

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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 850/Bang/2024
Assessment year : 2017-18

Prathamika Krushi Pattina Sahakari Sangh Niyamitha, At Post : Byakod. Tq. Sindagi. Dt. Vijaypur. PAN : AABAP 5654R	Vs.	The Income Tax Officer, Ward 3, Bijapur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Pramod Vaidya, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	04.06.2024
Date of Pronouncement	:	28.06.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 30.01.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 on the following grounds:-

“1. On the facts and circumstances of the case and in law the learned CIT(A) erred in dismissing the appeal filed by assessee and thereby upholding total addition of Rs.40,83,580/- made by A.O in assessment order u/s 144 comprising of: Cash deposits from members of Rs.20,97,000/-, Profit as per Profit and loss account Rs.10,81,201 deductible u/s 80P (2)(a)(i) ,Disallowance

for non deduction of TDS Rs.8,86,822/- u/s 40(a)(ia) of the IT Act. And Income Tax debited to P & L Account - Rs. 19,500.

2. The addition of cash deposits Rs. 20,97,000/- is not justified in law as the amount received only from the members of the society on account of regular transaction such as loan repayment, pigmy deposit etc. within the stipulated time as per demonetisation scheme is : deposited with authorised entity and credited to the members account. Members are recognised by the governing law and also by the bye-laws of the : society.

3. The Assessing officer has erred in making an addition of Rs. 10,81,261 being profit earned from providing credit facilities to small and marginal farmers which is exempt under section 80P of the; Income Tax Act 1961.

4.The Assessing Officer has erred in making an addition of Rs.18,500/- debited to Profit & Loss Account even though the entire income of the appellant is exempt under section 80P of the Income Tax Act and the addition also gets deductible under section 80P of the Act.

5.The A.O has erred in making disallowance u/s 40(a)(ia) of the Act of i) Commission of Rs.2,43,289/- ii) Interest Rs.26,17,785/- and iii) Audit fee Rs.95,000/- at 30% of Rs.29,56,074 = Rs.8,86,822/-”

2. At the outset, the appeal is time barred by 37 days and the assessee has filed affidavit explaining the delay that the accounts and tax matters of the society are handled by accountant who was on leave in second half of March and full month of April, 2024 and in the process the filing of appeal remained unattended. Soon after the accountant resumed office at the end of April, 2024, the society through tax consultant filed the appeal which led to delay. It is submitted that the delay is due to genuine cause and unintentional and condonation of delay is requested.

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. Briefly stated the facts of the case are that the under operation clean money the department gathered information of assessee who had deposited substantial cash in bank accounts during the demonetisation period (9th November to 30th December, 2016). The AO noted that the assessee deposited cash of Rs.20,97,000 in his account with Union Bank of India, Sindagi Branch during demonetisation period in old currency notes of Rs.500 & Rs,1000. The assessee had not filed return of income for AY 2017-18 u/s. 139(1) or in response to notice u/s. 142(1) of the Act. On further notices, the assessee filed financial statements and other details but failed to file any other documents. Accordingly AO issued notice u/s. 144 for completing assessment u/s. 144, but the assessee did not respond. For want of proper explanation from assessee the entire amount of deposited was treated as unexplained money u/s. 69A of the Act and taxed u/s. 115BBE of the Act. The AO also issued notice u/s. 133(6) to the Dy. Registrar of Co-operative Societies, Sindagi and from the details obtained, he noticed that assessee had paid pygmy commission of Rs.2,43,289, interest of Rs.26,17,785 and audit fee of Rs.95,000, but no TDS was deduction as per provisions of the Act. Accordingly he made addition u/s. 40(a)(ia) of Rs.8,86,822 @ 30% of Rs.29,56,074,

however the addition is mentioned as Rs.19,86,583. Accordingly the AO assessed income at Rs.40,83,580.

5. On appeal by the assessee, the Id. CIT(Appeals) noted that assessee has not complied the provision of section 249(4)(b) and as per sl.no.16 of Form 35 payment of appeal fee of Rs.1,000 only is made and at sl.no.9 of Form 35, the assessee has offered 'Not Applicable' comments. The CIT(A) therefore dismissed the appeal of assessee. Aggrieved, the assessee is in appeal before the ITAT.

6. The Id. AR submitted that assessee has no taxable income, therefore it did not file return of income. The cash deposited during the demonetisation period belongs to members of the society and assessee has not got any benefit from the deposits of members, it was liability or deposits of the members. Therefore it does not come under the purview of definition of income. He further submitted that assessee society is exempt from deducting tax at source u/s. 194A(3)(v) and pygmy commission also is not covered u/s. TDS provisions. He submitted that the assessee is eligible for deduction u/s. 80P(2)(a)(i) of the Act on the income received and requested that the matter may be sent back to the AO since the case was reopened by the AO.

7. On the other hand, the Id. DR relied on the order of lower authorities and submitted that assessee did not comply the provision of section 249(4)(b) and therefore the CIT(Appeals) has rightly dismissed the appeal of the assessee. He further submitted that in respect of

deduction u/s. Chapter VIA the assessee is not eligible for deduction u/s. 80P because assessee did not file return of income in spite of various opportunities. Accordingly as per the judgment of Hon'ble Karnataka High Court in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham vs CIT reported in [2023] 152 taxmann.com 347 (KERLA) assessee is not eligible for deduction u/s. 80P(2) of the Act. Further during the demonetisation period the assessee was not allowed to accept money in old currency notes which was banned. Therefore he submitted that the order of the lower authorities should be upheld.

8. Considering the rival submissions, we note that the CIT(Appeals) has dismissed the appeal of the assessee for non-compliance of section 249(4)(b) and ld. AR submitted that assessee has no taxable income and therefore did not file return of income. The assessee had PAN. This issue has been settled by the coordinate Bench of Tribunal in ITA No.1120/Bang/2023 for AY 2018-19, order dated 20.02.2024 in the case of Shri. Shamanna Reddy vs. ITO which it has been held as under:-

“7. We have heard the rival submissions and perused the material on record. Assessee is a senior citizen aged 65. Considering the age and education background as well as the procedure under the faceless regime coupled with the fact that notice issued during the course of assessment proceedings were not served as per the prescribed mode, we are of the view that the ex-parte order passed on the assessee under section 147 r.w.s. 144 of the Act is to be condoned.

8. However, before the CIT(A), assessee had made detailed submissions. The CIT(A) has dismissed the appeal of the assessee by invoking section 249(4)(b) of the Act. Assessee submitted that he is not liable for long-term capital gains since the property sold was agricultural land. Assessee has also placed on record the computation of statement of total income. On perusal of the same, it is seen that the total income for the relevant Assessment Year of assessee is Rs.13,296/-. Therefore, there is no question of payment of admitted tax. In view of the above, section 249(4) of the Act cannot be invoked to dismiss the appeal of the assessee. We also place reliance on the Order of the Tribunal in the case of Annapoorneshwari Investment Vs. DCIT (supra) wherein it has been held that in terms of section 249(4)(a) of the Act, stipulation as to payment of tax ante filing of first appeal is only directory and not mandatory, where appeal is filed without payment of tax but subsequently required amount of tax is paid, appeal shall be admitted on making payment of tax and taken up for hearing on merits.

9. In the present case, as mentioned earlier, we find assessee had not declared any admitted tax. On the facts of the instant case, assessee had claimed the receipt is for sale of agricultural land and not liable for capital gains. Since assessment has been completed under section 147 r.w.s. 144 of the Act, we are of the view that the matter needs to be examined afresh by the AO. Accordingly, the issues raised in this appeal are restored to the files of the AO. Assessee is directed to cooperate with the Revenue and shall not seek unnecessary adjournment in the matter. The AO is directed to afford reasonable opportunity of hearing to the assessee. It is ordered accordingly.

9. Respectfully following the above judgement, we hold that the CIT (A) should have been decided the issue on merits of the case.

10. We further note that assessee did not file return of income and deposited cash in old currency notes during the demonetisation period. During assessment proceedings, no documents like KYC and details of members of society like address, Aadhar, PAN, telephone, etc. and in

which account cash was deposited by the members were furnished. Therefore, this case is remitted back to Assessing Officer for fresh consideration and assessee is directed to file the KYC details of members. Similar issue has been decided by the coordinate Bench of the Tribunal in ITA No.329/Bang/2024 in the case of Merchants Credit Co-operative Society Ltd., vs ITO order 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 pygmie 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 u/s 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.”

11. Since in the cash at hand the assessee has not filed KYC during the course of assessment proceedings, therefore, we remit this issue back to the AO for fresh consideration in the light of the ITA No.329/Bang/2024 noted supra and decide the issue as per law.

12. We further noted that the assessing officer (AO) has made addition u/s 40(a)(ia) on payments made towards pigmy commission, interest and audit fee because the assessee did not comply the TDS provisions. Since the AO has completed the assessment u/s 144 of the Income Tax Act, considering the facts of the case and in the interest of justice, we are also remitting this issue back to the file of AO for fresh consideration. Needless to say that a reasonable opportunity of being heard is to be given to the assessee.

13. The assessee is directed to update its email id, communication address and other details and file necessary documents that would be essential and required for substantiating its case and for proper

adjudication by the revenue authorities and cooperate with the proceedings for early disposal of the case.

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

Pronounced in the open court on this 28th day of June, 2024.

Sd/-

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 28th June, 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.