

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.308/NAG/2015
निर्धारण वर्ष / Assessment Year : 2007-08

The Amravati Peoples Co-operative Bank Limited,
(Now merged in The Cosmos Co-op. Bank Ltd.),
Jawahar Road, Amravati-444601

PAN : AAAC5899B

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Amravati Circle, Amravati

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.G. Gandhi
Revenue by : Shri Amol Khairnar

सुनवाई की तारीख / Date of Hearing : 18-07-2023
घोषणा की तारीख / Date of Pronouncement : 04-08-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 30-09-2015 passed by the Commissioner of Income Tax (Appeals)-I, Nagpur [‘CIT(A)’] for assessment year 2007-08.

2. The assessee raised seven grounds of appeal amongst which the only effective issue emanates for our consideration is as to whether the CIT(A)

justified in confirming the order of AO ignoring the submissions of assessee in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. We note that the assessee is a Co-operative Society engaged in banking business. The assessee filed its return of income declaring a total income at Rs.Nil and claiming set off brought forward loss of Rs.61,96,253/- for A.Y. 2002-03. The said return of income was processed u/s. 143(1) of the Act. Thereafter, the AO found on verification of the records for A.Y. 2002-03 that there was no loss available for set off against the income for the year under consideration, thereby, issued notice u/s. 148 of the Act on 16-12-2013 by recording reasons which are reproduced in para Nos. 2 to 4 of the assessment order. In response to the said notice u/s. 148 of the Act, the assessee filed letter dated 06-01-2014 requesting the AO to treat the original return of income filed on 31-10-2007 may be treated as return of income in response to the notice u/s. 148 of the Act. Further, on perusal of the assessment record that the assessee sought copy of reasons and inspection of records for A.Ys. 2002-03 to 2008-09. The AO afforded inspection of the records, wherein, it is emanating from para No. 2 of the assessment order that the assessee vide letter dated 13-02-2014 thanked the AO for giving an opportunity for inspection of records for A.Y. 2002-03. We note that the assessee vehemently contended that there was no fresh tangible material in the possession of AO to reopen the assessment. The AO did not accept the objections of the assessee and proceeded to complete the reassessment proceedings vide para No. 10 of the assessment order, wherein, he clearly held that there was no loss available for A.Y. 2002-03 which was assessed u/s. 143(3) of the Act determining Nil income after allowing deduction u/s. 80P of the Act against the income for the year

under consideration. Further, the assessment for A.Ys. 2009-10 and 2010-11 was also completed u/s. 143(3) of the Act, wherein, set off of losses of earlier years i.e. A.Y. 2002-03 was disallowed which was confirmed by the order of CIT(A), thereby, the AO added an amount of Rs.61,96,253/- to the total income of the assessee vide its order dated 18-03-2014 passed u/s. 143(3) r.w.s. 147 of the Act.

4. Having aggrieved by the order of AO under reassessment, the assessee challenged the same before the CIT(A) vide its grounds of appeal in Form No. 35 which are at page No. 38 of the appeal memo. On perusal of the same, we note that the assessee challenged validity of reopening of assessment made thereon but no ground raised in respect of merits of the case before the CIT(A). The CIT(A) discussed the issue of reassessment in detail from para No. 5.3 in the impugned order. The CIT(A) considered written submissions of the assessee which are reproduced at para No. 5.2 of the impugned order and upheld the reopening of assessment by the AO. The relevant portion at para Nos. 5.5 to 5.7 of the impugned order is reproduced as under for ready reference :

*“5.5 On careful examination of the material facts, it is seen that the return of income filed on 31.10.2007 was processed u/s 143(1) on 28.07.2008. Notice u/s 148 was issued and served on 16.12.2013. Section 151 of the I.T. Act, 1961 relates to the provisions for **sanction of issue of notice**. Sub-section (1) of section 151 provides that no notice u/s 148 shall be issued by an Assessing Officer who is below the rank of ACIT or DCIT, where the assessment has already been completed u/s 143(3) or u/s 143(3) r.w.s.147, unless the approval of the Joint Commissioner is obtained to his satisfaction. The proviso to sub-section (1) further provides that after the expiry of four years from the end of the relevant assessment year, no notice u/s 148 shall be issued unless the Chief Commissioner or Commissioner is satisfied on the reasons recorded by the AO. The present case of the appellant does not fall under sub-section (1) of section 151 and the same falls under sub-section (2) of section 151 because the assessment in this case was originally completed u/s. 143(1) of the I.T. Act, 1961 and not u/s 143(3) of the Act. Sub-section (2) of section 151 provides that no notice u/s 148 shall be issued by an officer who is below the rank of Jt. Commissioner after the expiry of four years from the end of the relevant assessment year unless the Jt. Commissioner is satisfied on the reasons recorded by the Assessing Officer. Since, the notice*

u/s 148 in the case of the present appellant was issued by the DCIT, after the expiry of four years from the end of the relevant assessment year, therefore, approval of the Jt. CIT. was required for issue of such notice.

6.6 *In this regard, it is significant to note that the appellant in his submission dtd.03.08.2015 has himself clearly stated that the sanction report of the Jt. Commissioner of Income-tax was available at the time of inspection of records taken by the appellant during the assessment proceedings. The relevant finding noted by the appellant in his reply is as under:*

"We have gone through the sanction report/note of Hon'ble Joint Commissioner of Income Tax which was available at the time of inspection in the respective file and we have our own reservations on same but cannot be dealt unless we have a copy. Sir, when the report was made available for inspection, we fail to understand as to why a copy of same was rejected. We once again request you to supply a copy of sanction report/note as it has now become apart of reassessment proceeding. It thus, clearly transpires from the above finding of the AR of the appellant that the Id. AO has granted the inspection of the relevant records to the appellant in this regard. The appellant has duly inspected the sanction granted by the Jt. Commissioner for issue of notice u/s. 148 within the meaning of section 147 of the I.T. Act 1961. The appellant has not brought out any sort of infirmity in the sanction granted by the AO. The Id. AO in para-7 of the assessment order has clearly mentioned that inspection was granted to the assessee vide order sheet notings dtd.07.03.2014. The assessee in his written submission has also confirmed the same. Therefore, the contention of the AR that the AO has not dealt with the objections of the appellant is not found to be based on merits in as much as that neither the appellant had pointed out any infirmity in the approval granted u/s 151 nor there exists any objection for disposal once the inspection as desired by the appellant has been granted. In fact, on perusal of records, it is seen that the appellant had duly complied with the notice issued u/s 148 of the Act by its letter dtd.06.01.2014, informing the AO that the original return filed on 31.10.2007 may be treated as return having been filed in response to notice u/s 148. Thus, no objection as such was raised against issue of notice u/s 148 and the appellant's only, grievance before the AO during the assessment proceedings was that the AO has acted without jurisdiction by not obtaining sanction u/s 151 from the Jt.CIT. However, this objection of the appellant stands mitigated once inspection of relevant records was granted to him in respect of which no infirmity as such has been pointed out by the appellant, as regards to such sanction of Jt.CIT.

5.7 *The judicial decisions relied upon by the AR of the appellant in his written submission have duly been considered. It, however, is seen that the ratio of the decisions relied upon by the AR of the appellant is not applicable to the facts and circumstances of the present case of the appellant. The ratio of the decisions relied upon by the Id. AO which have been discussed on pg.no.12 to 14 of the assessment order is applicable to the facts of the case of the appellant. Thus, after having considered all the cumulative factors, I do not find any infirmity in re-opening the assessment u/s 148 of the I.T. Act, 1961. Therefore, the legal stand taken by the appellant stands **dismissed**. The appellant has not prosecuted the issue of allowability of*

*brought forward loss on merits, despite that inspection was granted to the appellant for all the relevant assessment records from AY 2002-03 to 2008-09. Therefore, all the grounds raised by the appellant are dismissed both on **legality and merits.***

5. On perusal of the above finding of CIT(A), we note that according to the CIT(A) the present facts does not fall under sub-section (1) of section 151 of the Act as it applicable to completed assessment u/s. 143(3) r.w.s. 147 of the Act. Further, he held that sub-section (2) of section 151 of the Act is applicable to the facts on hand as the original assessment u/s. 143(1) of the Act under intimation proceedings. Further, he reproduced observations of the assessee in assessment proceedings to show that the assessee inspected the assessment records and found satisfied the issuance of notice as required under law. According to the CIT(A) the contention of assessee is not maintainable in contending that no copy of approval u/s. 151 of the Act is supplied to the assessee as the assessee itself satisfied through their authorized representative by inspecting the assessment record and found satisfied the existence of copy of approval in the assessment record. Therefore, we find no dispute by the ld. AR about the granting an opportunity to the assessee for inspection of assessment records in verifying the existence of approval required under law and no material to show that there was no approval to initiate reassessment proceedings. Further, as discussed above vide letter dated 13-02-2014 thanked the AO for giving an opportunity for inspection of records for A.Y. 2002-03 which is evident from para 2 of the assessment record. Therefore, the contention of non-supply of copy of approval as it is stated in grounds forming part of Form No. 36 is not justified. Therefore, the reasons recorded by the CIT(A) concerning the seven grounds raised by the assessee from para Nos. 5.5 to 5.7 of the impugned order are justified and

we find no infirmity in the order of CIT(A). Thus, the grounds raised by the assessee are dismissed.

6. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 04th August, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th August, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-I, Nagpur
4. The CIT-I, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune