

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 1337/Bang/2024
Assessment Year: 2018-19

Vyavasaya Seva Sahakari Sangha, Sonkarappa Rshantha Mallappa Hithimmapura, Thandya Chowiahiriyur, Asandi, Main Road, Asandi BO, Kadur, Chickmagalur – 577 550. PAN – AABAV 9169 K	Vs.	The Income Tax Officer, Ward – 1, Chickmagalur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Monish Sowkar, Advocate
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	20.09.2024
Date of Pronouncement	:	15.10.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 08/06/2024 in DIN No. ITBA/NFAC/S/250/2024-25/1065488540(1) for the assessment year 2018-19.

2. In the present case, there was cash deposit in the bank account of the assessee amounting to Rs. 1,54,96,046/-, the source of which was not explained. Therefore, the AO invoked the provisions of sec. 69A of the Act and added the same to the total income of the assessee.

3. On appeal, the Id. CIT(A) dismissed the appeal of the assessee as non-maintainable for the reason that there was a delay in filing the appeal of 184 days. According to the Id. CIT(A), the delay was not suitably explained by the assessee and, therefore, the Id. CIT(A) dismissed the same as non maintainable.

4. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 39 to 92 and contended that entire income of the assessee is deductible u/s 80P(2)(a)(i) of the Act. Therefore, the assessee was under the bona-fide belief that it is not liable to file the Income-tax return. Secondly, the assessee could not make necessary compliances during the assessment proceedings. Likewise, the assessee due to negligence has also not filed the appeal before the Id. CIT(A) within the statutory time. As such, the Id. AR prayed before us that the income of the assessee cannot be taxed on gross basis. According to the Id. AR, the cash was deposited in the bank out of the receipt of loan given by it to its members, which has been duly accounted for in the books of accounts. Thus, it was pleaded by the Id. AR that the assessee has strong case on merit and, therefore, the same should not be dismissed on account of technical lapses. Accordingly, the Id. AR prayed to restore the issue to the file of the AO for fresh adjudication as per the provisions of law.

6. On the other hand, the learned DR vehemently supported the orders of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the primary onus lies upon the assessee to justify its claim. The assessee is a society registered dated 05/10/1976. thus, it is an old society, and it cannot be negligent in pursuing its Income-tax matters. Thus, we find that there is negligent approach of the assessee.

7.1 Be that as it may be the revenue cannot make the addition entirely on account of cash deposited during the assessment proceedings. It is settled position of law that even if the assessee does not co-operate, revenue authorities are not authorized to frame the assessment in arbitrary manner. In holding so, we draw support and guidance from the judgment of the Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165 wherein it was held as under:

18. The position is, therefore, that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is as a result of assessee's own mistake or otherwise, the CIT has the power to correct such an assessment under section 264(1) of the Act. If the CIT refuses to give relief to the assessee, in such circumstances, he would be acting de hors the powers under the Act and the provisions of the Act and, therefore is duty-bound to give relief to an assessee, where due, in accordance with the provisions of the Act.

19. In the present case, the respondent-CIT has nowhere stated that the petitioner is not entitled to the relief under section 10(10C) of the Act. In fact, the said position is undisputed. The Assessing Officer himself had passed an order under section 154 of the Act, granting such relief. In the circumstances, even the order under section 264 of the Act made on 29-3-2004, cannot be sustained.

20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an

unreported decision in case of Vinay Chandulal Satia v. N.O. Parekh, CIT [Spl. Civil Application No. 622 of 1981 dated 20-8-1981], has laid down the approach that the authorities must adopt in such matters in the following terms:

"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."

7.2. In view of the above, we find that admittedly, the assessee is negligent but at the same time, we also know that the revenue authorities have exceeded their jurisdiction by framing the assessment in arbitrary manner. Thus, considering the facts in totality, we are inclined to extend one more opportunity to the assessee to represent its case before the AO. Accordingly, we set aside the issue to the file of the AO for fresh adjudication as per the provisions of law. It is needless to mention that the assessee shall co-operate during the proceedings and shall not seek any adjournment without just cause. The Id. AR, at the time of hearing, has also undertaken the responsibility to extend the full co-operation to the AO on behalf of the assessee. Hence, the appeal of the assessee is hereby allowed for statistical purposes.

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

Order pronounced in court on 15th day of October, 2024

Sd/-

(GEORGE GEORGE K)

Vice President

Bangalore,

Dated, 15th October, 2024

Sd/-

(WASEEM AHMED)

Accountant Member

vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore