

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1257/Bang/2024
Assessment year : 2017-18

Sahaara Alpasankyatara Vividodesha Sahakara Sangha Niyamitha, Huliyar Circle, Hosadurga – 577 527. PAN : AAGAS 7889C	Vs.	The Income Tax Officer, Ward 3, Davangere.
APPELLANT		RESPONDENT

Appellant by	:	Shri Kashinath Kalmath, Advocate
Respondent by	:	Shri Sreenivasa Karthik Devara, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	07.08.2024
Date of Pronouncement	:	27.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 05.12.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 denying deduction u/s. 80P of the Act.

2. At the outset, there is a delay of 149 days in filing the appeal before the ITAT. The ld. AR submitted that after passing of the order

u/s. 143(3), the case was handed over to tax consultant and assessee was under bonafide belief that he is taking steps, but he did not take up any proceedings before the FAA(First Appellate Authority) . There was no intention to disregard the statutory notices issued by FAA. He submitted that the assessee participated in 143(3) proceedings. After the first appellate order was passed on 05.12.2023, the case was handed over to another tax consultant to file appeal and he was under bonafide belief that appeal has been filed before the ITAT, but no appeal was filed by the previous tax consultant. Later on the case was handed over to another tax consultant who filed appeal with a delay of 149 days. In this regard the assessee has filed affidavit dated 01.07.2024. He further submitted that the delay in filing the appeal before the ITAT was unintentional and beyond the assessee's control and the assessee has a good case on merits as additions and disallowances were not warranted as per the provisions of the Act. Therefore, the Id. AR requested for condonation of delay in filing the appeal.

3. After hearing both the parties, it is observed that there are sufficient reasons for the delay and following the judgment of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, delay in filing the appeal before the Tribunal is condoned.

4. Briefly stated the facts of the case are that the assessee is a society registered under the Karnataka Co-operative Societies Act,

1959 and has both regular, nominal and associate members. It filed return of income on 18.03.2018 admitting total income of Nil after claiming deduction under Chapter VIA of Rs.14,67,200. The case was selected for scrutiny and statutory notices issued to the assessee. From the details filed by the assessee the AO noticed that assessee has different class of members and there is no equal right among the members, accordingly relying on the judgment of Hon'ble Apex Court in the case of Citizen Co-op. Society Ltd. Hyderabad in Civil Appeal No.10245 of 2017, he denied deduction u/s. 80P(2)(a)(i) of the Act.

5. The AO further noted that during the demonetisation period assessee has deposited cash in denominations of Rs.500 & 1000 which was banned from 9.11.2016 to 30.12.2016 as follows:-

Sl. No.	Name of Bank	A/c. No.	Amount Rs.
1.	The DCC Bank Chitradurga	696000592340	13,04,200
2.	SBI, Chitradurga	64041007296	44,44,500
3.	Pragathi Krishan Gramin Bank, Chitradurga	10655110000200	20,00,000
4.	Canara Bank, Chitradurga	0454201000845	15,00,000

6. It was noted that there was opening balance on 09.11.2016 of Rs.13,38,469, resultantly net cash deposited by the assessee is Rs.79,10,000 in old SBNs and accordingly income was determined at Rs.93,77,200. The AO also noted that assessee has received interest income from deposits with Banks in DCC Bank of Rs.4,49,469, Pragathi Krishan Gramin Bank of Rs.69,165 totalling to Rs.5,18,634. Separate addition was not made sine this interest was included as

deduction claimed u/s. 80P(2)(a)(i) of the Act and completed the assessment. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA) on 4.2.2020. The case was migrated to NFAC as per Notification No.76/2020 dated 25.9.2020 issued by CBDT.

7. The Id. FAA issued five notices, but there was no response from the assessee's side, therefore after relying on various judgments, he dismissed the appeal of assessee without going into merits. Aggrieved, the assessee is in appeal before the ITAT.

8. Accordingly the Id. AR submitted that the Id. FAA has passed the order on the basis of material on record and dismissed the appeal of the assessee. He submitted that the notices issued by the Id. FAA were not served on the assessee. He requested that if a chance is given to the assessee, he undertook to respond to the notices and substantiate the case of the assessee with evidence before the lower authorities.

9. The Id. DR relied on the order of lower authorities and objected to sending back the matter to lower authorities. He submitted that the Id. FAA issued various notices to the assessee but the assessee did not file any documents in support of its case. He further submitted that the deduction u/s 80P claimed is not in accordance with law and decided by jurisdictional High Court as well as Hon'ble Apex Court. The assessee has also accepted cash deposits from members in SBNs and accordingly AO has passed a reasoned order which does not require interference.

10. Considering the rival submissions, we note that assessee participated in the 143(3) proceedings, but did not respond to the notices issued by the Id. FAA. Therefore the Id. FAA confirmed the order of the AO on the basis of material available before him. Considering the prayer of the assessee and in the interest of justice, we remit the issue to the CIT(Appeals) for fresh consideration and decision as per law. The assessee is directed to update its email id, communication address and other details and file necessary documents that would be essential and required for substantiating its case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

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

Pronounced in the open court on this 27th day of August, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th August, 2024.

/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.