



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATH, ACCOUNTANT MEMBER

ITA no.6669/Mum./2018
(Assessment Year : 2014-15)

Darodi Utkarsh Sahakari Patpedhi
Plot no.5, U-2, Shivaji Nagar
Govandi, Mumbai 400 043
PAN – AAAAD6764F

..... Appellant

v/s

Income Tax Officer
Ward-27(1)(4), Mumbai

..... Respondent

Assessee by : Shri Kumar Kale
Revenue by : Shri Kamal Mangal

Date of Hearing – 14.01.2020

Date of Order – 05.02.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee challenging the order dated 21st August 2018, passed by the learned Commissioner of Income Tax (Appeals)-24, Mumbai, pertaining to the assessment year 2014-15.

2. Brief facts are, the assessee, a Credit Co-operative Society, carries on business of Banking. For the assessment year under dispute, the assessee filed its return of income on 17th September

2014, declaring nil income after claiming deduction under section 80P of the Income Tax Act, 1961 (for short "*the Act*"). Assessee in case of the assessee was completed under section 143(3) of the Act vide order dated 9th December 2016, determining the income at ₹ 4,18,650. The variation between the income returned and income determined was due to disallowance of deduction claimed under section 80P of the Act. Against the assessment order so passed, the assessee preferred appeal before the first appellate authority.

3. The appeal filed by the assessee was dismissed in limine by learned Commissioner (Appeals) due to non-appearance of the assessee on the scheduled date of hearing.

4. The learned Authorised Representative submitted, no opportunity was granted to the assessee for representing its case before learned Commissioner (Appeals). He submitted, on the first date of hearing itself the appeal was disposed off ex-parte, that too, in limine without deciding the issues on merit. Thus, he submitted, the order of learned Commissioner (Appeals) should be set aside and issues may be restored back to him for fresh adjudication.

5. The learned Departmental Representative has no objection for restoring the issues to the file of learned Commissioner (Appeals).

6. We have considered rival submissions and perused the material on record. Undisputedly, the appeal filed by the assessee before learned Commissioner (Appeals) was disposed off ex-parte. Further, learned Commissioner (Appeals) has dismissed the appeal in limine without deciding the issues on merits. On a perusal of the impugned order of learned Commissioner (Appeals), it is not clear as to how many opportunities were given to the assessee to represent its case, as, learned Commissioner (Appeals) has only referred to the notice dated 11th June 2018, fixing the date of hearing on 21st August 2018, which is stated to have been served on the assessee on-line. However, the assessee has disputed the aforesaid fact. Be that as it may, learned Commissioner (Appeals) while disposing off the appeal has not decided the issues on merits. Provision contained under section 251(1)(a) of the Act clearly lays down that while disposing off the appeal against the assessment order, the first appellate authority has the power to confirm, reduce, enhance, or annul the assessment. In other words, he has to decide the appeal on merits, which has not happened in the present case. Therefore, for the aforesaid reason alone, the impugned order of learned Commissioner (Appeals) cannot be sustained. Further, on the basis of material on record, we are of the view that reasonable opportunity has not been granted to the assessee to represent its case. In view of the above, we are inclined to set aside the impugned order passed by learned Commissioner (Appeals)

and restore the matter back to his file for adjudication of the appeal on merits. Needless to mention, the assessee must be given adequate opportunity of being heard before deciding the appeal. Grounds are allowed for statistical purposes.

7. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 05.02.2020

Sd/-
G. MANJUNATH
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 05.02.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai