IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

BEFORE SHRI. VIJAY PAL RAO, JUDICIAL MEMBER

AND

SHRI. INTURI RAMA RAO, ACCOUNTANT MEMBER

I.T.A No.922/Bang/2014
(Assessment Year : 2010-11)

Income-tax Officer,
Ward – 6(2), Bengaluru .. Appellant

v.

M/s. Karnataka State Co-operative Federation Ltd,
No.32, 3rd floor, D. Devraj Urs Road,
Race Course Road, Bengaluru 560 001 .. Respondent
PAN : AAAJK0471H

Assessee by : Shri. Sandeep, CA
Revenue by : Shri. P. Dhivahar, JCIT

Heard on : 05.04.2016
Pronounced on : 2904.2016

O R D E R

PER VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the Revenue is directed against the order dt.03.03.2014 of CIT (A)-II, Bengaluru, for A. Y. 2010-11.

2. Revenue has raised the following grounds :

2. *On the facts and in the circumstances of the case the learned CIT(A) erred in holding that the AO has made additions/disallowance amounting to Rs 2,95,98,463 whereas, the assessee itself had declared Rs 2,52,18,534 as profit in Column 43 of P&L A/c in its Return of Income and declared "NIL" taxable income in Schedule BP without setting off the above income or claiming any exemption or deduction whatsoever.*

3. *On the facts and in the circumstances of the case the learned CIT(A) erred in law in holding that all of the additions/disallowances made by the AO are exempt by placing reliance on her earlier order for AY 2005-06, without appreciating the fact that the assessee has not claimed any exemption u/s 10 or any deduction under Chapter VIA in its Return of Income filed, which is the subject matter of appeal for AY 2010-11 an the same cannot be allowed if not claimed in the return of income by the assessee.*

3. Assessee is a cooperative society established by the Government of Karnataka and registered under the Karnataka Cooperative Societies Registration Act, 1959. For the year under consideration assessee filed its return of income on 28.03.2011. The return was processed u/s.143(1)(a)(ii) of the Income-tax Act, 1961 ('the Act' in short), vide intimation dt.10.05.2011. In the said intimation the AO at CPC processed the return and added a sum of Rs.2,95,98,463/- under the head ' income from business or profession' and raised a demand of Rs.2,35,69,278/-.

4. Aggrieved by the said addition and consequential demand, assessee filed an appeal before the CIT (A) and contended that the assessee has shown nil income in the return of income. It was pointed out that in the return of income against computation of profits of business or profession it had disclosed the income and then claimed exemption in respect of the said income Thus the assessee contended that the ultimate result is nil income. CIT (A) noted the fact that in the case of the assessee there appears a typographical error with respect of the schedule 'BP – Computation of Profits of Business or Profession', where the figure is wrongly mentioned as nil, whereas it should have been Rs.2,52,18,534/-. CIT (A) accordingly issued a remand order to the AO for verification. But despite several reminders over a period of 18 months, AO did not submit its report. CIT (A) has decided the appeal of the assessee by allowing the claim and deleting the addition.

5. We have heard the Ld. DR as well as the Ld. AR and considered the relevant material on record. Ld. DR has submitted that the CIT (A) has allowed the claim of exemption u/s.10 which was not claimed by the assessee in the return of income and further the claim was allowed without examination of the eligibility of the assessee for claim of exemption of the

said income. Therefore he has pleaded that in the absence of any examination of the claim, CIT (A) is not justified in allowing the claim of exemption.

6. On the other hand, Ld. AR has submitted that the CIT (A) has given sufficient opportunity to the AO by issuing the remand order, But the AO did not submit his remand report thereafter the CIT (A) allowed the claim. He has further submitted that mainly because there is an error in the return of income in mentioning the business income and then claiming exemption of the same, cannot be a reason for making such addition by the AO when the income was otherwise not taxable in the hands of the assessee. In support of his contention he has relied upon the decision of Mumbai bench of this Tribunal in the case of Shrikant Real Estates P. Ltd v. ITO [22 ITR (Trib) 266]. Ld. AR pointed out that this is a bonafide mistake in the e-return filed by the assessee and therefore the AO was not justified in making the addition without examining the claim of the assessee of exemption.

7. Having considered the rival submissions as well as the relevant material on record, at the out set we note that in the return of income the assessee has not admitted any income but the total income was shown at

nil. Though the assessee has not shown the business income of Rs.2,52,18,534/- in the relevant column of the return and then again no claim of exemption was made, however, when the assessee has not admitted any income in the return of income, then while making the addition / adjustment u/s.143(1) of the Act, the AO cannot consider only one aspect of the matter being the income which was not disclosed by the assessee in a particular column. But the eligibility of the said income for exemption u/s.80P of the Act and further exemption u/s.10 of the Act, as the government grant are exempted u/s.10(23C)(iiib) of the Act, was also required to be examined. We find that when this mistake was pointed out before the CIT (A), a remand order was issued to the AO for verification. The relevant part of the impugned order of CIT (A) is in para 3.1 and 3.2 as under :

> *3.1 It appears to be a case of typographical error with respect to Schedule BP where the figure at part Al is wrongly mentioned as NIL whereas it should have been Rs.2,52,18,534/- as per item No.43 of Part A of P/L para in the return of income. The same figure should have been claimed in item No.A-5(d) of Schedule BP. The matter was also remanded to the AO for verification but, despite several reminders over a span of 18 months, no reply has been received from the AO. Therefore, on the basis of the materials available on record, appellant's arguments and records and certain files, the case has been decided.*

3.2 The AO [in this case the ACIT (CPC)] was, therefore, not justified in making the additions or disallowances. However, no attempt is made here to annul the intimation u/s 143(1) of the Act though such an action is called for in the appellate proceedings since the additions/disallowances made by the AO are deleted. The remand report called for from the AO has not been received despite several reminders. The findings in this order are based on the earlier order, available facts on the file, which however do not preclude the AO from taking action as per law.

8. As it is clear that despite the expiry of more than 18 months, AO did not respond to the remand order of the CIT (A) and therefore the CIT (A) was left with no option but to decide the appeal of the assessee without having the benefit of the remand report of the AO. We find that there is no justification or explanation by the Department as to why the AO has not submitted the remand report or other report of not submitting the remand report. Therefore it is clear that the AO was not having any explanation or reason for not filing the remand report. Even otherwise, it is not the case of the Revenue that the assessee is not entitled for the relief u/s.80P as well as u/s.10(23C) of the Act. Therefore when the entire income of Rs.2,52,18,534/- was eligible for exemption, then allowing the claim of the assessee by the CIT (A) is proper and justified. Mumbai bench of the Tribunal in the case of Shrikant Real Estatates P. Ltd, (supra) while dealing with an issue of a mistake in the return has held in paras 7 and 8 of its

order, as under :

7. We have heard the rival submissions and perused the orders of the lower authorities and the copy of the revised e-return filed by the assessee. In the present system of e-filing of return which is totally dependent upon the usage of software, it is possible that some clerical errors may occur at the time of entering the data in the electronic form. The return is prepared electronically which is converted into an XML file either through the free downloadable software provided by the CBDT or by the software available in the market. In either case, there is every possibility of entering incorrect data without having the expert knowledge of preparing an XML file. XML file so created is uploaded to the official Website, i.e. www.Incometaxindiaefiling.gov.in. Once the return is uploaded, ITR-V, which is the acknowledgment of the return so filed, is generated by the system itself and if the return is not signed digitally, the ITR-V so generated has to be signed and sent to the Central Processing Centre, Bengaluru within 120 days.

8. Keeping in mind this system of e-filing of the returns, coming back to the facts of the case, we find that the assessee has claimed short-term capital gains and has shown it in the revised e-return but the same figure did not appear under the item where the short-term capital gain is to be taxed at special rate under section 111A of the Act, i.e., internal page 19 of the return under Schedule CG—Capital gains under item No. 7. However, at the same time we find that under Schedule SI—income chargeable to income tax at special rates IB which is at internal P-24 of the return, the assessee has shown short-term capital gains (iiia) at special rate of 10 per cent. on income of Rs. 2,65,853, i.e., tax thereon of Rs. 26,585 which clearly establishes that the assessee has shown short-term capital gains liable to be taxed at the special rate of 10 per cent. Accordingly, reversing the finding of the learned Commissioner of Income-tax (Appeals), we direct the Assessing Officer to allow credit of the short-term capital gains subject to special rate of tax as per provisions of section 111A of the Act and rectify the intimation under section 143(1) accordingly.

9. In the case on hand, when the CIT (A) has already issued a remand order giving full opportunity to the AO for examination of the claim, then in the absence of any claim of the Revenue that assessee is not entitled for the exemption u/s.80P and 10(23C) of he Act, we do not find any error or reason to interfere with the impugned order of the CIT (A). Accordingly we dismiss the appeal of the Revenue.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29th April, 2016.

Sd/-	Sd/-
(INTURI RAMA RAO)	(VIJAY PAL RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

MCN

Copy to:
1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar