

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.33/RPR/2017
निर्धारण वर्ष / Assessment Year : 2010-11

Raigarh Nagrik Sahkari Bank Maryadit,
Darogapara,
Raigarh-496 001 (C.G.)
PAN : AAGFR6341B

.....अपीलार्थी/Appellant

बनाम / V/s.

The Income Tax Officer-3,
Raigarh (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :Shri S.R. Rao, Advocate
Revenue by :Shri G.N Singh, DR

सुनवाई की तारीख / Date of Hearing : 22.07.2022

घोषणा की तारीख / Date of Pronouncement : 23.09.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee bank is directed against the order passed by the CIT(Appeals), Bilaspur dated 29.03.2016, which in turn arises from the order passed by the A.O u/s. 143(3)/148 of the Income Tax Act, 1961 (for short 'the Act') dated 26.12.2013 for assessment year 2010-11. Before us the assessee has assailed the impugned order on the following grounds of appeal:

- “1. In the facts and circumstances of the case, the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the action of Ld. Assessing Officer with enhancement of Rs.10,18,166/- to the total income without giving mandatory opportunity stipulated in sec. 251(2) of the Income-tax Act, 1961 and the appeal order is bad in law.
2. The Ld. Commissioner of Income-tax (Appeals) has erred in confirming the action of disallowance made u/s. 40(a)(ia) of the Income-tax Act including enhancement at Rs.64,000/-.
3. The appellant reserves the right to add, amend, alter and omit all or any of the grounds of appeal with permission of the Hon'ble Appellate Authority.”

2. Succinctly stated, the case of the assessee which is a non-scheduled bank for assessment year 2010-11 was reopened by the A.O u/s.147 of the Act. In compliance to the notice issued u/s.148 dated 12.09.2012 the assessee filed its return of income for AY 2010-

11 on 05.11.2012, declaring an income of Rs.4,50,320/-. Thereafter, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. During the course of the assessment proceedings, it was, inter alia, observed by the A.O that the assessee had claimed deduction u/s.36(1)(viiia) and u/s.36(1)(viii) of the Act of Rs.3,47,000/- and Rs.10,18,165/-, respectively. Although the A.O found that the claim of the assessee for deduction u/s. 36(1)(viiia) of the Act was in order, but the same was not so as regards its claim for deduction u/s.36(viii) of the Act. It was observed by the A.O that though the assessee's claim for deduction u/s.36(1)(viii) i.e @ 20% of the amount of profit derived from eligible business worked out to an amount of Rs.10,18,166/-, whereas it had raised a claim for deduction of an amount of Rs.10,75,811/-. i.e. aggregating of the total provision made during the year under consideration. Accordingly, the A.O called upon the assessee to put forth its explanation regards maintainability of its claim for deduction under Sec. 36(1)(viii) of the Act. explain as regards the allowability of the same. In reply, it was submitted by the assessee that as the aggregate of its claim for deduction u/s. 36(1)(viiia) and u/s.36(1)(viii) of the Act worked out at

Rs.19,09,060/-, while for it had claimed an aggregate amount of deduction of Rs.14,22,811/-, viz. (i) U/sec. 36(1)(viia) : Rs.3,47,000/- ; and (ii) U/sec. 36(1)(viii) : Rs.10,18,165/-, therefore, the sum total of its claim for deduction under the aforesaid respective sections was much below the aggregate amount of deduction to which it was entitled during the year under consideration. In sum and substance, it was the claim of the assessee that the allowability of its claim of deduction should be considered in the backdrop of the aggregate amount of deduction that was raised under the aforesaid respective sections. However, the A.O did not find favor with the aforesaid claim of the assessee and disallowed the excess claim of deduction u/s. 36(1)(viii) of Rs.57,645/- (supra). Also, it was observed by the A.O that though the assessee during the year under consideration had raised a claim for deduction of legal expenses of Rs.64,200/-, but had failed to comply with the statutory obligation of deducting tax at source on the same which it was obligated to do u/s. 194J(i)(a) of the Act. On a perusal of the details, it was gathered by the A.O that the assessee had defaulted to deduct tax at source on the payments towards legal expenses on two occasions viz. (i). legal charges paid towards income-tax appeal and scrutiny assessment of a case:

Rs.20,000/- and (ii). legal charges paid towards compilation of income-tax return and appeal/scrutiny case fee payment : Rs.20,000/-. Accordingly, the A.O holding the assessee as being in default for not having deducted tax at source on the respective payments made on the aforesaid two occasions made a disallowance of an amount of Rs. 40,000/-. On the basis of his aforesaid deliberations the AO after, inter alia, making the aforesaid additions/disallowances assessed the income of the assessee at Rs. 6,26,750/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). After deliberating at length on the issues under consideration, the CIT(Appeals) not only upheld the view taken by the A.O but also enhancement its assessed income by declining its claim for deduction u/s.36(1)(viii) of the Act in toto. It was observed by the CIT(Appeals) that although the assessee within the meaning of Sec. 36(1)(viii) was a specified entity i.e. a banking company but was not carrying on an eligible business, therefore, it was not entitled for claim of deduction u/s.36(1)(viii) of the Act. It was observed by the CIT(Appeals) that as the assessee was not providing long term finance as contemplated in clause (b) r.w clause (h) to "Explanation"

to section 36(1)(viii) of the Act, but was engaged in providing intermediate term finance, therefore, it was not eligible for claiming deduction under the said statutory provision. Accordingly, the CIT(Appeals) on the basis of his aforesaid observations enhanced the assessee's income by declining its entire claim for deduction of Rs. 10,18,166/- u/s. 36(1)(viii) of the Act. Also, it was observed by the CIT(Appeals) that though the assessee had claimed deduction of legal expenditure of Rs.64,200/- but had not incurred the expenditure for the purpose for which the payments were claimed to have been made, therefore, on the said count the entire claim of deduction of legal expenses were liable to be disallowed. Accordingly, the CIT(Appeals) on the basis of his aforesaid observation made a further enhancement of Rs.24,200/-.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. At the very outset of the hearing of appeal, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that the CIT(Appeals) had carried out the enhancement of the assessee's income without putting the assessee-appellant to show

cause as was mandatorily required u/s. 251(2) of the Act. It was averred by the Ld. AR that the assessee appellant was unaware of any such enhancement proceedings which were taken recourse to by the CIT(Appeals) and had learnt about the same only after it had received his order. Our attention was drawn by the Ld. AR to the copy of the "Order sheet" entry, dated 29.03.2016. It was submitted by the Ld. AR that the CIT(Appeals) had after obtaining the signatures of the authorized representative and accountant of the assessee who had attended the proceeding before him i.e. on 29.03.2016, thereafter, interpolated certain lines which would give an impression as if they had no objection to the enhancement of the assessee's income. It was further submitted by the Ld. AR that the CIT(Appeals) had wrongly stated in his order that the Ld. AR had chosen to remain silent when confronted with the issue of enhancement in the course of the appellate proceedings before him.

7. Considering the aforesaid claim of the assessee wherein he had raised a serious allegation on the conduct of the CIT(Appeals), we had directed the ld. Departmental Representative (for short 'DR') to produce the file records of the assessee as were there before the first appellate authority. Also, as the aforesaid facts as were so claimed by

the ld. AR were not borne out from the record, therefore, the Ld. AR was directed to place on record “Affidavits” under Rule 10 of the Income-Tax Appellate Tribunal Rules, 1963 of both the authorized representative and the accountant who had appeared in the course of the proceedings before the CIT(Appeals).

8. During the course of the next hearing of the appeal, the Ld. DR produced the file records of the assessee as were there before the CIT(Appeals) for the perusal of the bench. Also, the Ld. AR had filed before us an “Affidavit” of the Accountant of the assessee bank, viz. Shri. Keshaw Prasad Patel s/o. Sh. Deodhar Patel who had participated in the proceedings before the CIT(Appeals). As regards the “Affidavit” of the chartered accountant, viz. Shri Gulshan Agrawal, it was submitted by the Ld. AR that as the professional services of the said person were not being availed by the assessee anymore, therefore, the same could not be obtained from him. On a perusal of the “Order sheet” entry dated 29.03.2016 (supra) as could be gathered from the file records of the CIT(Appeals), we find that the said reads as under:

2908/16 Sh. Gulshan Agrawal A.A. and Sh. Keshav

Patel the manager appears and he was asked for enhancement of income. With silence on the issue of enhancement he assigned the case. (filed papers)

Attorney. He was asked on to not enhance the assessment as it is not long term finance.

[Signature]

[Signature]

True copy
S R Rao
AR

Also, the aforesaid person, viz. Keshav Prasad Patel had categorically deposed in his "affidavit", dated 28.05.2022 that at no stage either he or the Ld. AR (who had appeared in the course of the proceedings before the CIT(Appeals) had ever signed on the order sheet on the issue of enhancement of the assessee's income. For the sake of clarity the relevant extract of the "Affidavit" of Shri Keshav Prasad Patel (supra) is culled out as under:

"4. That it is found after receipt of the appeal order that the Ld. CIT (Appeal) dismissed Ground No.2 of the grounds of appeal relating to disallowance of deduction claimed u/s 36(1)(viii) of the Act by observing that the Ld. AR was asked why enhancement may not be made and the AR kept silent on the issue of enhancement. Since, this observation is contrary to facts and since no such opportunity

was allowed to us during the course of hearing, specific ground of appeal has been raised in appeal before Hon'ble Tribunal.

5. That on being so advised, the Bank has obtained copy of order sheet relating to said appeal proceedings and it is found that Id. CIT (Appeal) has added and interposed certain sentences in the space available between the lines to suit his findings only to exhibit that due compliances has been made to requirement of provisions of section 251(2) of the Act. It is wrong and contrary to facts.

6. That copy of the order Sheet has been filed before this Hon'ble Tribunal in support of appellant's submissions that the enhancement was made without giving mandatory of opportunity stipulated in sec. 251(2) of the Act. It is reiterated that Id. CIT(Appeals) did not give any opportunity of being heard before resorting to enhancement and the impugned order is illegal and without jurisdiction in so far as this ground of appeal is concerned.”

9. We have given a thoughtful consideration to the aforesaid issue in hand in the backdrop of the orders of the lower authorities and the material placed on our record. Considering the facts involved in the case before us, we find substance in the claim of the Ld. AR that the CIT(Appeals) had carried out enhancement of the assessee's income without affording putting it to show cause as to why its income may not be enhanced. In sum and substance, the CIT(Appeals) had carried out the enhancement of the assessed income of the assessee without validly putting it to show cause as is mandatorily required under Sec. 251(2) of the Act. In the backdrop of our aforesaid observations, we are of the considered view that the matter in all fairness requires to be restored back to the file of the

CIT(Appeals), with a direction to re-adjudicate the issues qua the enhancement of the assessee's income after validly putting it to notice as per the mandate of sub-section (2) of Section 251 of the Act. As we have restored the matter to the file of the CIT(Appeals) for fresh adjudication, therefore, we refrain from dealing with the merits of the case which, thus, are left open. The assessee would in the course of the set-aside proceedings remain at a liberty to assail the validity of the additions that had been sustained by the CIT(appeals). Thus, the **Grounds of appeal No. (s) 1 and 2** raised by the assessee are allowed for statistical purposes in terms of our aforesaid observations.

10. The **Ground of appeal No.3** being general in nature is dismissed as not pressed.

11. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd September, 2022

*SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The CIT, Bilaspur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.