

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Chandra Poojari, Accountant Member
&
Shri Soundararajan K, Judicial Member**

ITA No.152/Coch/2023: Asst.Year : 2014-2015

ITA No.153/Coch/2023: Asst.Year : 2015-2016

Kerala Agricultural University Co-operative Society Near Vettinery College Madakkathara, Vellanikkara Nettissery, Thrissur – 680051. PAN: AALFK4575D	vs.	The Income Tax Officer Ward 2(1) Thrissur.
(Appellant)		(Respondent)

Appellant by: Sri.Arun Raj S, Advocate
Respondent by: Sri.Ilaiyaraja K.S., Senior DR

Date of Hearing : 03.07.2024	Date of Pronouncement: 25.07.2024
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ORDER

Per Soundararajan K, JM :

These two appeals filed by the assessee challenging the orders of the NFAC, Delhi, both dated 27.12.2022, in respect of the assessment years 2014-2015 and 2015-2016. Since identical issue is involved in these appeals, they were heard together and are being disposed of by this consolidated order. First we take ITA No.152/Coch/2023 for Asst.Year 2014-2015.

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2. The facts of the case are that the assessee is a co-operative society and during the assessment year 2014-2015, the assessee had not filed return of income. Originally the assessee had a PAN in the status of firm, which was subsequently, on request, cancelled by the

Assessing Officer (AO) and a new PAN was issued treating the assessee as an Association of Persons (AOP). The assessee on the bonafide belief that since the old PAN was cancelled, they have not filed the return of income, and therefore, the AO had issued notice u/s.148 for the old PAN. Thereafter, the assessee filed its return of income and claimed the entire income as exempt as per section 80P of the Income-tax Act, 1961 (the Act). The AO not accepted the case of the assessee for the reason that the assessee is not eligible to get the benefit u/s.80P of the Act for the reason that they are dealing with the members as well as non-members, and therefore, the principle of mutuality was not there. As against the said order of the AO, the assessee preferred an appeal before the CIT(A) and contended that the assessee is eligible for deduction u/s.80P of the Act since the assessee is admittedly a society registered under the provisions of the Act. It was further contended that the reopening was made for the reason that huge cash deposits were made during the year, whereas the assessment was made on other reasons, and therefore, the entire assessment is bad in law. The Id.CIT(A) had dismissed the appeal on the ground that the assessee was not interested in prosecuting the same even though four notices were issued on 15.07.2022, 03.08.2022, 30.11.2022 and 15.12.2022. Challenging the said order, the assessee is before us.

3. The assessee has raised the following grounds of appeal in its memorandum of appeal:-

“1. The order of the Hon. CIT(A) is opposed to law, facts and circumstances of the case and against the principles of natural justice.

2. Re: Notices received in old PAN

a) The Hon. CIT(A) had violated the principles of natural justice by initiating proceedings in the deactivated PAN instead of the active PAN of the appellant.

b) The Hon. CIT(A) ought to have appreciated that the order of learned assessing officer contained the fact that old PAN had been deactivated and new PAN had been issued and consequently all proceedings ought to have taken place only under new PAN.

3. Re: Denial of claim u/s. 80P

The Hon. CIT(A) erred in not considering the grounds raised by the appellant in Form 35 relating to denial of the claim u/s 80P. |

4. Re: reopening of assessment

a) The Hon. CIT (A) failed to appreciate that learned assessing officer erred in making addition by withdrawing the claim u/s 80P when the case was reopened for verifying huge cash deposits and factually no addition was made on that account.

b)The Hon. CIT (A) ought to have appreciated that the learned assessing officer failed to understand that once the reassessment order is passed based on reasons other than the one for which the case was reopened, the entire assessment proceedings is invalid and void ab initio.

c) The Hon. CIT(A) ought to have appreciated that the learned assessing officer failed to follow the principles laid down in the case of CIT Vs. Jet Airways India Limited., 331ITR 236.

In view of the above grounds and such other additional grounds as may be adduced at time of hearing, it is prayed before the Hon'ble Income Tax Appellate Tribunal to,

a) reverse the order of the lower authorities for the addition of Rs.39,07,644/-.

b) give directions to the learned assessing officer to allow the deduction claimed u/s. 80P in full as claimed in the return of income, or ;

c) Alternatively, declare the assessment as void ab-initio by following the ruling of Bombay High Court in the case of Jet Airways India Limited, cited supra or

d) pass such other consequential orders as the Hon'ble Income tax Appellate Tribunal may deem fit to render justice.”

4. At the time of hearing, the learned AR submitted that the assessee was not able to appear before the CIT(A) since they have not viewed the notices sent through the old PAN profile, and therefore, prayed that if one more opportunity is granted, the assessee will satisfy that the assessment made is not correct.

5. On the other hand, the learned Departmental Representative contended that sufficient opportunities were granted by the CIT(A), but the assessee had not responded to the same. Therefore, the order of the CIT(A) does not require any interference by this Tribunal.

6. We heard the arguments of both the sides and perused the material available on record. We have considered the argument of the assessee and also perused the assessment order and found that the assessee had originally raised a plea that the earlier PAN was cancelled in view of the wrong status mentioned, and therefore, a new PAN was obtained by correcting the status of the assessee as AOP and therefore they have not filed their return. Therefore, the assessee's contention that they have not viewed the portal of the earlier PAN and therefore the notices issued by the CIT(A) were not viewed by the assessee seems to be an acceptable one. Further, the CIT(A) had not decided the appeal on merits, but dismissed the same for non-prosecution by the assessee. We therefore, in the interest of justice, setting aside the order of the CIT(A) and restore the matter to the file of the CIT(A) to decide the issue afresh in accordance with law after granting a reasonable opportunity of being heard to the assessee

and also after considering the documents, if any, filed by the assessee in support of their claim. Since we are setting aside the order of the CIT(A) and remitting the same to the CIT(A) for passing the order on merits we are not considering the other grounds raised by the assessee and left it open to the assessee to raise the same at the time of hearing before the CIT(A).

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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8. In so far as this appeal is concerned, which is also on similar facts as of the preceding assessment year, we remit the issue to the file of the Id.CIT(A) with the very same directions, for deciding it afresh after affording a reasonable opportunity of being heard to the assessee.

9. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 25th July, 2024.

**Sd/-
(Chandra Poojari)
Accountant Member**

**Sd/-
(Soundararajan K)
Judicial Member**

Bangalore; Dated: 25th July, 2024
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar
ITAT, Cochin