, the Ld. AR submitted that he was filing audit report as per the direction from the Bench while the Bench brought it to his notice that there was no such direction issued by the Bench. The Ld. AO added a sum of Rs. 77,00,000/- on account of specified bank notes. The relevant para of the order of the Ld. AO is extracted below:

"4.10. In the instant case, the assessee was found to be owner of the Money but has not offered any acceptable and cogent explanation regarding the source of such Money found in its bank accounts as the submission were more contradictory than the real facts. The Income earned during the year has not been offered properly and taxes due there upon has not been paid also. The scheme of Section 69A of the Income-tax Act, 1961, would show that in cases where the nature and source of acquisition of money, bullion, etc., owned by the assessee is not explained at all, or not satisfactorily explained, then, the value of such investments and money or value of articles not recorded in the books of

accounts, may be deemed to be the income of such assessee. The provisions of section 69A of the Act treat unexplained money, bullion, etc., as deemed income where the nature and source of investment, acquisition as the case may be, have not been explained or satisfactorily explained. Therefore, in these cases, the source not being known, such deemed income covered under the provisions of Section 69A of the Act in view of the scheme of those provisions. The transaction pattern reveals that money were deposited in cash with a view to transfer out the same with an ulterior motive to bring back the unaccounted money into banking channel in a well mechanized and colorful manner to defraud the revenue. The assessee was found owner of the Money but has not offered any acceptable and cogent explanation regarding the source of such Money found in its bank accounts. The Income earned during the year has not been offered and taxes due there upon has not been paid. All three limbs of Section 69A of the Act stands qualified in the case of the assessee i.e. :-

- a) The assessee was found to be owner of the money;*
- b) Such money was not recorded in the books of accounts; and*
- c) its nature and source is not identifiable.*

With the view in the backdrop, I am of the considered opinion to treat the entire credits of Rs.77,00,000/-, in Specified Bank notes, as unexplained money and treated as assessee's income in accordance with the provision of section 69A of the I. T. Act, 1961 read with provision of section 115BEE of the Act."

9. The assessee did not file any cash book during the time of assessment proceedings and it is stated that it is an agricultural credit society but even the society by laws were not available. In the course of the hearing before us, the Ld. AR attempted to justify that cash deposited during the demonetization period was the receipts from the members. However, on analysis of cash deposited in one month i.e. October, 2015, it was observed that while the cash deposited in the bank was Rs.17.51 lakh, the net available cash with the assessee was of a much smaller amount. The Ld. DR relied upon the orders of the lower authorities that as no evidences were filed before the Ld. AO he was justified in making the assessment.

10. We note that the assessee is a society and it has claimed that the money deposited during the demonetization period was on account of cash collected from its members. Since the Ld. CIT(A) did not have the occasion to go through the additional documents which are filed before us and as the matter has not been properly examined by the Ld. CIT(A), we deem it proper in all fairness and in the interest of justice that the

matter is remitted back to the Ld. CIT(A), who may call for the documents relating to availability of cash with the assessee including the cash book. The assessee may file an application before the Ld. CIT(A) for admission of additional documents and the Ld. CIT(A) may allow an opportunity to the Ld. AO under Rule 46A of the I. T. Rules to examine the same and after receiving his comments, decide the appeal on merit in accordance with law as the provision of sub-section (6) of section 250 does not appear to have been followed in the course of the appeal. Hence, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 26th June, 2024.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 26th June, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order
Assistant Registrar
ITAT, Kolkata Benches, Kolkata