IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN, K., JUDICIAL MEMBER

ITA No.1436/Bang/2024
Assessment year : 2017-18

Shivasarane Hemaraddi Mallamma, Pattin Sahakar Sangh Ni Talikoti, Tali Koti. Muddebihal. Vijayapur – 586 212. **PAN : AAPAS 2649B**	Vs.	The Income Tax Officer, Ward 1 & TPS, Bijapur.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Shree Raksha, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	04.09.2024
Date of Pronouncement	:	13.09.2024

O R D E R

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 08.11.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 on the following grounds:-

> "1. That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred on law and on facts in not allowing the deduction u/s 80P on the ground that the appellant has not filed his return.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing the interest and dividend income of INR 4,03,945as deduction u/s 80P(2)(a)(i) of the Act even though the investments were made out of the surplus fund and attributable to business activities of the appellant.

4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing the interest and dividend income earned from Co-operative Banks as deduction u's 80P(2)(d) of the Act.

5. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing expenditure incurred for earning the interest and dividend income from the investments.

6. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not adjudicating the grounds on addition u/s. 69A of the Act.

7. That the learned lower authorities erred in law and on facts in confirming the addition of INR 10,36,000 u/s 69A of the Act and bringing to tax u/s. 115BBE of the Act even though the appellant had explained the source of income and submitted complete details of the beneficiary members who had deposited cash with the Appellant during the demonetization period.

8. That the learned lower authorities erred in law and on facts in making an addition u/s 69A of the Act on the ground that the appellant transacted in demonetized notes.

9. That the learned lower authorities erred in law and on facts in holding that the appellant was not allowed to accept Specified Bank Notes after 08.11.2016 and such a finding is perverse.

10. Without prejudice to the above ground and even assuming but without admitting that a person cannot accept Specified Bank Notes on or after 09.11.2016, the lower authorities erred in law

and on facts in adding sum of INR 10,36,000/- just because the provisions of some other statute are alleged to have been violated.

11. That the learned lower authorities erred in law and on facts in levying tax at 60% u/s. 115BBE of the Act even though the said section came into effect only from 15.12.2016 and therefore, erred in law and on facts in invoking section 115BBE for the deposits made prior to 15.12.2016.

Each of the above grounds is without prejudice to one another, the appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to allow, delete, amend or modify otherwise each of any of the grounds of appeal either before or at the time of hearing this appeal."

2. The assessee has also raised additional ground as follows:-

"Without prejudice to the above grounds that the learned Commissioner of Income Tax (Appeals) ought to have held that the disallowance on audit fee and pigmy commission are part of deduction u/s. 80P(2)(a)(i) of the Act."

3. The ld. AR submitted that the above additional ground is purely legal in nature and the relevant facts are already available on the record and emanating from the assessment order. This ground was not raised before the first appellate authority as the same is highly technical and the consultant of the appellant was not aware of the same. It is submitted that it is purely legal in nature and can be decided on the basis of existing facts on record and the same may be admitted. Reliance is placed on the Hon'ble Supreme Court judgment in CIT v. National Thermal Power Corporation, 229 ITR 383 (SC).

4. Considering the rival submissions, we note that the additional ground is legal in nature and following the Hon'ble Supreme Court

judgment in CIT v. National Thermal Power Corporation (supra), we admit the additional ground.

5. The brief facts of the case are that a notice u/s. 142(1) was issued to the assessee on 09.03.2018 calling the assessee to file return of income and time was granted to the assessee upto 08.04.2018. The assessee did not file its return. Under 'Operation Clean Money' it was noticed that assessee has deposited cash of Rs.10,36,000 in its Union Bank of India account at Talikoti Branch during the demonetisation period from 09.11.2016 to 30.12.2016 in the demonetised currency of Rs.500 & 1,000 notes. Subsequently notices were issued to the assessee on 08.08.2019 and 05.09.2019 and letter was also issued on 17.07.2019 but there was no response from the assessee's side. Accordingly AO completed the assessment on the basis of documents available before him. The AO issued notice to the bank u/s. 133(6) of the Act on the basis of AIR information which was provided. The AO noted that the assessee was not authorized to collect money in banned currency notes of Rs.500 & 1,000 and the assessee was unable to prove the sources, accordingly. it was treated as unexplained investment u/s. 69A and applied tax rate u/s. 115BBE of the Act.

6. Furthe notice u/s. 133(6) was issued to the Deputy Director of Registrar of Cooperative Societies, Alipur Oni, Sindagi Road, Vijayapur calling for bye laws of the society, address of Directors with PAN, audit report for FY 2016-17 as per Society Act which was provided. From the financial statements the AO noted that assessee

has paid pigmy commission of Rs.2,06,274 and audit fee of Rs.45,000, but no TDS was deducted as per the TDS provisions, therefore, following the section 40(a)(ia) of the Act. 30% of the same was added back in the total income. The AO also observed that assessee had made investment in fixed deposits etc. and derives interest income thereon. The total income earned by the assessee is Rs.4,03,945 which was also disallowed. Thereby total disallowance made as per para 13 of assessment is Rs.4,79,327. The assessed income u/s. 144 was Rs.15,15,330.

7. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA). The FAA allowed the ground regarding addition u/s. 40(a)(ia) and confirmed the rest additions made by AO. Aggrieved, the assessee is in appeal before the ITAT.

8. There is a delay of 211 days in filing appeal before the Tribunal. The assessee has submitted that the appeal could not be filed within the due date since the appellant society is situated in mofussil area and the management and administrative department are not well versed and the communications sent to emails by the department are beyond the reach of the said administrative personnel and appellant was not aware of the appellate order. On receiving phone call from the AO regarding recovery of demand during June, 2024, the appellant approached the consultants for further course of action and the appeal was filed. Hence there was delay and it was prayed that the delay may be condoned.

9. After hearing both the parties, it is observed that there are sufficient reasons for the delay in filing appeal 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, we condone the delay of 211 days.

10. The ld. AR of the assessee submitted that the assessee is eligible for deduction u/s. 80P(2)(a)(i) as well as u/s. 80P(2)(d) of the Act. The income earned on its investments deserve to be allowed as deduction u/s. 80P(2)(a)(i) of the Act because it was income of the assessee earned during the normal course of business and investment made in cooperative bank is under compulsion asper the direction of the Registrar of Cooperative Society. Therefore interest income earned by the asse shall be treated as business income of assessee. Alternatively, he further submitted that the deduction u/s. u/s. 80P(2)(d) of the Act should be allowed because interest was received from cooperative bank which is primarily a cooperative society.

11. He further submitted that cash was deposited by the members in their bank account maintained with the cooperative society during the demonetisation period in the demonetised currency of Rs.500 and Rs.1,000. It was the money of members deposited in their accounts only. The assessee has not got any benefit of this amount. During the appellate proceedings the assessee submitted the source of deposit with complete details of beneficiary members who had deposited the cash

with the appellant during the demonetisation period. Therefore, the ld. FAA is not justified in confirming the addition u/s. 69A of the Act.

12. The ld. DR relied on the orders of lower authorities and submitted that the assessee is not eligible to make claim of deduction u/s. 80P(2) because the asse has never filed return of income u/s. 139(1), 139(4) and even in response to notice u/s. 142(1). Therefore as per the judgment of Hon'ble Kerala High Court in the case of M/s Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs. CIT dated 14.03.2023 in ITA No. 120 of 2019 assessee is not eligible for deduction under Chapter VIA. In support of his arguments, he relied on the order of the Tribunal in ITA No.969/Bang/2023.

13. In case of cash deposits during the demonetisation period of Rs.10,36,000, he reiterated the order of lower authorities who have given detailed reasons. He further submitted that remand report was called from the AO and after assessee's reply, the FAA has rightly upheld the addition.

14. Considering the rival submissions we note that assessee has not filed return of income and claimed deduction under Chapter VIA on the income of Rs.4,03,945. We are in agreement with the ld. DR of the assessee that the assessee is not eligible for deduction u/s chapter VI-A following the judgement relied by the ld. DR noted above, since the assessee has not filed return of income within the due date. The Hon'ble High Court of Kerla in the case of M/s Nileshwar Range

Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs. CIT [2023] reported in 152 taxmann.com 347 9KERLA) in which it has been held as under:-

> **11.** On a consideration of the rival submissions and on a perusal of the statutory provisions, we find that a reading of section 80A(5) and Section 80AC of the IT Act as they stood prior to 1-4-2018, when the latter provision was amended by Finance Act 2018, would reveal that the statutory scheme under the IT Act was to admit only such claims for deduction under section 80P of the IT Act as were made by the assessee in a return of income filed by him. That return can be under sections 139(1), 139(4), 142(1) or section 148, and to be valid, had to be filed within the due date contemplated under those provisions. Under section 80A(5), the claim for deduction under section 80P could be made by an assessee in a return filed within the time prescribed for filing such returns under any of the above provisions. The amendment to Section 80AC with effect from 1-4-2018, however, mandated that for an assessee to get a deduction under section 80P of the IT Act, he had to furnish a return of his income for such assessment year on or before the due date specified in section 139(1) of the IT Act. In other words, after 1-4-2018, even if the assessee makes his claim for deduction under section 80P in a return filed within time under sections 139(4), 142(1) or section 148, he will not be allowed the deduction, unless the return in question was filed within the due date prescribed under section 139(1). Thus, it is clear that the statutory scheme permits the allowance of a deduction under section 80P of the IT Act only if it is made in a return recognised as such under the IT Act, and after 1-4-2018, only if that return is one filed within the time prescribed under section 139(1) of the Act. As the return in these cases, for the assessment years 2009-10 and 2010-11, were admittedly filed after the dates prescribed under sections 139(1) and 139(4) or in the notices issued under section 142(1) and section 148, the returns were indeed non-est and could not have been acted upon by the Assessing Officer even though they were filed before the completion of the assessment.
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> **12.** There is yet another aspect of the matter. The requirement of making the claim for deduction in a return of income filed by the assessee can be seen as a statutory pre-condition for claiming the benefit of deduction under the IT Act. It is trite that a provision for deduction or exemption under a taxing Statute has to be strictly construed against the assessee and in favour of the Revenue. Thus viewed, a failure on the part of an assessee to comply with the pre-condition for obtaining the deduction cannot be condoned either by the statutory authorities or by the courts.

> **13.** It is in the backdrop of the aforesaid discussion that we must consider the findings of a Division Bench of this Court in *Chirakkal Service Co-operative Bank Ltd.* [*supra*]. The findings therein, that appear to suggest that a claim for deduction under section 80P can be entertained even if it is made in a return filed beyond the time permitted under the IT Act, ignores the perspective that sees the requirement of the claim for deduction being made in a valid return as a pre-condition for obtaining the benefit of the statutory deduction. The said findings also fly in the face of the express statutory provisions that requires the claim to be made in a return filed by the assessee, by which term is meant a valid return under the Act, and therefore have necessarily to be seen as *per incuriam*. We also find that the subsequent amendments to section 80AC by the Finance Act 2018 fortifies the view that we have taken for, it makes the claim for deduction under section 80P conditional on filing a return within the due date prescribed under section 139(1) of the IT Act. In other words, the pre-condition for claiming the deduction under section 80P of the IT Act has now been made more stringent by reducing the time available to an assessee for making the claim.

15. Respectfully following the above judgment the assessee is not eligible for claim of deduction under Chapter VI-A of the Act on its income.

16. The next issue is regarding cash deposit of Rs.10,36,000. After considering the submissions of the assessee, the ld. FAA noticed that the burden of proof lies on the appellant to explain the nature and source of cash deposits. However, we note that the assessee has submitted source of cash deposits, details of beneficiary members who had deposited the cash with the appellant during the demonetisation period which has not been considered by the ld. FAA. Similar issue has been decided in the case of the Income Tax Officer, Ward 1(1), Hubballi vs. M/s. Shri Chatrapati Shivaji Vividoddeshagala Sahakari Sangha Niyamita, in ITA No. 929/Bang/2023 for the AY 2017-18 order dated 19.01.2024 in which it has been held as under:-

> 6. Before the First Appellate Authority, the assessee submitted the details of the members who were claimed to have been the source of deposit during demonetization. The same is appearing from pages 72-76 of the paper book filed before us. However the PAN and KYC in respect of such members of the assessee's society was not furnished either before the AO or before the CIT(A) which could assist the authorities below to consider the genuineness of the income in its proper perspective.
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> 7. Hence we are not satisfied with the order passed by the Ld.CIT(A) in granting relief to the assessee since no such proper verification is found to have been done. Having regard to this particular facts and circumstances of the matter, we set aside the issue to the file of the Ld.AO for consideration of the genuineness of the deposit of Rs.65,55,000/- during demonetization by the assessee, upon verification of the details mainly PAN & KYC of the members of the assessee society to be furnished by the assessee before him. The Ld.AO is also directed to grant an opportunity of being heard to the assessee and to consider the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. We also make it clear that in the event, the assessee does not co-operate with the revenue officer, he will be at liberty to dispose of the matter strictly in accordance with law.

17. Respectfully following the above decision, we remit this issue to the AO in above terms.

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

Pronounced in the open court on this 13th day of September, 2024.

Sd/-	Sd/-
(SOUNDARARAJAN K.)	(LAXMI PRASAD SAHU)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 13th September, 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.