IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 929/Bang/2023
Assessment Year : 2017-18

The Income Tax Officer, Ward 1(1), Hubballi.	**Vs.**	M/s. Shri Chatrapati Shivaji Vividoddeshagala Sahakari Sangha Niyamita, Municipal Complex, Belgaum Road, Hallyal, Uttar Kannada. **PAN: AAJAS9684G**
APPELLANT		**RESPONDENT**

&
C.O. No. 13/Bang/2023
(in ITA No. 929/Bang/2023)
(By Assessee)

Assessee by	**:**	Shri Vinay Kulkarni, CA
Revenue by	**:**	Shri V. Parithivel, JCIT DR

Date of Hearing	**:**	03-01-2024
Date of Pronouncement	**:**	19-01-2024

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The instant appeal filed by the Department and the Cross objection by the assessee are directed against the order dated 09.10.2023 passed by the National Faceless Appeal Centre (NFAC), arising out of the order dated 19.11.2019 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the Income Tax Officer, Ward – 1(7), Hubli for assessment year 2017-18.

2. The brief facts leading to this case is that the appellant, a co-operative society, engaged in the activity of accepting deposits and providing credit facilities to its members and making investments filed its return of income for A.Y. 2017-18 on 08.11.2017 declaring gross income at Rs.68,08,382/- and after claiming deduction u/s. 80P(2)(a)(i) of Rs.68,08,382/- declared Nil income. The case was selected under CASS and finally the Ld.AO passed the orders u/s. 143(3) of the Act upon making disallowance of deduction claimed u/s. 80P(2)(a)(i) of Rs.68,08,382/- holding that nominal members are not members in real sense. He further held that interest on investment with SVCC Co-op Bank /and other banks cannot be claimed u/s. 80P(2)(a)(i) and disallowed Rs.1,14,380/-. However, no separate disallowance was made as entire deduction of

Rs.68,08,382/- was already disallowed. Upon comparing the cash deposit made during demonetization period with deposits made in prior years held that the cash in hand as on 08.11.2016 was abnormally high and cash deposit of Rs.65,55,000/- was unexplained and required to be taxed u/s. 115BBE of the Act.

3. Before the First Appellate Authority, the assessee submitted as follows:

> *"B) Addition of Rs.65,50,000 made u/s 68/69A is contrary to the both facts and law*
>
> *The learned Assessing Officer has made additions U/s 69/69A it appears, the basis for this addition is difference between cash-in-hand as on 08-11-2015 and 08-1-2016 (paint no. 8.2, page. no 27 of the assessment order dated 19-11-2019) and the reasoning given for this addition are purely based on imagination, assumption and not on facts When we have explained the source for cash-in-hand as on 08-11-2016, the very invocation of section 68 or section 69A is not called for. The officer has concluded that the assessee manipulated its cash book, without mentioning any corroborative evidence, is in itself an assumption which lacks legal standing. In view of the elaborate submission made before Assessing Officer and the very basis on which addition on this account is made lacks objectivity and legal standing. In view of this we pray to allow the deduction made on this basis In view of the above it is prayed-*
>
> *A) To allow the deduction of Rs.68,08,382 u/s 80P(2)(a)(i) and*
> *B) To delete the addition of Rs.65,50,000 u/s 68/69A*
>
> *Please take the above into consideration and do the needful."*

4. However, the Ld.CIT(A) while granting relief observed as follows:

> *"6.2 DECISION: - The observations of the AO, submissions of the appellant and the / material on record have been considered. The A.O. on the perusal of books of accounts found out that the appellant during demonetization period have deposited cash of Rs 70,93,602 in Specified Bank Notes which was shown as cash in hand as on 08.11.2016. The A.O. after comparing cash in hand in earlier years and preceding months held that the appellant manipulated its books of accounts to accommodate or facilitate the beneficiary to route its unaccounted income. The A.O. held that Rs. 65.55,000/- is the unexplained cash credit u/s 68 and to be treated u/s 115BBE for taxation. Since A.O. disallowed deduction claimed u/s 80P(2)(a)(i) of 68,08,382/-, no separate deduction was made and only Rs. 65,55,000/- was taxed at 60% u/s 115BBE.*
>
> *The appellant claimed that the A.O. made the impugned addition only on the basis of surmises and without any corroborative evidence. The appellant claimed that all the books of accounts were produced before the A.O. and elaborate submission was made, the A.O. was incorrect to reject the same and allegation of manipulation of books was without any evidence.*
>
> *6.2.1 I have considered the contention raised by the A.O. as well as the appellant. The allegation of the A.O. is that the appellant had accepted amounts from its members in SBNs after midnight of 08.11.2016 and manipulated its book to show that these deposits were made prior to declaration of demonetization. The only basis of A.O.'s conclusion was comparison with prior period cash balance on the end of each month. Accordingly the A.O. gave benefit in case of Old Dandeli Branch and Ramnagar Brach wherein closing cash balance were Rs. 3,07,279/- and Rs. 1,98,636/- respectively. However, the A.O. held that closing cash balance on 08.11.2016 in Haliyal Branch and Dandeli Branch were Rs. 33,40,455/- and Rs. 32,47,2321- respectively which the A.O. found that were not in line with balance at the end of the month which was on average of around Rs. 3,00,000/- in F.Y 2016-17. Apart from these data analysis no other evidence of*

manipulation of books was pointed out by the A.O. At the outset, the A.O. accepted the closing balance in respect of two branches viz Old Dandeli Branch and Ramnagar Brach. Now the question is whether there can be a case of cash deposits in some month which was substantially more than average balance. The answer to the question is in the affirmative. The appellant is a co-operative credit society which accepts as a money lender for its members and the amount received from its members were credited in their respective accounts. From the data analysis made by the A.O. shown average monthly cash receipts Rs. 1.20 crores in F.Y. 201617 and around Rs. 1 crores in F.Y. 2015-16. Now the table depicted that all the cash receipts were not deposited in the bank and might be consumed in the appellant's business. However, in the month of November 2016 till 8th November, the cash receipt had to be deposited in the bank, which was the closing balance of Rs. 70,93,602/-. Though the amount was on the higher side it was not logical to conclude manipulation of books without any corroborative evidence. Further, the appellant is only a credit society, the money so deposited was only credited in the respective member's account who is the ultimate beneficiary and proper action as per the IT Act can be taken in case of the members on account of unexplained cash deposits even if such cash deposits were made prior to demonetization. The A.O. was incorrect to allege manipulation of books of accounts without any corroborative evidence. It is nobody's case for what amount of cash receipt is reasonable and there was no bar for the appellant for receiving cash prior to demonetization. The A.O. also failed to give any evidence of the appellant accepting cash in SBN after 09.11.2016. Considering these facts, I find the addition made by the A.O. u/s 68 in respect of cash deposits of Rs. 65,55,000/- was not correct. The A.O. is directed to delete the addition. Ground No. 3 raised by the appellant is allowed."

5. We have heard the submissions made by the respective parties and we have also perused the relevant materials available on record.

6. Before the First Appellate Authority, the assessee submitted the details of the members who were claimed to have been the source of deposit during demonetization. The same is appearing from pages 72-76 of the paper book filed before us. However the PAN and KYC in respect of such members of the assessee's society was not furnished either before the AO or before the CIT(A) which could assist the authorities below to consider the genuineness of the income in its proper perspective.

7. Hence we are not satisfied with the order passed by the Ld.CIT(A) in granting relief to the assessee since no such proper verification is found to have been done. Having regard to this particular facts and circumstances of the matter, we set aside the issue to the file of the Ld.AO for consideration of the genuineness of the deposit of Rs.65,55,000/- during demonetization by the assessee, upon verification of the details mainly PAN & KYC of the members of the assessee society to be furnished by the assessee before him. The Ld.AO is also directed to grant an opportunity of being heard to the assessee and to consider the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. We also make it clear that in the event, the assessee does not co-operate with the revenue officer, he will be at liberty to dispose of the matter strictly in accordance with law.

8. By way of filing the C.O., the assessee supported the order passed by the Ld.CIT(A) in its favour. However, since the order passed by the Ld.CIT(A) impugned before us has been quashed and set aside to the file of the Ld.AO, the C.O. automatically becomes infructuous and thus treated to be dismissed as infructuous.

In the result, the appeal filed by the revenue stands partly allowed for statistical purposes and the cross objection by the assessee stands dismissed.

Order pronounced in the open court on 19th January, 2024.

Sd/-	Sd/-
(CHANDRA POOJARI)	(MADHUMITA ROY)
Accountant Member	Judicial Member

Bangalore,
Dated, the 19th January, 2024.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore