

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 279/Coch/2023
(Assessment Year: 2011-12)

Ayyanad Service Co-op. Bank Ltd. No. 2565, Vazhakkala Thrikkakara P.O. Ernakulam 682021 [PAN:AACAA0824B]	vs.	Income Tax Officer Non-Corporate Ward - 1(5) C.R. Building, I.S. Press Road Kochi - 682018
(Appellant)		(Respondent)

Appellant by:	Shri Amaljith P.J., CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	24.01.2024
Date of Pronouncement:	31.01.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order dated 17.02.2023 by Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], disallowing the assessee's appeal contesting its assessment u/s. 147 read with section 144 of the Income Tax Act, 1961 (the Act) dated 27.12.2017 for Assessment Year (AY) 2011-12.

2. Before us, the only grievance raised by Shri Amaljith, the learned counsel for the assessee, was that the impugned order stands passed without affording proper opportunity of hearing to the assessee, and that, therefore, the instant appeal be restored for adjudication afresh back to the file of the ld. CIT(A). Sure, the impugned order states four dates of hearing, which were not responded to by the assessee (para 5/pgs. 3-4), but no notice was in fact received by the assessee, even as averred per a sworn affidavit dated 12.09.2023 by the Principal Officer of the assessee society, Ms.

Jalajakumari, C.B. (copy on record), who has also verified the appeal memo before the Tribunal. Form 35, the memorandum of appeal before the first appellate authority, he would continue, specifically states the assessee's email ID for communication by the office of the said authority. On an enquiry by the Bench as to the manner of receipt of the impugned order, he would clarify it to be, on 20.02.2023, by downloading the same from the assessee's account on the Revenue's portal, reiterating the prayer for restoration for adjudication afresh on merits, in which proceedings, even as stated in the affidavit, the assessee undertakes to participate. Smt. Devi, the Id. Sr. DR, was, upon this, allowed time by the Bench to file a counter affidavit or otherwise rebut the claim – with material, of the non-receipt of any of the notices of hearing by the assessee. She, would, however, express her inability to do so. We, accordingly, are constrained to accept the contents of the affidavit as true.

3. There is, in view of the foregoing, a clear deficiency in observing the required procedure, enshrined in s. 250(1) of the Act, read out during hearing, even as the same is even otherwise only an expression of a principle of natural justice. The matter must, accordingly, necessarily travel back to the file of the Id. CIT(A) for a consideration afresh in accordance with law after allowing due opportunity of hearing to the parties before him, i.e., back to the stage where the irregularity had set in. Shri Amaljith, on enquiry, confirmed the assessee's email address, i.e., as stated in Form 35, for the purpose of communication in the set aside proceedings.

4. We, however, before parting, consider it incumbent upon us to state two aspects we regard as relevant. Though the Id. CIT(A) at para 7 of his order states of deciding on the basis of the material on record, he in fact does not do so. His adjudication per para 7, also read out during hearing, does not to our mind meet the mandate of s. 250(6) of the Act, which should reflect his opinion, along with reasons, on each of the points arising from determination, considering the points for & against. That, in fact, is also the requirement of a speaking order, which should be satisfied for

it to be regarded as a judicial order. Secondly, the assessee has, without citing it, made reference to a decision by the Hon'ble jurisdictional High Court to the effect that the issue of notice u/s. 148(1) shall, for the purpose of s. 147, imply its service, and which, being in April, 2016, is thus barred by time. The issue, as it appears to us, is no more *res integra*, toward which we may cite some decisions, viz. *R.K. Upadhyaya v. Shamabhai P. Patel* [1987] 166 ITR 163 (SC); *CIT v. Sheo Kumari Devi* [1986] 157 ITR 13 (Pat)(FB); *Jai Hanuman Trading Co. v. CIT* [1977] 110 ITR 36 (P&H)(FB), which may be taken into account where it is being decided on merits.

5. Further, we find that the dispute in the instant case is *qua* the deduction u/s. 80P(1) r/ws. 80P(2)(a)(i), denied admission in view of s. 80A(5), on which aspect we express no opinion. If and where the same is required to be decided on merits, the same may be with reference to and taking note of the several decisions by the Coordinate Bench in the matter, viz. *Koyyode SCB Ltd. v. ITO* (in ITA No. 682/Coch/2022, dated 31/1/2024); *Mundakkayam SCB Ltd. v. ITO* (in ITA No. 73/Coch/2023, dated 28.12.2023); and *Sivapuram SCB Ltd. v. ITO*(in ITA Nos. 61 & 62/Coch/2023, dated 13.12.2023). We decided accordingly.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced on January 31, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: January 31, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order
Assistant Registrar
ITAT, Cochin