



सत्यमेव जयते



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 033/PAN/2025

Assessment Year : 2018-19

The Gokak & Mudalagi Taluka
Primary Teachers Co-op. Society, Ltd.
Opp. JSS College, Falls Road,
Gokak, Dist. Belagavi.-591307
PAN : AAAAT4120D

..... *Appellant*

V/s

The Income Tax Officer,
Gokak, Belagavi.

..... *Respondent*

Appearances

Assessee by : Mr Sateesh Nadagauda ['Ld. AR']

Revenue by : Ms Rijjula Uniyal ['Ld. DR']

Date of conclusive Hearing : 15/07/2025

Date of Pronouncement : 23/07/2025

ORDER

PER G. D. PADMAHSHALI;

By captioned appeal the assessee impugns DIN & Order 1071086412(1) dt. 11/12/2024 passed by National Faceless Appeal Centre, Delhi ['Ld. NFAC/CIT(A) hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] which in turn arisen out of order of assessment dt. 31/03/2021 passed u/s 143(3) of the Act by National Faceless e-Asstt Centre, Delhi ['Ld. AO' hereinafter] anent to assessment year 2018-19 ['AY' hereinafter].



2. Tersely stated facts of the case are that;

2.1 The assessee is a co-operative society and for the year under consideration filed its return of income u/s 139(4) of the Act on 30/03/2019 declaring total income at NIL after claiming deduction u/s 80P(2)(b) of chapter VI-A of the Act for sum of ₹98,55,989/-.

2.2 On 22/10/2019 the aforesaid ITR of the assessee was summarily processed u/s 143(1) of the Act. Subsequently vide notice dt. 23/09/2019 u/s 143(2) of the Act the case of the assessee selected for scrutiny to examine claim for deduction, wherein deduction claimed u/s 80P(2)(b) of Chapter VI-A was denied to the assessee for twofold reasons; (1) for defaulting in filing the return within the time limit prescribed u/s 139(1) of the Act and further (2) as assessee's business activities are not eligible for deduction u/s 80P(2)(b) of the Act.

2.3 Aggrieved by denial of deduction the assessee unsuccessfully contested the dispute in first appeal before the Ld. NFAC/CIT(A).



2.4 Dissatisfied by the actions of tax authorities below the assessee instituted the present appeal with twin substantive grounds which are directed against the denial of deduction u/s 80P(2)(a)(i) of the Act.

3. We have heard the rival party's submission on limited issue of non-adjudication of appellant's ground raised against entitlement for deduction u/s 80P(2)(a)(i) of the Act and subject to rule 18 of ITAT Rules, 1963 perused the material placed on records and considered the facts in the light of settled position of law and judicial precedents relied upon which are forewarned to the parties present. As we note that, while rejecting the claim for deduction made u/s 80P(2)(b) of chapter VI-A of the Act by the appellant, the Ld. AO based its denial on twin premises such as; (1) the return of income in this case was filed belatedly hence provisions of section 80AC(ii) of the Act are attracted and further (2) the assessee since not engaged in the activities of referred to in section 80P(2)(b) of the Act. When the former denial travelled in



appeal with two separate grounds, the Ld. NFAC through oversight dealt with first part of dispute and thus left the second part of dispute wherein the appellant submitted that through oversight there was a mistake a claiming deduction u/c (b) instead of (a)(i) of 80P(2) of the Act.

7. Admittedly, during the assessment proceeding the appellant assessee failed to prove that its activities are substantially confined to credit facilities to its members and the deduction was inadvertently claimed u/s 80P(2)(b) instead of 80P(2)(a)(i) of the Act. In the course of first appellate proceeding though necessary submission to prove the former case of the appellant was placed, the Ld. NFAC however missed the same to adjudicate on its merits. Thus the respective ground of appeal raised in Form No 35 by the appellant in first appeal remained unadjudicated. In the present appeal, the appellant assessee also raised the same ground, which ostensibly did not pass through the impugned first appellate proceedings.



8. The question as to whether the Tribunal can adjudicate such ground which did not pass through the first appellate forum finds negatively answered in the recent decision of Hon'ble Delhi High Court in case of '*Divine Infracon Pvt Ltd. Vs PCIT*' [2025, 171 taxmann.com 92 (Del)], wherein their Hon'ble Lordship have categorically held that, the ground which did not adjudicated by first appellate authority or the ground not originating from the first appellate order cannot be the subject matter of adjudication in second appeal. The Tribunal therefore duty bound to remit the matter to first appellate authority where ground raised therein did not give rise to rights & liabilities to the rival parties.

9. Following the former judicial precedents(supra) the Ld. Co-ordinate bench in the case of '*Maga Ram Choudhary Vs ITO*' [004/PAN/2025 dt. 20/03/2025] while dealing with similar facts & circumstances remanded the case back to the file of Ld. NFAC/CIT(A) with a direction to adjudicate the misplaced ground.



10. In view therefore, without multiplying the authority on the issue, it is necessary to hold in the present case that, Tribunal has much less jurisdiction to adjudicate the ground challenged before it unless it is adjudicated first by the Ld. NFAC/CIT(A). Since the impugned order is suffered by non-adjudication of ground challenged therein, we therefore set-aside the same on this limited score and remit the file to the Ld. NFAC with a bullet direction to adjudicate the issue of appellant's entitlement for claim of deduction u/s 80P(2)(a)(i) of the Act and pass a speaking order in accordance with law preferably in three hearings.

8. The appeal in result is ALLOWED FOR STATISTICAL PURPOSES.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

-S/d-

PAVAN KUMAR GADALE
JUDICIAL MEMBER

Panaji/Dt: 23th July 2025

Copy of the Order forwarded to:

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|-------------------|-----------------------------------|-------------------------|
| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A) Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File |

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

By Order,
Sr. Private Secretary / AR ITAT, Panaji.