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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA Nos.1940 & 1941/Bang/2024
Assessment Years: 2018-19 & 2018-19 respectively

ITO Ward-1 Ballari	**Vs.**	Varalakshmi Credit SSN, Sri SB Complex Hospet, Kampli Ballari Karnataka 583132 **PAN NO : AAAAV3707E**
APPELLANT		**RESPONDENT**

Appellant by	:	Shri V. Parithivel, D.R.
Respondent by	:	Sri Deepak, A.R.

Date of Hearing	:	18.11.2024
Date of Pronouncement	:	29.11.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These two appeals at the instance of the revenue are directed against ld. CIT(A)/NFAC order dated 8.8.2024 Vide Din & Order No. ITBA/NFAC/S/250/2024-25/1067448811(1) passed u/s 250 of the Income Tax Act, 1961 (in short "The Act") for the AY 2018-19. Since both these appeals are with respect to same order of the ld. CIT(A) and that too in respect of same assessment year, hence, these appeals are clubbed together, heard together and disposed of by this common order for the sake of convenience.

2. At the outset, ld. D.R. submitted that these two appeals are filed for the same assessment year 2018-19 against the same order dated 8.8.2024 of the ld. CIT(A)/NFAC. The only difference is that in ITA No.1940/Bang/2024, the revenue has taken only one ground of appeal and whereas in ITA No.1941/Bang/2024 revenue has

taken two grounds of appeal. We take a note that the revenue has filed these two appeals for the same assessment year 2018-19 against the same order of ld. CIT(A) dated 18.8.2024. Further, we take a note that in appeal No.1940/Bang/2024, the revenue has taken only one ground, which related to not allowing the opportunity to AO to examine the evidence produced by the assessee whereas in appeal No.1941/Bang/2024, the revenue has raised one more additional ground with regard to allowing the deduction u/s 80P(2)(d) of the Act.

3. In our considered opinion, both the appeals for the same assessment year 2018-19 against the same order of ld. CIT(A) cannot be admitted simultaneously. The ld. A.R. of the assessee has also submitted that two appeals filed by the revenue for the same assessment year against the same order of the ld. CIT(A)/NFAC is illegal and bad in law. Considering the same and at the request of ld. D.R., we admit the appeal in ITA No.1941/Bang/2024 for adjudication and accordingly appeal in ITA No.1940/Bang/2024 becomes infructuous and dismissed as infructuous.

4. Now in ITA No.1941/Bang/2024, the revenue has raised following grounds:

a) *Whether on the facts and in the circumstances of the case and in law, the Learned CIT(A)(NFAC) was correct in holding the Unsecured loans/deposits of Rs. 4,28,27,020/- without allowing the opportunity to A.O. to examine the evidences produced by the assessee, during the appellate proceedings and present his findings through the remand report in violation of Rule 46A(3) of Income-tax Rules, 1962.*

b) *On facts and circumstances of the case and in law, the Learned CIT(A)/(NFAC) has erred in allowing the deduction u/s. 80P(2)(d) of the IT Act with regard to interest income earned from the investments in Cooperative Banks without taking into its consideration the decision of the Hon'ble HC of Karnataka in Pr.CIT, Hubballi Vs the Totgars Co-operative Sale Society Limited, Sirsi in ITA No. 100066 of 2016 wherein it was held that "..the income by way of interest earned by deposit or investment of surplus funds doesn't change its character irrespective of the fact whether such income is earned from the scheduled or Cooperative Bank and thus, clause (d) of 80P(2) of the Act would not apply in the facts and circumstances of the case".*

c) *Any other ground that may be raised subsequently.*

5. The brief facts of the case are that the assessee is a credit co-operative society registered under the Karnataka Co-operative Societies Act, 1959 engaged in the business of providing credit facility only to its members. For the financial year 2017-18, relevant for the assessment year 2018-19, the assessee filed its return of income on 12.10.2018 declaring income of Rs.Nil after claiming deduction of Rs.1,26,96,351/- u/s 80P of the Act. Thereafter, the case was selected for limited scrutiny to examine deduction claimed u/s 80P of the Act and loans during the year and accordingly, statutory notices u/s 143(2) of the Act as well as u/s 142(1) of the Act were issued to the society calling for various details. Vide said notices, the assessee was asked to submit various details to justify its claim of deduction under Chapter VI-A, details of earning under different head against which deduction was claimed and details of unsecured loans accepted during the year. During the course of assessment proceedings, the AO observed from the return of income filed by the assessee for AY 2017-17 and AY 2018-19, that the total unsecured loan as on 31.3.2018 was Rs.20,13,62,606/-, whereas total unsecured loan as on 31.3.2017 was Rs.15,85,35,586/- only. Therefore, it is apparent that new unsecured loan accepted during the year under consideration is Rs.4,28,27,020/-. Further, the AO has also observed that as the assessee miserably failed to submit any details called for to prove that the unsecured loans increased during the year were genuine and accordingly same was held as unexplained cash credit of the assessee and added to the total income of the assessee u/s 68 of the Act. Further, the ld. AO also observed that the assessee also did not comply various notices issued and failed to submit supporting evidence to justify its claim of deduction u/s 80P(2)(a)(i) of the Act and accordingly, in the absence of evidences the claim of deduction u/s 80P(2) of the Act of Rs.1,26,96,351/- was disallowed

and also added to the income of the assessee. Accordingly, the ld. AO completed the assessment on a total income of Rs.5,55,36,954/- against the returned income of Rs. Nil u/s 143(3) of the Act. Aggrieved by the assessment completed u/s 143(3) r.w.s. 143(3A)&(3B) of the Act dated 3.3.2021, the assessee preferred an appeal before the ld. CIT(A)/NFAC. The ld. CIT(A)/NFAC partly allowed the appeal of the assessee by observing that the assessee is not eligible to claim deduction u/s 80P(2)(a)(i) of the Act but following the decision of the coordinate bench in ITA No.6547/Mum/2017 dated 25.4.2018 in the case of Kaliandas Udyog Bhawan Premises Co-operative Society Ltd., the ld. CIT(A) directed the AO to allow the deduction u/s 80P(2)(d) of the Act to the extent of interest earned from the co-operative society and co-operative banks. Further, ld. CIT(A) also directed the AO to assess if any interest earned on deposit held with the scheduled banks, commercial banks and any financial institutions other than mentioned in para 6.3 under the head “income from other sources” as per section 56 of the Act. Further, ld. CIT(A) observed that since sale of e-stamp is not related to the activity of the co-operative society and accordingly held that commission received amounting to Rs.96,000/- is to be assessed under the head “income from other sources”. Further, with regard to addition u/s 68 of the Act, after examining the written submissions along with details of deposit, breakup of head-wise details with names and members, account number, date, member-wise details and list of various deposits as on 31.3.2018. the ld. CIT(A) held that total deposit of Rs.4,28,27,020/- is actually the deposits received from the members and are not unsecured loan and after carefully perusing the details provided by the assessee during the course of appellate proceedings, the addition made u/s 68 of the Act was deleted by the ld. CIT(A). Aggrieved by the order of ld. CIT(A), the revenue filed the present appeal before this Tribunal.

6. The ld. A.R. of the assessee filed a paper book comprising 42 pages enclosing therein copies of written submissions, financial statements for AY 2018-19, acknowledgement for submission before NFAC, copy of the order of Delhi High Court in the case of CIT (Intl. Taxation) v. Hotchand Techchand Punjabi (2024) 158 taxmann.com 244 (Delhi), order of the Hon'ble ITAT Bangalore in the case of PACCS Vs. ITO (2024) 164 taxmann.com 327 (Bangalore Trib.) and also order of ITAT Bangalore in the case of Saptagiri Pattina Souharda Sahakari Sangha Niyamitha Vs. ITO (2024) 162 taxmann.com 855 (Bangalore Trib.)

7. Before us, ld. D.R. submitted that ld. CIT(A)/NFAC was not justified in deleting the unsecured loans/deposit of Rs.4,28,27,020/- without allowing the opportunity to AO to examine the evidence produced by the assessee during the appellate proceedings, which is the clear violation of principles of natural justice as well as violation of Rule 46A(3) of the Income Tax Rules, 1962. Further, the ld. D.R. vehemently submitted that no details were produced by the assessee during the course of assessment proceedings and accordingly, the ld. CIT(A) should have granted opportunity to the ld. AO before accepting the additional evidences produced before him. Further, ld. D.R. vehemently submitted that ld. CIT(A)/NFAC was also not justified in allowing the deduction u/s 80P(2)(d) of the Act with regard to interest income earned from investment in co-operative banks without taking into consideration the decision of the Hon'ble High Court of Karnataka in Principal CIT Hubballi Vs. Totgars Co-operative Society Ltd., Sirsi in ITA No.10066 of 2016.

8. The ld. A.R. of the assessee on the other hand, vehemently submitted that this is not a case of additional evidence produced before the ld. CIT(A). Further, the ld. A.R. of the assessee submitted a screen shot depicting therein the details of loans,

investments, etc. submitted during the course of assessment proceedings vide response dated 3.3.2021.

8.1 Further, ld. A.R. of the assessee vehemently submitted that whatever furnished before the ld. Assessing officer during the course of assessment proceedings are retabulated and produced before the first appellate authority and the ld. CIT(A) has rightly after making such enquiry has deemed fit has taken a judicious view as per the provisions contained in section 250(4) of the Act.

9. We have heard the rival submissions and perused the materials available on record. With regard to ground No.1 of the appeal of the revenue, we take a note of the fact that this is not a case of filing additional evidence before the ld. CIT(A)/NFAC. In fact, the assessee society filed its submissions before the AO on 3.3.2021 as can be seen from the screen shot submitted by the ld. A.R. of the assessee before us. We also take a note of the fact that the AO passed an order u/s 143(3) of the Act on 3.3.2021 itself. Therefore, in our opinion, this is a case of non-consideration of submissions produced during the course of assessment proceedings, before passing order of assessment by the AO. We also agree with the contention of the ld. A.R. of the assessee that these submissions could not be filed after passing of the assessment order as the submission tab gets inactive/freeze, once the AO passed an order. Therefore, we are of the opinion that these documents are not additional evidence under rule 46A but merely documents submitted by the assessee during the course of assessment proceedings, which are not considered by the AO. The assessee has submitted all these documents/records/information during the course of appellate proceedings for proper adjudication of the appeal. Therefore, in our opinion, Rule 46A of the Income Tax Rules, 1962 with regard to production of additional evidence does not apply in case of the assessee.

9.1 It is well settled law that the powers of the ld. CIT(A) are co-terminus and co-extensive with that the AO. The ld. CIT(A)/NFAC is not only an appellate authority but also possesses the power of an adjudicating authority similar to that of an AO. The powers of enquiry thus in a sense runs concurrently. Under the provisions of section 250(4) of the Act, the ld. CIT(A) may either himself make such further enquiry as he thinks fit or he may direct the AO to make further enquiry and report the result of the same to him. We find that in the present case, ld. CIT(A)/NFAC chooses to make further enquiry and called for the records/documents/information himself, rather than direct the AO to make further enquiry and submit the report. Therefore, in our opinion, there is nothing wrong as per the provisions contained in section 250(4) of the Act. We also found that during the course of appellate proceedings, as observed by the ld. CIT(A) in para 8.2 that assessee has submitted the written submissions along with details of deposit, breakup of headwise details with names of the members, account numbers, the list of various deposits as on 31.3.2018 and after carefully perusing the material/records the ld. CIT(A) held that addition made u/s 68 of the Act amounting to Rs.4,28,27,020/- cannot be sustained. We are also of the view that revenue has also not brought any deficiency or discrepancy to disturb the aforesaid factual finding of the ld. CIT(A).

9.2 We are of the opinion that under the similar facts and circumstances, Hon'ble High Court of Delhi in the case of Commissioner of Income Tax (International Taxation) Vs. Hotchand Techchand Punjabi reported in 158 taxmann.com 244(2024) (Del.) has observed as follows:

"17. Being aggrieved, the appellant revenue carried the matter in appeal to the Tribunal. The Tribunal missed the appeal pre erred by the appellant/revenue on two grounds.

7.1 Firstly, that the CIT(A) had exercised his powers under Section 250(4) of the Act which was co-equal to that of the AO. It also took note of the fact that notice was issued to the concerned branch of Canara Bank under Section 133(6) of the

Act and it was only after information was received from Canara Bank and material evidence furnished by the respondent/assessee, that e relevant observations made in this behalf by the Tribunal being apposite are set forth hereafter:

> *"7. We have considered rival submissions and perused the materials on record. The basic grievance of the Revenue is, learned Commissioner (Appeals) should not have deleted the addition based on additional evidences furnished by the assessee without forwarding them to the Assessing Office for his examination and opinion. It is fairly well settled, powers of the first appellate authority is co-terminus with the Assessing Officer. On a reading of section 250 and 251 of the Act, it is very much clear that learned Commissioner (Appeals) while deciding an appeal can consider and decide any matter arising out of proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised by the appellant. In fact, sub-section (4) of section 250 of the Act empowers the first appellate authority to make further inquiry as he thinks fit for disposing of the appeal. Even, sub-rule (4) of Rule 46A empowers the first appellate authority to call for and examine evidences and make necessary inquiry. Thus, as could be seen, the statutory provisions empower the first appellate authority make necessary inquiry and call for evidences to decide appeal.*
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> *8. In the facts of the present appeal, undoubtedly, learned Commissioner (Appeals) exercising statutory power vested with him has called for and examined necessary evidences for deciding the issue. Such exercise of power by learned first appellate authority assumes importance in the present case considering the fact that the assessee did not get a fair opportunity to represent his case before the Assessing Officer. On a careful reading of the impugned order of learned Commissioner (Appeals) it is very much clear that considering the fact that the assessee did not get a fair opportunity to represent his case before the Assessing Officer, learned Commissioner (Appeals) took the responsibility upon himself to inquire into the matter and in the process has called for necessary evidences, not only from the assessee, but from the concerned bank through the assessee. After examining the evidences, learned Commissioner (Appeals) has factually found that the actual quantum of time deposits in Canara Bank was to the tune of Rs.9,50,0Q,000/-. He has further found that even Rs.9,50,00,000/- deposited in Canara Bank was out of overseas remittances from the income earned by the assessee as a resident in USA for past so many years. No material has been brought on record by the Revenue to disturb the aforesaid factual findings of learned Commissioner (Appeals). Therefore, if, upon examining the material on record learned Commissioner (Appeals) has recorded a factual finding, without pointing out any deficiency or discrepancy in such finding, the decision of learned Commissioner (Appeals) cannot be reversed merely on the allegation of violation of Rule 46A."*

18. According to us, the Tribunal has reached the correct conclusion. Mr Kumar cannot but accept that the CIT(A) has co-equal powers as that of the AO. The enquiry carried out by the CIT(A) revealed a grave factual error committed by the AO, in noting the figure with regard to the time deposits.

19. In our opinion, since the CIT(A) has returned a finding of fact with regard to the source of funds that were found deposited in the period in issue, i.e., Rs.9.50 crores, no interference is called for as these findings have been affirmed by the Tribunal as well.

20. Thus, according to us, no substantial question of law arises for our consideration."

9.3 Respectfully following the above, we are of the firm opinion that CIT(A) had exercised his power u/s 250(4) of the Act in accordance with law and adjudicated the case on merits after considering certain information/documents/records submitted by the assessee. Therefore, ground No.1 raised by the revenue fails and accordingly dismissed.

10. Now with regard to ground No.2 raised by the revenue of allowability of the deduction u/s 80P(2)(d) of the Act, with regard to interest income earned from the investment in co-operative banks, we direct the AO to verify whether interest/dividend is received by the assessee out of the investments made with co-operative societies? If the assessee earns interest/dividend income out of the investment with co-operative society, as observed by Hon'ble Supreme Court in the case of Kerala Stat Co-operative Agricultural & Rural Development Bank Ltd. in Civil Appeal No.10069/2016 order dated 14.9.2023, the same is entitled to deduction u/s 80P(2)(d) of the Act.

10.1 Without prejudice to the above, we make it clear that if the interest earned by the assessee from the banks is considered under the head "Income from other sources" relief to be granted to the assessee u/s 57 of the Act in accordance with law. Accordingly, this issue is restored to the file of ld. AO for de-novo consideration with the above observations. Accordingly, this ground of revenue is partly allowed for statistical purposes.

11. In the result, appeal filed by the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 29th Nov, 2024

Sd/-	**Sd/-**
(Waseem Ahmed)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 29th Nov, 2024.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.