

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.517/Bang/2024
Assessment Year : 2017-18

Karnataka Power Corporation Limited Employees Credit Coop. Society Limited, No.116/2, Trade Centre, Race Course Road, Gandhinagar, Bangalore-560 001. PAN : AADAK 0351 Q	Vs.	The Income Tax Officer, Ward-1(2)(1), Bangalore
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravishankar S.V, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of hearing	:	16.04.2024
Date of Pronouncement	:	16 .04.2024

ORDER

PER SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 13/02/2024 in DIN No. ITBA/APL/S/250/2023-24/1060855009(1) for the

assessment year 2017-18 with the following grounds of appeal:-

- “1. The order passed by the learned Commissioner of Income Tax (Appeals) – NFAC (“CIT(A)”) under section 250 of the Act insofar as it is against the Appellant, is opposed to law, weight of evidence, natural justice and probabilities on the facts and circumstances of the Appellant's case.*
- 2. The Appellant denies itself liable to be assessed at Rs. 11,28,527/- as against the returned income of NIL on the facts and circumstances of the case.*
- 3. The learned CIT(A) was not justified in passing the order by relying on data of a different assessee and without appreciating that there was no delay in filing the appeal, on the facts and circumstances of the case.*
- 4. The appellant prays that the cost of preferring the appeal before this Hon'ble Tribunal of Rs. 10,000/- be directed to be refunded to the appellant, since the order passed is without application of mind, on the facts and circumstances of the case.*
- 5. The learned CIT(A) was not justified in not deciding on the merits of the matter and upholding the addition made under section 80P(2)(d) of the Act, when such interest income is treated as income from other sources, the respective cost of fund expenses were to be deducted, on the facts and circumstances of the case.*
- 6. The learned CIT(A) failed to appreciate that the Assessing Officer was not justified in considering only the interest earned for computing the income under other sources and ought to have reduced the cost of funds from the expenditure to arrive at the true income from other sources, on the facts and circumstances of the case.*
- 7. The Appellant denies the liability to pay interest under section 234B of the Act in view of the fact that there is no liability to additional tax as determined by the learned Assessing Officer on the facts and circumstances of the case.*
- 8. The Appellant craves to add, alter, modify, substitute, change and delete any or all of the grounds and to file a paper book at the time of hearing the appeal.*
- 9. In the view of the above and other grounds that may be urged at the time of the hearing of appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”*

2. The brief facts of the case are that the assessee filed return of income on 27/10/2017 declaring Nil income after claiming deduction under Chapter VIA of Rs.78,96,401/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee.

3. From the submissions, it was noticed that the assessee is a credit co-operative society registered under the Karnataka State Co-operative Societies Act 1959 and engaged in providing credit facilities to its members. Besides, the assessee made investments in fixed deposits and earned interest there from.

4. Further, the AO noted from the balance sheet that the assessee has made investment in banks and earned interest income on which, deduction u/s 80P(2)(d) of the Act has been claimed. Accordingly, further notice was issued to the assessee with regard to the interest earned on investments/deposits with the banks financial institutions, which are not in the category of co-operative society in terms of sec. 80P(2)(d) of the Act. In reply, the assessee submitted that the interest of Rs.11,28,527/- was received towards investments made in the co-operative banks. The AO noted interest received from the Co-operative Bank is not eligible for deduction u/s 80P(2)(d) of the Act and

relying on the judgment of the Hon'ble jurisdictional High Court in the case of Totagars Co-operative State Society reported in ITA No.100066/2016 dated 16.06.2017 denied the deduction claimed u/s 80(2)(d) of the Act of Rs.11,28,527/- and passed order on 27/12/2019 as per face of the assessment order.

5. The assessee instituted appeal on-line before the CIT(A) on 26/01/2020. The CIT(A) noted that the assessee has filed appeal beyond the due date as per sec. 249(2) of the Act and as per the Limitation Act u/s 5, the appeal is time barred by 45 days in filing the appeal and there was no sufficient cause shown in terms of sec. 249(3) of the Act. Accordingly, he did not condone the delay and dismissed the appeal of the assessee.

6. Aggrieved, the assessee filed appeal before the ITAT.

7. The ld.AR of the assessee submitted that the CIT(A) has noted that the appeal was instituted on 04/03/2020 against the order passed by the ITO, Ward-1 & TPS, Mandya vide order dated 16/12/2019 for the assessment year 2017-18. However, the appeal was instituted online on 26/01/2020, it is clear from the Form No.35 and appeal fee was paid on 20/01/2020. He submitted that the CIT(A)

has consider the wrong appeal and applied the same in the case of the assessee, whereas the appeal was filed within the due date as per sec. 249(2) of the Act, therefore, the CIT(A) should have decided the issue on merits of the case.

8. Further he submitted that the AO has considered the entire interest earned on the investments made with co-operative bank. However, the cost of funds have not been given to the assessee for earning of such investments. Therefore, he requested that the matter may be sent back to the AO for fresh decision for allowing cost of funds towards earning of interest income.

9. On the other hand, the ld.DR strongly relied on the orders of the lower authorities.

10. Considering the rival submissions, we note that the CIT(A) has dismissed the appeal by observing that the appeal filed by the assessee is delayed by 45 days and dismissed the appeal without going into the merit of the case. We noted from the order of CIT(A) that appeal was instituted on 26/01/2020 and which is also clear from the Form No.35 and we also noted that the AO has wrongly noted the date of order which is on 27/12/2019 whereas the order has been digitally signed on 28/12/2019. Accordingly, the appeal was instituted by the assessee

within the period of 30 days as per the provision of sec. 249(2) of the Act and we also noted that 26th January is a national holiday. The assessee filed appeal online on this date i.e on 26th January 2020. We further noted that the CIT(A) has wrongly noted the date of institution of appeal on 04/03/2020 against the order passed by the ITO, Ward-1 & TPS, Mandya, whereas the assessment order has been passed by the ITO, Ward- 1(2)(1), Bangalore. Considering the above facts, the CIT(A) has not justified in dismissing the appeal of the assessee.

11. Further, we noted from the assessment order that the assessee has received interest of Rs.11,28,527/- on the investment made with co-operative banks as per the submissions and entire interest income has been considered as income u/s 56 of the Act and no expenditure as per sec. 57(iii) has been allowed for earning such interest income, therefore, relying on the jurisdictional High Court judgment in the case of Totgars Co-operative Sale Society Ltd., Vs. ITO reported in [2015] 58 taxmann.com 35 (Kar), order dated 25.03.2015 the assessee is eligible for cost for earning of such income. Accordingly, we are remitting the issue back to the file of the AO for fresh consideration in the light of the judgment of the jurisdictional High Court noted supra for determination of correct income. The AO is directed to give

reasonable opportunity of being heard to the assessee and decide the issue as per law. The assessee is directed to produce the necessary documents for substantiating its case and to avoid unnecessary adjournments for early disposal of the case and update the email, mobile No. and address for communication.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on the 16th day of April, 2024 in the open court.

Sd/-
(GEORGE GEORGE K)
Vice President

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated : 16 .04.2024.
Vms
Copyto:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore