

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON. VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON. JUDICIAL MEMBER

ITA No.727/PUN/2023
(A.Y. 2007-08)

The Seva Vikas Co-operative Bank Ltd., Plot No.336, Near Hemu Kalani Garden, Pimpri, Pune-411017. PAN: AAATT 1710 G	vs	Addl.CIT, Range-10, Pune.
Appellant		Respondent

Assessee by	:	Shri N.C. Lahoti, CA
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	22/08/2023
Date of pronouncement	:	23/08/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 02.05.2023 for A.Y.2007-08 as per the grounds of appeal on record.

2. That, at the outset this is the second round of litigation. The relevant facts are that the original assessment order was passed on 30/12/2009 u/sec. 143(3) of the Act for A.Y. 2006-07. The assessee preferred an appeal before the Id. CIT(A) against the said order, which was allowed by the Id. CIT(A) vide his order dated 21/11/2011. The order giving effect to the Id. CIT(A)'s order u/sec. 250 was done on 09/03/2012. The assessee, thereafter, filed an application for

rectification u/sec.154 of the Act wherein it was requested that interest on refund had not been calculated till the date of refund hence, needs to be modified. In the order passed u/sec. 154 of the Act on 30/03/2016, it was mentioned that while giving effect to Id.CIT(A)'s order, the status of the assessee was taken as trust instead of Association of Persons (AOP) and the same now was rectified and the tax liability has been recomputed in the status of AOP resulting into refund of Rs. 39,38,170/-. However, the grievance of the assessee still remained that the interest on refund as per sec.244 (1A) was still not provided to the assessee by the Department. In this regard, the assessee filed a grievance petition through CPGRAMS, however, the request of the assessee was rejected. Aggrieved, the assessee filed appeal before the Id. CIT(A) and the Id. CIT(A) held that the appeal that was preferred by the assessee was against the grievance petition disposal letter dated 08/06/2016 and not against the rectification order passed u/sec. 154 dated 30/03/2016 as was observed from the appeal form No.35. The said appeal against the grievance petition was not appealable u/sec. 246A and, therefore, the appeal was dismissed as not maintainable. Being further aggrieved, the assessee preferred an appeal before the ITAT, who vide its order dated 30/07/2021, set aside the matter to the file of Id. CIT(A) to adjudicate the same on merits as per law.

3. When the matter came up for second time before the NFAC,

which is the present impugned order passed by NFAC dated 02/05/2023 and therein it was observed that as per the reasons recorded, the Department's case was that delay was attributable to the conduct of the assessee and at para 4.7 precisely it is stated that taxpayer will not be entitled to any interest on refund, if the proceedings resulting in the refund were delayed for the reasons attributable to the taxpayer or the deductor. In such case, the period of delay so attributable to the assessee shall be excluded from the period for which interest is payable. Accordingly, the appeal of the assessee was dismissed.

4. Being further aggrieved, the matter had travelled before this Bench. At the time of hearing, none appeared for the assessee, the submissions of the Id.DR were recorded and the materials/documents on record have been considered and the case decided on merits.

5. We observe from the findings of the NFAC's order dated 02/05/2023 that the section invoked for non-granting of the interest on refund by the Revenue is sec. 244A(2) which says that (2) *"If the proceedings resulting in the refund are delayed for reasons attributable to the assessee or the deductor, as the case may be, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable*". In this case as observed from the order of the NFAC, the delay

which the Department is attributing on the part of the assessee is that when the assessee was informed by the AO that the tax has been credited as per status of the assessee available on PAN data base, then the assessee was requested to get the status corrected, but the assessee instead of seeking change of status, preferred to get a new PAN, in the status of society. However, the fact of the matter is that in pursuant to the order passed u/sec.154 refund, amount was determined in respect of the assessee. When this refund is issued to the assessee automatically, the interest component has to be calculated and to be given to the assessee. This exercise should have completed immediately after the pronouncement of the rectification order u/sec. 154 of the Act. But, in this case, in the refund amount calculated, there was no interest given to the assessee. This is in direct contravention to sec.244(1A) of the Act. The Id. CIT(A) had allowed the appeal of the assessee in the original order dated 21/11/2011. Thereafter, the order giving effect was passed and after which the rectification order u/sec. 154 was passed determining the refund amount of 39,38,170/-. The Department should have, at that stage itself, calculated the interest component and should have handed-over to the assessee. In this case, there is no failure on the part of the assessee as contemplated and submitted by the Department u/sec. 244A(2) of the Act. We, therefore, set aside the order of the NFAC and direct the AO to calculate the interest as per law and remit the same to the assessee. The grounds of appeal

stands allowed.

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

Order pronounced in open Court on 23rd August, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 23rd August, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.