

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE  
SHRI MANJUNATHA G., ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / ITA No.855/Hyd/2024  
(निर्धारण वर्ष / Assessment Year: 2016-17)

Khammam Finance Corporation Khammam [PAN : AAAAK6655L]	Vs.	Income Tax Officer Ward-1 Khammam
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अपीलार्थी / Appellant                      प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Y.V.Bhanu Narayan Rao, AR  
राजस्व द्वारा/Revenue by: Shri Karthik Manickam, DR

सुनवाई की तारीख/Date of hearing: 29/10/2024  
घोषणा की तारीख/Pronouncement on: 12/11/2024

**आदेश / ORDER**

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 27/06/2024 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Khammam Finance Corporation ("the assessee") for the assessment year 2016-17, the assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an AOP (Society), formed with the object of providing financial support to the members only by collecting amounts from the members and lending the same to the needy members for their personal needs, on a no profit and no loss basis. The interest collected from the members, who availed advances, is distributed to all the other members as Dividend /Discount and only meagre amount of interest is retained by the Society towards common expenditure and establishment charges.

3. An amount of Rs 2,59,63,221/- was deposited in IDBI Bank of the Society during the FY 2015-16 relevant for AY 2016-17 and the entire cash deposits into the IDBI Bank savings accounts represents contribution/share received from the members of the Society. The Society handles the amounts received from members and in turn lends to needy members in the capacity as custodian of funds of the members only and no amount of deposits belong to the Society.

4. Learned AR submitted that since there is no lending activity to outsiders and interest also is received from members, which in turn is used for the benefit of the members in the form of dividend, the Society was under the genuine impression that the surplus generated from the main object is for mutual benefit of the society members and hence not liable to tax on the concept of Mutuality Principle and there is no lending activity to outsiders, and, therefore, no return of income was filed for AY 2016-17.

5. As things thus stood, a notice u/s 148 of the Income Tax Act, 1961 ("the Act") Act,1961 was issued on 30/03/2021 and proceedings u/s 147 of the Income Tax Act, 1961 ("the Act") were initiated. Assessee did not give any response and the Learned AR attributed the reason for such non-response is that the new Executive Committee of the Society was elected in March, 2021 and it had to depend on the previous Executive Committee for gathering and submitting the information sought by the department.

6. Learned AR further submitted that the Society submitted its reply dated 16/03/2022 in response to show cause notice stating the above facts

and also giving the details of number of groups and number of members in each group and amount collected per member in each group. It also requested for a further time, but no such time was granted, and the assessment order was passed on 26/03/2022 under section 147 read with section 144 read with section 144B of the Act by treating the deposits of cash of Rs.2,59,63,221/- received from members as contribution and interest of Rs.20,984/- as undisclosed income u/s 69A of the Act and also raised demand of Rs 2,15,82,254/-.

7. Assessee preferred an appeal before learned CIT(A), who having noticed that the assessee did not pay the tax on the returned income and not furnished the particulars of such payment and did not furnish the information in column Nos 8 and 9 of Form 35, issued notice to the assessee to explain these things. Impugned order reads that the assessee did not respond to such notice, and therefore, the learned CIT(A) invoked the provisions under section 249(4)(b) of the Act declined to admit the appeal, and accordingly dismissed the same.

8. Hence, the assessee filed this appeal. Learned AR pleads that the statutory requirement contemplated under section 249(4)(b) of the Act would stand triggered only where any obligation was cast upon the assessee to pay "advance tax" and since no such obligation is there on the assessee in this case, invoking the provisions under section 249(4)(b) of the Act is not warranted. He placed reliance on a decision of the coordinate Bench reported in Vishnusharan Chandrevanshi (2024) 161 Taxmann.com 803 (Raipur-Trib).

9. Per contra, learned DR submitted that when the learned CIT(A), based on the material available before him, entertained a doubt as to the maintainability of the appeal without payment of the advance tax, and issued a notice to the effect, assessee failed to respond to the notice and explain to the learned CIT(A) as to the case, and therefore, learned CIT(A) is justified in passing the impugned order basing on the material available before him.

10. We have gone through the record in the light of the submissions made on either side. In the case of Vishnusharan Chandrevanshi (*supra*), the assessee did not file the return of income either under section 139 of the Act, or in response to the notice issued to him under section 142 (1) of the Act and the learned CIT(A), while considering the appeal filed by the assessee, invoking the provisions under section 249(4)(b) of the Act and dismissed the appeal observing that the assessee who did not file the return of income also did not pay an amount equal to the amount of advance tax which was payable by him; nor did he file an application seeking exemption from the operation of the statutory provision in section 249(4)(b) of the Act and therefore for non-compliance with the statutory requirement contemplated in section 249(4)(b) of the Act the appeal of the assessee was liable to be dismissed.

11. In appeal, a coordinate Bench of this Tribunal observed that as per section 249(4)(b) of the Act, in a case where no return of income was filed by the assessee, then his appeal shall be maintainable before the learned CIT(A) only if he had paid an amount equal to the amount of advance tax which was payable by him, but at the same time the legislature had carved out an exception to the applicability of the aforesaid statutory requirement by way of a “proviso” to section 249(4) of the Act, as per which, and an application made by the assessee, the learned CIT(A) may, for any good and sufficient reason to be recorded in writing exempt him from the operation of the aforesaid statutory provision.

12. Bench, however, further observed that the statutory requirement contemplated in section 249(4)(b) of the Act would stand triggered only when any obligation was cast upon the assessee to pay “advance tax”, but when the assessee pleaded in the statement of facts before the learned CIT(A) that there was no taxable income for the year under consideration, no such obligation was cast upon the assessee to compute and pay any advance tax under sections 208 and 209 of the Act. On this premise the Bench decided that the First Appellate Authority could not have held that the assessee failed to comply with the statutory condition contemplated in

section 249(4)(b) of the Act. To reach this conclusion reliance was placed on the decision of the Bangalore Bench of the Tribunal in the case of Shamanna Ready vs. ITO in ITA No. 1120/Bang/2023 by order dated 20/2/2024 and the Delhi Bench of the Tribunal in the case of Vikram Singh vs. ITO in ITA No. 6559 /Del/ 2019 by order dated 21/2/2023.

13. Coming to the facts of the case on hand, the assessee pleaded in the statement of facts submitted before the learned CIT(A), that since there is no lending activity to outsiders and interest also is received from members, which in turn is used for the benefit of the members in the form of dividend; the assessee was under the genuine impression that Surplus generated from the main object is for mutual benefit of the society members and hence not liable to tax on the concept of Mutuality Principle and there is no lending activity to outsiders, and that is the reason why no return of income was filed for AY 2016-17.

14. Facts of the case on hand are very similar or identical to the facts involved in the case of Vishnusharan Chandrevanshi (supra), and therefore, to this fact situation, the decision of the Raipur Bench of the Tribunal in the case of Vishnusharan Chandrevanshi (supra) applies on all fours. Hence, respectfully following the decision of the coordinate Bench in the case of Vishnusharan Chandrevanshi (supra) and the line of decisions referred to therein, we set aside the impugned order and restore the appeal to the file of the learned CIT(A) to dispose of after affording an opportunity of being heard to the assessee and considering the merits of the case.

15. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on this the 12<sup>th</sup> November, 2024.

Sd/-

**(MANJUNATHA G.)**

**ACCOUNTANT MEMBER**

Hyderabad, Dated: 12/11/2024

*L.Rama, SPS*

Sd/-

**(K. NARASIMHA CHARY)**

**JUDICIAL MEMBER**

Copy forwarded to:

1. Khammam Finance Corporation, D.No.9-11-150/1, Beside Brahmakumari Eswariyam, Ramalayam Road, Khammam
2. The Income Tax Officer, Ward-1, Khammam
3. Pr.CIT, Hyderabad
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD