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

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.2327/Bang/2024
Assessment year : 2021-22

Prathamika Krishi Pattina Shakari Sangh Niyamith Kaladgi, At & Post Kaladagi. Dist. Bagalkot **PAN: AABAP 7233J**	Vs.	The Income Tax Officer, Ward 1, Bagalkot.
APPELLANT		RESPONDENT

Appellant by	:	Shri Veeranna Murgud, CA
Respondent by	:	Shri Ganesh R Gale, Standing Counsel

Date of hearing	:	16.04.2025
Date of Pronouncement	:	30.04.2025

O R D E R

Per Prashant Maharishi, Vice President

1. This appeal is filed by Prathamika Krishi Pattina Shakari Sangh Niyamith Kaladgi (the assessee/appellant) for the assessment year 2021-22 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [ld. CIT(A)] dated 30.9.2024 wherein the appeal filed by the assessee against the assessment order passed u/s. 143(3) r.w.s. 144B of the Income-tax Act, 1961 [the Act] on 18.12.2022 by the Assessment Unit was dismissed.

2. The assessee has raised the following grounds of appeal :-

"1. The impugned order of the Appellate Commissioner of Income Tax is liable to set aside in so far as the same is incorrect, irregular, improper, unlawful and oppose to the law and facts of the case.

2. Because, the learned Appellate Commissioner erred in upholding the impugned action of the Assessing Officer in bringing to tax a sum of Rs, 17,08,611/- under the head Income from other sources denying the deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 and bringing the proportionate amount of interest earned on investment as taxable to that extent with complete disregard to the decision of the Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Others v. CIT 431 ITR 1 (SC) and Hon'ble ITAT 'C' BENCH : BANGALORE in the case of M/s. Bhavasar Kshtriya Cooperative Credit Society Ltd.,. Vs. The Income-tax Officer. Ward -3(3), Hubbali., ITA No. 581/Bang/2022 for the assessment year 2015-16, and as such the impugned additions made to that extent are liable to deletion.

3. Because, the learned Appellate Commissioner erred in upholding impugned order of the Assessing Officer restricting the deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 to the extent of Rs. 17,08,611/- misconstruing the facts of the case and disregarding the provisions of the Karnataka Cooperative Societies Act, 1959.

4. That the impugned order is liable to set aside in so far as the Appellate Commissioner erred in upholding the levy of interest.

5. The appellant craves leave to add / alter any of the grounds of appeal before or at the time of hearing."

3. The main contention of the assessee in all the grounds of appeal is allowability of deduction u/s. 80P(2)(a)(i) of the Act.

4. The brief facts of the case show that assessee is a primary agricultural credit cooperative society. Assessee filed its return of income on 15.2.2022 at Rs. Nil wherein deduction of Rs.37,60,754 was claimed u/s. 80P of the Act. The return of income was selected for scrutiny for

verifying the claim u/s. 80P of the Act. On verifying the claim, show cause notices were issued to the assessee. The AO noted that assessee has received interest on fixed deposits with Bagalkot District Central Co-op. Bank totalling to Rs.17,08,611 on which deduction u/s. 80P(2)(a)(i) of the Act is claimed which is not allowable, as the same is not business income of the assessee society. In response to the notices, assessee stated that it is an agricultural cooperative society registered under the Karnataka Cooperative Societies Act. It also explained the activities and stated that out of the business funds assessee has placed the funds with the above Central Cooperative Bank and therefore as per the decision of the Hon'ble Supreme Court in 431 ITR 1, assessee is entitled to deduction u/s. 80P of the Act on interest received.

5. The ld. AO held that interest so received by the assessee is earned from investment which does not form part of profits & gains of business of assessee, but income from other sources and therefore same is chargeable to tax u/s. 56 of the Act and 80P deduction on the same is not allowable by assessment order dated 18.12.2022 and total income of assessee was determined at Rs.17,08,611.

6. Aggrieved with the assessment order, the assessee preferred appeal before the ld. CIT(Appeals). Before him, the assessee did not file any reply and therefore for non-compliance of the notices, he confirmed the order of the ld. AO. As per para 3 of the appellate order, he issued 5 notices through email on various dates which were not responded to by the assessee.

7. Aggrieved with the appellate order, the assessee is in appeal before us.

8. The ld. AR submitted that assessee is a small credit cooperative society. In Form 35 it stated that it does not want to receive communication sent on email. He submits that all communications and notices were sent by the ld. CIT(Appeals) through email. Therefore, in fact, there is no service of any notice on the assessee by the ld. CIT(Appeals).

9. The ld. DR vehemently supported the order of the ld. AO and the order of the ld. CIT(Appeals) stating that the AO has categorically stated that assessee is not entitled to deduction u/s. 80P of the Act and further when the ld. CIT(Appeals) has sent the notices, the assessee did not reply and therefore there is no merit in the appeal of the assessee.

10. We have carefully considered the rival contentions and perused the orders of ld. lower authorities. Against the assessment order passed by the AO, assessee preferred appeal before the ld. CIT(Appeals). In Form 35 assessee has categorically mentioned that it did not want any notice to be served on it through email. As per para 3 of the appellate order, the ld. CIT(Appeals) has sent 5 notices though email. Therefore, in fact, despite assessee stating categorically that it did not want to receive notices through email, which was the option available to the assessee as per Form 35, it clearly shows that no notices are served in proper manner to the assessee. Therefore the findings of the ld. CIT(Appeals) that assessee did not want to pursue the appeal remedy effectively is incorrect. It is in fact failure on the part of the

CIT(Appeals) to even issue a notice of hearing to the assessee in a proper manner. The ld. CIT(A) is duty bound to decide the issue on merits of the case, even if the assessee does not respond to the notices. In the assessment proceedings, the assessee has relied upon the decision of the Hon'ble Supreme Court, the same was not at all considered by the ld. CIT(A). At least, the same should have been considered. Therefore the order passed by the ld. CIT (A) is not sustainable as no notices were properly served on the assessee and further order even otherwise passed is not on merits of the case as the decision cited by the assessee before ld. AO were not at all considered. Therefore, in the interest of justice, we restore the appeal of the assessee back to the file of ld. CIT(Appeals) to issue notices in accordance with preference mentioned in Form 35, grant an opportunity of hearing and then decide the issue on merits of the case.

11. In the result, the appeal by the assessee is allowed for statistical purposes with the above directions.

Pronounced in the open court on this 30th day of April, 2025.

Sd/-	Sd/-
(SOUNDARARAJAN K.)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	VICE PRESIDENT

Bangalore,
Dated, the 30th April, 2025.

/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.