

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Makarand Vasant Mahadeokar, Accountant Member**

**ITA No. 1101/Ahd/2024
(Along with Stay Petition No. 10/Ahd/2024)
Assessment Year 2016-17**

Laxmi Co-Operative Credit Society Limited, Station Road, Bus Stand, AT & PO Vishol, TA Unjha, Mehsana, Gujarat-384215 PAN: AAAAL3860E (Appellant)	Vs	The ITO, Ward-1, Patan (Respondent)
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**Assessee Represented: Shri Hasmukh V Doshi, CA
Revenue Represented: Shri Atul Pandey, Sr.D.R.**

Date of hearing : 25-06-2024
Date of pronouncement : 14-08-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the ex-parte appellate order dated 18.05.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the ex-parte assessment order passed under section 147 r.w.s. 144 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2016-17.

2. The brief facts of the case is that the assessee is a Co-operative Society and has not filed its Return of Income u/s. 139(1) of the Act for the Asst. Year 2016-17. The A.O. received information that the assessee Society had deposited cash aggregating to Rs.92,58,900/- in its bank account maintained with Dena Gujarat Gramin Bank, Mehsana Urban Co-Op. Bank Ltd. and also made investment in time deposits of Rs.29,80,000/- with Surat Mercantile Bank during the Financial Year 2015-16. However, the assessee society has not filed the Return of Income thereby for escapement of income notice u/s. 148 was issued. In response to the notice, the assessee filed its Return of Income on 01.04.2023 declaring Nil income. However the hearing notices issued by the A.O. was not complied by the assessee, therefore the A.O. made an addition of Rs.1,22,38,900/- and demanded tax thereon.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A) who was given two opportunities of hearing on 01.05.2024 and 08.05.2024, as there was no response from the assessee. The appeal filed by the assessee was dismissed by passing exparte order confirming the tax demand.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. Learned CIT(A) has erred in making order of rejecting of the appeal of appellant without giving enough opportunities to appellant and further erred in making order by not considering the merits involved in grounds of appeal.

2. Ld. CIT(A) has erred in facts and law in confirming the order made by AO u/s 144 by making addition of income of Rs. 1,22,79,900/- without considering the grounds of appeal raised by appellant before CIT(A).

3. Ld. CIT(A) has erred in law and facts in not considering the ground of appellant that Ld. AO has erred in law and facts in issuing notice u/s 148 without any valid information of escapement of income.
 4. Ld. CIT(A) has erred in law and facts in not considering the ground of appellant that Ld. AO has erred in law and facts in making order for addition of income of Rs. 92,99,900/- u/s 69A in respect of cash deposited in bank accounts without considering the facts of nature of business of co. op society.
 5. Ld. CIT(A) has erred in law and facts in not considering the ground of appellant that Ld. AO has erred in law and facts in making order for addition of Rs.29,80,000/- u/s 69 in respect of time deposit in Surat Mercantile co. op. Bank on the basis of information of NMS only without making verification of correctness of the information.
 6. Ld. CIT(A) has erred in law and facts in not considering the ground of appellant that Ld.. AO has erred in law and facts in making order u/s 144 without considering the basis of figures of Profit and loss account and balance sheet submitted in income tax return and also without making verification of correctness of the information received through NMS.
 7. Ld. CIT(A) has erred in law and facts in not considering the ground of appellant that Ld. AO has erred in law and facts in making order u/s 144 without proper service of the notice by SMS or e-mail or by any other mode like personal messenger and not considered the facts that notices with the reference to assessment are not viewed by appellant on e- portal as per village culture of our country.
5. Ld. Counsel Shri Hasmukh V. Doshi appearing for the assessee submitted before us though the Assessing Officer has treated the assessment as exparte, the assessee society filed its Return of Income in pursuant to the 148 notice on 01.04.2023 declaring Nil income and also responded to the notices. The replies filed by the assessee society on 10.03.2023, 09.07.2023 with the available information which are placed in the Paper Book at Page Nos. 28 to 37 and 45 to 50. The assessee categorically mentioned that it had not made any deposit in Surat Mercantile Co-Op. Bank and the information with the Assessing Officer is not correct in law. However, without considering the above submissions, Ld. Assessing Officer

made the cash deposits as the unexplained investment u/s. 69 and also taxed u/s. 115BBE of the Act.

5.1. Aggrieved against the assessment order, the assessee filed appeal before Ld. CIT(A). However the Ld. CIT(A) had given two opportunities of hearing on 01.05.2024 and 08.05.2024 and dismissed the appeal for non-compliance. Ld. Counsel further submitted the members of the assessee Co-operative Society are Farmers residing in small and interior village of Mehsana District is located at Vishol and the members are illiterate Farmers. The business of the assessee Society is giving loans to members out of funds raised from members by way of deposits and share capital, which is eligible for deduction u/s 80P of the Act. The alleged time deposit of Rs.29,80,000/- with Surat Mercantile Co-Op. Bank is incorrect information with the A.O. Further the cash deposited in the bank accounts are properly recorded in the cash book regularly maintained by the Co-operative Society and the source of the cash deposit, receipt from members are by way of loan recovery or deposits. Thus the addition made by the Assessing Officer is not sustainable in law and an Affidavit to this extent was filed by the General Manager of the society is placed before us and requested to deleted the additions.

6. Per contra, Ld. Sr. D.R. Shri Atul Pandey appearing for the Revenue supported the orders passed by the Lower Authorities and also submitted that assessee has not filed its Return of Income u/s. 139(1) of the Act. Therefore the additions made by the Assessing

Officer is sustainable in law and requested to dismiss the assessee appeal.

7. We have given our thoughtful consideration and perused the materials available on record. It is as against the impugned exparte appellate order, the assessee has filed the present appeal with Stay Application No. 10/Ahd/2024 for stay of recovery of the demand of tax and interest amounting to Rs.1,16,86,977/-. In the Stay Petition proceedings on 21.06.2024, though the parties agreed for early hearing of the appeal, since the assessment and appellate orders being exparte orders and thereby fixed the main appeal for hearing on 25.06.2024 and the Bench directed the Department not to exercise any coercive action for recovery of demand till the disposal of the appeal.

7.1. On further perusal of the Paper Book filed by the assessee and other records available on record, it is found that the Assessing Officer has not taken in to account, the replies filed by the assessee on 10.03.2023, 09.07.2023 and passed the assessment order making addition in the hands of the assessee society. When the appeal was filed before Ld. CIT(A), he has granted hearing of the case only on 01.05.2024 and 08.05.2024 to file its submissions on or before 07.05.2024 and 14.05.2024. When there was no response to the above hearing notices, the appeal filed by the assessee was dismissed for non-prosecution. However, Ld. CIT(A) has not considered the Statement of Facts, Grounds of Appeal and Affidavit declaring the facts by the assessee. Further there is some lackcity on the part of the assessee society in not complying with the notices

issued by the Authorities concerned. In order to meet the ends of justice, we deem it fit to impose a cost of Rs.10,000/- (Rupees Ten Thousand only) payable by the assessee society to the Prime Ministers National Relief Fund and set aside the matter back to the file of Ld. CIT(A), NFAC to decide the appeal on merits by giving proper opportunity of hearing to the assessee society by serving hearing notice both by physical form as well as e-mail by giving adequate time to response to the notices. Needless to say, the assessee society should co-operate by filing all required details before the First Appellate Authority for deciding the case on merits.

8. In the result, the Stay Petition filed by the assessee is allowed with a direction not to recover the tax demand till the disposal of the appeal by the Ld. CIT(A)/NFAC.

9. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 14-08-2024

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER *True Copy*
Ahmedabad : Dated 14/08/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद