

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.477 & 487/Ind/2023
(Assessment Year: 2017-18)

Adim Jati Seva Sahakari Samiti Maryadit Bhoura Adim jati Seva Sahakari S Maryadit Boura, At-Bhoura Post -Bhoura Betul (Appellant / Assessee)	Vs.	ITO Betul (Respondent/ Revenue)
PAN: AABAA0977A		
Assessee by	Shri Amul Regnekar, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	01.04.2024	
Date of Pronouncement	01.04.2024	

O R D E R

Per Vijay Pal Rao, JM :

These two appeals by two related assesses are directed against the two separate orders of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi dated 13.10.2023 & 24.03.2023 respectively for A.Y.2017-18. The assesses have raised common grounds of appeal as under:

“1) The learned CIT(A) has erred in law and on facts in dismissing the appeal against assessment order u/s. 144 of the Act dated 13/10 / 2023 treating it as dismissed for non-prosecution being appellant is not interested in prosecuting its appeal.

2) The learned CIT(A) has erred in stating that several opportunities of being heard has been duly served on the assessee thru ITBA Portal, but none of the notices for the said AY 2017-18 were found in the e-mail box of the assessee, and not served physically at the address of the assessee, as and when it was brought to the notice of the assessee, it was promptly responded by the appellant.

3) The learned CIT (A) has simply dismissed the appeal summarily without even referring to the elaborate statement of facts and specific issues raised in the grounds of appeal.

4) The Learned CIT (A) has erred in ignoring the Assessee's right to be heard at the hearing of the appeal" and such a right cannot be put against the assessee. The non-exercise of this right by the assessee cannot be a reason enough for the CIT(A)'s not dealing with the points so raised before him on merits. Despite knowing that the assessee society is a Primary agriculture Credit society located in the remote village of the District Betul, where Telecommunication network is barely available, and without verifying the fact of no physical delivery of the hearing notices the CIT(A) ought to have dealt with the issues so raised by the assessee on merits and to pass order by way of speaking order and in accordance with the law.

5) The Learned CIT (A) has erred in ignoring the fact that, authority is required to extend opportunity to be heard to the appellant. It has been held in numerous cases that "right to natural justice" is a personal right. A person can waive it, a person may not avail it. Merely because a person is not availing his right of natural justice, it cannot be a ground of refusal to do statutory duty of deciding appeal.”

2. At the time of hearing Ld. AR of the assessee has submitted that the assessees are primarily agricultural credit societies involved in facilitating credit to farmers and sale of fertilizers to the

farmers. In the regular course of business the society collects the loan and sale proceeds from its member farmers and deposit it in the current account opened with District Central Bank. All the transactions have been duly recorded in the books of account of the society. Ld. AR has further submitted that the society has been founded by Government of Madhya Pradesh with an objective to serve the poor farmers. The affairs/operations of the assessee society are being audited by the Government Co-operative Department. He has pointed out that at present day to day affairs of the society are managed by officials appointed as Administrator of the Co-operative Ministry of Government of Madhya Pradesh. Since there is a change of Government appointed administrator of society from time to time therefore, the society could not participated in the assessment proceedings as well as in the proceedings before the CIT(A) due to lack of communication and internet connectivity issues. Thus, Ld. AR has submitted that the ex-parte order passed by the CIT(A) may be set aside and the matter may be remanded to the record of the AO for fresh adjudication after considering the relevant record, details as well as duly audited books of account of the assessee society.

3. On the other hand, ld. DR has not seriously objected to the prayer of the assessee for setting aside the matter to the record of the AO for fresh adjudication.

4. We have considered rival submission as well as relevant material on record. The CIT(A) has dismissed the appeals of the

assessee when there was no response on behalf of the assessee to the various notices issued by it. The concluding part of the CIT(A) in para 3.4 in of impugned order relating to ITANo.477/Ind/2023 as under:

“3.4 Considering the above facts and the records available, it is established that the appellant was provided many opportunities of being heard. However, the appellant has remained noncompliant. No material fact has been brought on record in support of the grounds of appeal or to rebut the findings of the Assessing Officer (AO). The appellant in spite of being given ample opportunities during appellate proceedings, failed to offer any explanation/ supporting documents in respect of grounds of appeal raised by the appellant. I have carefully considered the assessment order and since the appellant has not furnished any documentary evidence in support of the grounds of appeal filed by the appellant, I do not find any reason to interfere with the order of the AO. Hence, the assessment order passed by the AO stands confirmed. Accordingly, all the grounds of appeal taken by the appellant are dismissed.”

4.1. The appeal of the assessee relating to ITANo.487/Ind/2023 was also dismissed by CIT(A) due to non-participation of the assessee despite the notice issued by it. Since the AO has passed an ex-parte order without considering the relevant record and particularly books of account of the assessee which has been confirmed by the CIT(A) due to non-furnishing of the reply and relevant details on the part of the assessee therefore, it is clear that relevant record has not been examined by the authorities below while making additions in case of these assessee. Accordingly in the facts and circumstances of the case and in the interest of justice we set aside the impugned orders of the CIT(A) and remand the matter to the record of the AO for proper verification and

examination of the relevant record as well as books of account of the assessee and then pass a fresh order. The assesseees are also directed to produce the relevant records as well as books of account for verification and examination of the AO. Ld. AR has undertaken that the assessee will cooperate in the set aside proceedings.

5. In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on conclusion of hearing
01.04.2024.

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 01 .04.2024

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*