

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.2040/Bang/2024
Assessment Year: 2016-17

The Beekeepers Co-operative Society Ltd. Post Box No.2, S.P. Road Sakaleshapura 573 134 Hassan Karnataka 573 134  <b>PAN NO : AAAAT1506F</b>	<b>Vs.</b>	ITO Ward 1 & TPS Hassan
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri Pranav Krishna, A.R.
<b>Respondent by</b>	:	Sri Ganesh R Ghale, Standing Counsel for revenue.

<b>Date of Hearing</b>	:	03.12.2024
<b>Date of Pronouncement</b>	:	05.12.2024

**O R D E R**

**PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:**

Present appeal of the assessee is arising from the order of Id. CIT(A)/NFAC dated 23.8.2024 having DIN & Order No.ITBA/NFAC/S/250/2024-25/1067905148(1) for the assessment year 2016-17.

**2.** There is a delay of 6 days in filing of this present appeal. Ld. Counsel for the assessee appearing on behalf of the assessee has pointed out that because of the communication gap between the assessee and the professional who was handling the matter earlier, the inadvertent delay has occurred.

**3.** Ld. D.R. could not seriously objected to the prayer of the assessee vis-à-vis condonation of delay.

**4.** Considering the smallness of the delay of 6 days, we hereby condone the same and proceed to decide the matter.

**5.** Brief facts of the case leading to the filing of present appeal are that the assessee is a Co-operative Society filed its return of income for the impugned year on 30.3.2018. The return of income filed by the assessee was processed u/s 143(1) of the Income Tax Act, 1961 (in short "The Act"), wherein the claim of deduction u/s 10(23B) of the Act, claimed by the assessee has been disallowed by the CPC.

**6.** Aggrieved with the order of CPC, assessee preferred an appeal before the ld. CIT(A), who vide its order dated 6.12.2021 allowed the appeal of the assessee by observing that the matter requires fresh consideration by the AO and hence, the ld. CIT(A) restored the matter to the file of AO.

**7.** Aggrieved with the order of ld. CIT(A) dated 6.12.2021, the assessee preferred appeal before the Hon'ble ITAT and the Hon'ble ITAT vide its order dated **7.12.2023 in ITA No 841/Bang/2022** held that the ld. CIT(A) has exceeded his jurisdiction by restoring the matter to the file of the AO for deciding afresh. Lastly the ITAT restored the matter to the file of CIT(A).

**7.1.** When the proceedings were pending before the ld. CIT(A), after the order of ITAT dated 7.2.2023, the ld. AO following the directions of the ld. CIT(A) dated 6.12.2021 has passed the impugned order dated 27.4.2022 and held that the assessee is not entitled for the deduction u/s 10(23B) of the Act.

**7.2** Aggrieved of the order of the ld. AO, the assessee preferred appeal before the ld. CIT(A) who vide its order dated 23.8.2024, dismissed the appeal of the assessee upholding the disallowance of deduction made u/s 10(23B) of the Act to the assessee.

**7.3** Now the assessee has come up in appeal before us and contended that the directions given by the Hon'ble ITAT vide its order dated 7.2.2023 are still pending and hence, the present proceedings are non-est proceedings, as the

same are initiated in response to an order of Id CIT(A), which order has already been set aside by the Hon'ble ITAT vide its order dated 7.2.2023.

**8.** Ld. D.R. relied upon the order of the authorities below and sequence of events as narrated by the counsel for the assessee.

**9.** After considering the rival submissions, we deem it appropriate to incorporate certain sequence of events, which goes to the root of the matter are as under:

<b>Date</b>	<b>Nature of proceedings</b>	<b>Remarks</b>
29.03.2019	Return filed by the assessee was processed u/s 143(1) of the Act	Deduction u/s 10(23B) of the Act was disallowed.
11.07.2019	Assessee preferred appeal before ld. CIT(A) against the order of CPC	No remarks. Admitted fact.
06.12.2021	Ld. CIT(A) set aside the matter to the file of AO	Admitted fact.
07.02.2023	Coordinate bench of the ITAT in <b>ITA No.841/Bang/2022</b> set side the order of ld. CIT(A) and restored the matter to the file of ld. CIT(A).	Fresh proceedings before ld. CIT(A) are still pending.
27.04.2022	The AO passed the impugned order	Admitted fact
07.09.2022	Assessee filed appeal before the ld. CIT(A) against the order of AO	Admitted fact
23.08.2024	Impugned order of ld. CIT(A) has been passed.	Against this order now the assessee has comeup in appeal.

**9.1** After bare perusal of the above sequence of events would show that the impugned order of the AO has been passed when the matter was sub-judice before the coordinate bench in ITA No.841/Bang/2022. We are of the view that the moment the order of CIT(A) in first round has been set aside all consequential proceedings in pursuance to such order become non-est/ void ab initio, since the directions of ITAT are yet to be complied by the first appellate authority. Therefore, we dismiss these present appeals which are emanating from non-est order. However, we make it clear that assessee would have full liberty to contest its appeal before the first appellate authority, which

pending as on today as intimated by the counsel for the assessee. The appeal is decided accordingly.

**10.** In the result, appeal of the assessee is dismissed as indicated above.

Order pronounced in the open court on 5<sup>th</sup> Dec, 2024

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

**Sd/-**  
**(Prakash Chand Yadav)**  
**Judicial Member**

Bangalore,  
Dated 5<sup>th</sup> Dec, 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.**