



**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "SMC" BENCH, PUNE
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 838/PUN/2023

निर्धारण वर्ष / Assessment Year : 2017-18

Sahyogh Nagri Sahakari Patsanstha Maryadit,
Kasturi 47, Azad Maidan,
Near Saibaba Temple
PAN: ABMFS8514J

..... **अपीलार्थी / Appellant**

बनाम / V/s

Income Tax Officer
Ward- 3, Jalana.

..... **प्रत्यर्थी / Respondent**

द्वारा / Appearances

Assessee by : None

Revenue by : Shri R.Y. Balawade

सुनवाई की तारीख / Date of conclusive Hearing : 10/08/2023

घोषणा की तारीख / Date of Pronouncement : 20/09/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

This appeal of the assessee for the assessment year [for short 'AY'] 2017-18 is assailed against the order of National Faceless Appeal Centre, Delhi [for short 'NFAC'] dt. 19/05/2023 passed u/s 250 of the Income-tax Act, 1961 [for short 'the Act'].

2. The assessee raised following grounds in present appeal;

"1. On the facts and circumstance previewing in the case, national faceless appeal centre (NFAC), Delhi has erred in conforming the addition made by the AO of Rs. 8,08,170/-, for the reason that the appellant is society registered under co-operative society Act, 1960 vide registration no. ABD/RSR/(CR)763/2001 dated 05.01.2001, u/s 12(1) vide rule 10 (1), which is eligible to avail the deduction u/s 80P of the IT Act. However, it is submit that the PAN no. of the Society (Pathsanstha), was allotted of Firm erroneously, which is then applied for allotment of appropriate PAN of



*Society, as per which formation of Society dated 05.01.2001. Hence it is requested that **deduction u/s 80P of the IT Act, may be allowed.***

2. *On the facts and circumstance prevailing in the case, the appellant could not submit the response to the notice dated 12.04.2023, with in stipulated time for the illness of the person authored to submit the response/represent the case on the date of hearing. Therefore, it is prayed that the appeal may kindly be **admitted and the deduction u/s 80P may be allowed.***

3. *The assessee craves right to add, alter, amend, modify, and delete the grounds of appeal and right to make detailed submissions, clarifications and explanation on the **grounds of appeals at the time of hearing.***

3. Despite service of notice, none appeared on behalf of the assessee nor there found on record any application for adjournment, faced with the situation, in the interest of justice we proceeded to hear the matter *ex-parte* u/r 24 of Income Tax Rules, 1963 [for short 'ITAT-Rules'] of course with the able assistance from the Revenue.

4. After hearing to Ld. DR; subject to rule 18 of ITAT Rules, perused the material placed on record.

5. We note that, the assessee vide registration no. ABD/RSR/(CR)763/2001 dt. 05/01/2001 is registered under the State Co-op. Societies Act as a Co-operative Society and for the purpose of assessment under the Act is holding a PAN 'ABMFS8514J' in the status of '**Firm**' as against '**AOP**'. For AY under consideration the assessee was identified as non-filer which has found deposited substantial cash into its bank account no. 60182000001 maintained with '*Samarth Sahakari*



Bank Ltd.' In these facts and circumstance the assessee by notice dt. 08/03/2018, 16/12/2019 & 24/12/2019 was called upon to file its return of income and explain nature & source cash deposits made during demonetisation period. Upon assessee's effective failure to comply with aforesaid notices, the Ld. Income Tax Officer, Ward-3, Jalna, [for short 'AO'] placing on records details of bank transactions obtained from the Bank u/s 133(6) of the Act, has culminated the assessment proceedings u/s 144 of the Act by bringing to tax entire amount of profit as reflected in Profit & Loss Account of the assessee. While framing aforesaid assessment, the Ld. AO denied to grant deduction u/s 80P(2) by pressing into service the provision of s/s (5) thereof and the recent judgment of Hon'ble Kerala High Court in the case of 'Kuthuparamba Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd. Vs CIT' reported in 95 Taxann.com 299 [equivalent citation 257 Taxman 151].

6. Aggrieved assessee in an appeal before Ld. NFAC contended that, owing to incorrect PAN allotted to it by the department was prevented from filing its return as 'Co-op. Society', which resulted into framing of *ex-parte* assessment and denial of deduction u/s 80P(2) of the Act.

7. Upon assessee's failure to attend notices of hearing dt. 23/12/2020 & 12/04/2023, the Ld. NFAC in the light of Hon'ble



Supreme Court decision in the case of '*B.N. Bhattacharjee & other*' reported in 118 ITR 461, dismissed the appeal of the assessee for non-prosecution.

8. We note that, in the light of restriction placed by clause (a) of sub-section (1) of section 251, the Ld. NFAC without remanding the *ex-parte* assessment, has *de-facto* dismissed the appeal of the appellant assessee. However said dismissal in our view has suffered from the provisions of sub-section (6) of section 250 of the Act, which mandates the Ld. first appellate authority to state the points for its determination, the decision thereon and the reason for such decision while disposing of the appeal instituted before it u/s 246A of the Act. For the reasons, without commenting on merits hereof, we deem it fit to remand the file back to Ld. NFAC for *de-novo* adjudication on merits in terms of section 250(6) of the Act, thus order accordingly.

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

In terms of rule 34 of ITAT Rules, order pronounced in open court on this Wednesday, 20th September, 2023

-S/d-

SATBEER SINGH GODARA
JUDICIAL MEMBER

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 20th day of September 2023.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr.CIT, -4, Pune (MH-India)

4. The NFAC, Delhi, New Delhi

5. DR, ITAT, Pune Bench 'SMC', Pune

6. गार्डफाइल / Guard File.

Ashwini

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary



आयकर अपीलिय न्यायाधिकरण, पुणे / ITAT, Pune.