

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'B' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 1289/Bang/2024
Assessment Year : 2020-21

M/s. The Naragund Taluka Prathamika Shiksa Shiksakiyar Co-op. Credit Society Ltd., Near bus stand, Nargund 582 207. Karnataka. PAN: AACAT9998F	Vs.	The Income Tax Officer, Ward – 1, Gadag.
APPELLANT		RESPONDENT

Assessee by	:	Shri Siddesh .N. Gaddi, CA
Revenue by	:	Shri Ganesh R. Ghale, Standing Counsel for Dept.

Date of Hearing	:	10-09-2024
Date of Pronouncement	:	04-12-2024

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 30/03/2024 in respect of Assessment Year 2020-21.

2. The brief facts of the case are that the assessee is a co-operative society and filed their return of income on 31/12/2020 and subsequently the case was selected for scrutiny under CASS and assessment was made by making an addition of Rs. 3,87,348/- by holding that the other interest income and other income were not eligible for deduction u/s. 80P(2)(a)(i) of the Act. The AO also disallowed the donation claim of Rs. 94,700/-. As against the said

proceedings, the assessee filed the appeal before the NFAC. The NFAC had confirmed the order of the AO by following the judgment of the Hon'ble Apex Court reported in 322 ITR 283. Insofar as the donation is concerned, the Ld.CIT(A) had remitted the issue to decide afresh by considering the claim of the assessee. As against the said order, the assessee is in appeal before this Tribunal and raised the following grounds:

“1. The impugned order passed by the Learned CIT(A) and AO, to the extent prejudicial to the Appellant, is not justified in law and on facts and circumstances of the case;

2. The Learned CIT(A) and AO have erred in law and on facts in passing the order against the principles of natural justice.

3. The Learned CIT(A) and AO have erred in disallowing deduction claimed under section 80P of the Act on 'SB interest' and 'other income' to the extent of Rs. 3,87,348/-;

4. Without prejudice to the above, the Learned CIT(A) and AO have erred in law in taxing gross receipt by ignoring the overriding principle in tax law that it is not the gross receipt that falls to be assessed but it is only the net income after all the expenditure to earn the income is deducted, that can be assessed to tax;

5. The Learned CIT(A) and AO have erred in not applying the principle of netting;

6. The Learned CIT(A) and AO impugned adjustments being merely based on presumption and surmises, are to be deleted;

7. The Learned CIT(A) and AO have erred in raising demand vide issue of notice under section 156 of the Act;

8. The Learned CIT(A) and AO has erred in levying interest under section 234A and 234B of the Act;

9. The Learned AO has erred in initiating penalty proceedings by issuing of notice under section 271(1)(C) and other provisions of the Act;

(Total tax effect: Rs. 1,64,836 /-)

On the basis of the above grounds and other grounds which may be urged at the time of hearing with the consent of the Honorable Tribunal, it is prayed that the order passed under section 250, to the extent it is against the Appellant, be quashed and the relief sought be granted.”

3. While the matter is taken up for hearing, the Ld.AR submitted that there is a delay of 41 days in filing the appeal before this Tribunal and to that effect filed an affidavit and explained that the delay has been occurred because of the assessee being not exposed to online procedures of conducting an assessment and receipt of the order via email was not within the knowledge of the assessee and therefore, the appeal was prepared and filed belatedly, hence there is a delay of 41 days in filing the appeal.

We consider that the delay is only minimal and the reasons are also convincing therefore we are condoning the delay in filing the appeal and proceeded to take the appeal on merits.

4. At the time of hearing, the Ld.AR submitted that the receipts of Rs. 1,36,380/- are attributable to the banking business of the assessee society and therefore entitled for deduction. Insofar as the rental income received, the Ld.AR submitted that this is also related to the income of the assessee and therefore it is also attributable to the business of the assessee eligible for deduction.

5. The Ld.AR further submitted that the interest earned from commercial / co-operative banks are also attributable to the business of the assessee and therefore the same is eligible for deduction as per the judgment of the Hon'ble Jurisdictional High Court in the judgment dated 19/02/2018 in ITA No. 100004 of 2018 in the case of Lalitamba Pattina Souharda Sahakari Niyamita reported in 2018 SCC OnLine Kar 955: (2019) 307 CTR 770.

6. The Ld.AR further submitted that the reliance made by the AO as well as the Ld.CIT(A), on the judgment of the Hon'ble Karnataka High Court

reported in (2017) 83 taxmann.com 140 (Karnataka) in the case of PCIT vs. Totagars Co-operative Sale Society is also not correct for the reason that the judgment deals with the deduction claimed u./s. 80P(2)(d) of the Act.

The Ld.DR relied on the orders of the lower authorities.

7. We have heard the arguments of both the sides and perused the materials available on record.

8. It is an admitted fact that the assessee had received interest income on the deposits made with the commercial banks / co-operative banks and other financial institutions and treated the said income as income from other sources. We have also considered the submission made by the Ld.AR that these interest incomes are attributable to the business activities of the assessee and therefore as held by the Division Bench of the Hon'ble Jurisdictional High Court in the judgment dated 19/02/2018 in ITA No. 100004 of 2018 in the case of Lalitamba Pattina Souharda Sahakari Niyamita reported in 2018 SCC OnLine Kar 955: (2019) 307 CTR 770, eligible for deduction.

9. In order to find out the facts, the AO has to examine the issue based on the findings given in the above judgment. In the above judgment, the Division Bench also considered the judgment of the Hon'ble Karnataka High Court reported in (2017) 83 taxmann.com 140 (Karnataka) in the case of PCIT vs. Totagars Co-operative Sale Society which was decided by considering the provision 80P(2)(d) of the Act. Therefore reliance made by the AO as well as the Ld.CIT(A) on the judgment of the Hon'ble Jurisdictional High Court is not correct and therefore we are following the subsequent judgment and restore this issue to the file of the AO to decide the issue afresh by examining whether the interest income received from the said banks are attributable to the business activities carried on by the assessee.

10. In view of the above said direction given in the said judgment to ascertain the facts, we are remitting this issue to the AO to consider whether other incomes earned by the assessee is attributable to the business carried on by the assessee and if the assessee is able to demonstrate before the AO that it is attributable to the business activities carried on by the assessee, then naturally they are entitled for deduction u/s. 80P of the Act.

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

Order pronounced in the open court on 04th December, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 04th December, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore