

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
 INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

AND

SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.94 to 96/Ind/2023

(Assessment Years:2015-16, 2016-17&2018-19)

ITA No.92 to 93/Ind/2023

(Assessment Years:2015-16 to 2016-17)

Indore Mandal Dak Tar Karamchari Sahakari Sanstha Maryadit, 11, Ahilya Mata Goushala Colony, New Dewas road, Indore -452001	Vs.	ACIT , Aayakar Bhawan Indore, MadhyaPradesh
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAJI0159C		
Assesseeby	Shri VinusRawka, CA, AR	
Revenue by	Shri Ashish Porwal, ACIT-Sr.DR	
Date of Hearing	15.05.2023	
Date of Pronouncement	15.05.2023	

PER BENCH:

These five appeals have been filed by the assessee out of which three appeals are directed against the three separate orders of CIT(Appeals) NFAC Delhi all dated 27/01/2023 arising from assessment orders passed under section 143 (3) read with section 147 of the income tax act for the assessment year 2015-16, 2016-17 &2018-19. The other two appeals are directed against the two separate orders of CIT(Appeals) NFAC Delhi both dated 30/01/2023 arising from the penalty order passed under section 271(1)(c) of the income tax act for

assessment years 2015-16 and 16-17 respectively. In the appeal filed against the assessment orders, the assessee has raised common grounds. The grounds raised for the assessment year 2015-16 are reproduced as under:

(1) That the learned CIT(A) erred in law and facts of the case and passed an order on ex-parte basis without giving the assessee the opportunity of being heard.

(2) That the learned CIT(A) erred in law and facts of the case and assessed the total income at Rs.2,70,08,955/- as against the returned income of Nil.

(3) That the learned CIT(A) erred in law and facts of the case and made an addition of Rs.2,70,08,955/- on account of deduction claimed under section 80P under chapter VI-A of Income Tax Act 1961 as is admissible deduction to a co-operative society. The addition therefore made by AO is totally wrong and without considering the facts of the case.

(4) That the appellant craves to leave add alter or amend any of the ground at or before hearing.

2. At the time of hearing Id. counsel for assessee has submitted that the CIT (Appeals) has dismissed the appeals of the assessee while passing the ex-parte orders. He has pointed out that the CIT(Appeals) has not afforded an effective opportunity of hearing to the assessee before passing the impugned orders. He has submitted that the assessee has not received the alleged notices issued by the CIT(Appeals) as none of the notices were sent in physical form but the same were sent at the registered email ID which could not be noticed by the assessee society. Further, the issue involved in these appeals

arising from the assessment order is regarding the claim of deduction under section 80P in respect of the interest income earned by the assessee from the scheduled bank. He has submitted that the CIT(A) has confirmed the disallowance by following the judgement of Hon'ble Supreme Court in case of Totagars Co-operative Sale Society versus ITo 188 Taxmann 282. The said decision is not applicable in the facts of the present case and the CIT(A) decided the appeal without giving an opportunity to the assessee to comments on this decision. Thus he has pleaded that the matter may be set aside to the record of the CIT(A) for fresh adjudication after giving an opportunity of hearing to the assessee.

3. On the other hand Ld. DR has fairly submitted that since, the impugned order has been passed by CIT(Appeals) ex-parte therefore, he has no objection if the matter is set aside to the record of the Commissioner of Income Tax (appeals) for fresh adjudication.

4. We have considered the rival submissions as well as relevant material on record. At the outset we note that the CIT(A) has passed identical ex-parte orders for all these three appeals arising from the assessment orders when nobody has made appearance nor any reply was filed to the notices issued by the CIT(Appeals). We find that the the CIT (Appeals) has dismissed these appeals of the assessee by following the judgement of Hon'ble Supreme Court

in case of totgars Co-operative Sale Society versus ITO (supra) without confronting the same to the assessee. Since the assessee was not aware about the notices issued by the Commissioner of income tax appeal due to the reason that the notices were sent to the registered email ID and not in physical form. Therefore, in the facts and circumstances of the case and in the interest of justice, we are of the considered view that the assessee be given one more opportunity to present its case before the CIT(Appeals). Accordingly in the facts and circumstances and in the interest of justice we set aside the impugned orders of CIT(A) and the matter is remanded to the record of the CIT(A) for fresh adjudication of these appeals after giving appropriate opportunity of hearing to the assessee.

5. As regards the appeals arising from penalty order passed under section 271(1)(c) of Act for the assessment year 2015-16 and 2016-17 we find that the assessee has raised common grounds as under:

(1) That the learned CIT(A) erred in law and facts of the case and passed an order on ex-parte basis without giving the assessee the opportunity of being heard.

(2) That the learned CIT(A) erred in law and facts of the case and levied the penalty u/s 271(1)(c) read with section 274 of Income Tax Act, 1961 at Rs.91,76,957/- without considering the full facts and legal position.

(3) That the appellant craves to leave add alter or amend any of the ground at or before hearing.

6. We have heard the learned authorise representative of the assessee as well as Ld. DR and considered relevant material on record. At the outset we note that the CIT(A) has passed impugned ex-parte orders due to non-representation of the assessee. Since, we have set aside the quantum appeals for the assessment year 2015-16 and 2016-17 to the record of the CIT (Appeals) for fresh adjudication therefore, the penalty appeals are also set aside to the record of Commissioner of Income Tax (Appeals) for fresh adjudication as per the outcome of the quantum appeals and after giving opportunity of hearing to the assessee.

7. In the result the appeals filed by the assessee arising from assessment order passed under section 143(3) read with section 147 as well as the appeals arising from penalty order passed under section 271(1)(c) are allowed for statistical purposes.

The order is pronounced in open court on conclusion of hearing on 15.05.2023 and the same is reduced in writing and signed on the date indicated below.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 15.05.2023

Patel/Sr. PS

Copies to:

- (1) The appellant*
- (2) The respondent*
- (3) CIT*
- (4) CIT(A)*
- (5) Departmental Representative*
- (6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*