



BEFORE HON'BLE SMT ASTHA CHANDRA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 399/PUN/2024

निर्धारण वर्ष / Assessment Year : 2015-16

Rupmata Zilla Nagari Sahakari Pathsanstha Ltd.

Samarth Nagar,

Dharashiv-413501

PAN: AAAAR9677H

..... अपीलार्थी / Appellant

बनाम / V/s

Income Tax Officer,

Ward-1, Latur

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by: Mr Pratik Sandbhor ['Ld. AR']

Revenue by: Mr Sourabh Nayak ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 10/05/2024

घोषणा की तारीख / Date of Pronouncement : 10/05/2024

आदेश/ ORDER

PER G. D. PADMAHSHALI, AM;

This appeal is instituted against DIN & Order No. ITBA/NFAC/S/250/2023-24/1059414888(1), dt. 05/01/2024 passed u/s 250 of Income Tax Act, 1961 [in short 'the Act'] by National Faceless Appeal Centre, Delhi [in short 'CIT(A)/NFAC'] which in turn arisen out of order of best judgement assessment passed u/s 144 of the Act by the Income Tax Officer, Ward-1, Latur [in short 'AO'] for the assessment year 2015-16 [in short 'AY']

2. Briefly stated facts of the case are that;

2.1 The assessee a credit co-operative society engaged in providing credit facilities, had filed its return of income [in short 'ITR'] declaring taxable income of ₹NIL/- after claiming a deduction of ₹58,56,658/- u/c VI-A of the Act. The case



of the assessee was subjected to scrutiny by service of notice u/s 143(2) of the Act. During the course of assessment proceedings, through as many six notices u/s 142(1) of the Act the appellant was called upon to produce books, documents and material in support of its claim for deduction, which however remained unattended effectively by the assessee. In the event of assessee's failure to produce books of accounts, evidential material and other document in support of its claim for deduction, the Ld. AO denied the claim of chapter VI-A deduction to the assessee and thus came to determine total income to the best of his judgement u/s 144 of the Act by an order dt. 24/11/2017.

2.2 Aggrieved assessee unsuccessfully assailed the aforestated *ex-parte* assessment in an appeal before first appellate authority u/s 246A(1)(a) of the Act. On the basis of written submissions and documents freshly adduced by the assessee in the course of first appellate proceedings, the Ld. CIT(A) confirmed the assessment concluding that the assessee society as ineligible for claim of deduction u/s 80P of the Act for two bullet reasons viz; (i) in the absence of details showing the amount of interest income received/earned from its members and non-members and (ii) Interest received/earned from scheduled co-operative banks or commercial banks etc., as being ineligible owing to ratio laid in '*Totagars Co-op. Sale Society Vs ITO*' reported in 322 ITR 283 (SC).

2.3 Aggrieved assessee came in present appeal on following grounds;

1. *On the facts and in the circumstances of the case and in law the Assessing Officer erred in assessing the total income at Rs. 58,56,658/-*



2. *On the facts and in the circumstances of the case and in law the Assessing Officer erred in disallowing the deduction u/s 80P(2)(a) i)/80P(2)(d) of the Income Tax Act, 1961*

3. *On the facts and in the circumstances of the case and in law the Assessing Officer failed to appreciate the fact that the appellant is a cooperative society engaged in activity of providing credit facilities to its members and is duly eligible for deduction u/s 80P(2)(a) (i)/80P(2)(d) of the Income Tax Act, 1961*

4. *On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in placing reliance on the decision of Hon'ble Supreme Court in the case of Totagar Co-operative Sale Society Ltd – 188 Taxman 282 without taking cognizance of the fact that the said decision is distinguishable and has been distinguished by the various decision of Jurisdictional ITAT Pune*

5. *On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in disallowing the deduction u/s 80P without taking cognizance of the binding decisions of Jurisdictional ITAT, Pune relied upon by the appellant.*

6. *On the facts and in the circumstances of the case and in law the Assessing Officer erred in not taking cognizance of the facts that the appellant has been allowed the deduction u/s 80P of the Income Tax Act, 1961 in assessment proceedings us 143(3) for A.Y. 2017-18 & 2020-21.*

The above ground may be allowed to be altered, amended, modified, deleted etc in the interest of natural justice.

3. During the course of physical hearing, the Ld. AR at the outset averred that, the issue of entitlement of deduction u/s 80P of the Act to the assessee credit society is no-more *res-integra*. The assessee since a credit co-operative society engaged in providing credit facilities to its member is entitled to 80P deduction



against the interest income earned by it in the course of its business. The interest earned/received by it out of investment placed with other co-operative banks/society do qualify for deduction as such investment are made under the statutory business restriction fastened by the Reserve Bank of India and Registrar of Co-op. Society. It is further stated that, since the assessee is solitary engaged in the business of providing credit facility, the theory of surplus funds as laid in '*Totagars Co-op. Sale Society Vs ITO*' (supra) has no application in the present case. Adverting to paper-book it is prayed that, the facts of the present case are similar to various cases decided by the co-ordinate bench wherein the deduction u/s 80P of the Act against the interest earned out of investment with co-operative banks/societies and commercial banks were allowed. *Per contra*, without touching merits of the case, objecting the admission of paper-book the Ld. DR assailed that, the assessee's grounds although came to be dismissed on the basis of written submission and documents produced first time in the appellate proceedings before Ld. NFAC, however same were neither supported by cogent evidences nor were confronted to the Ld. AO for verification. It is vehemently argued by the Revenue that, the Ld. CIT(A) surpassing the compliance of rule 46A of IT-Rules, 1962 has dealt with the issue, therefore in the first instance the adjudication is suffered and hence deserves to be set-aside on this score itself.

4. Without going into the merits of the case we have heard the rival contentions of both the parties on the issue of violation of rule 46A of Income Tax Rules, 1962; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal



Rules, 1963 perused the material placed on records And we observed that, the appellant neither during the course of original assessment could lay any document so has to enable the Ld. AO to vouch its claim of deduction nor it adduced any evidence to dislodge the observation & findings of the Ld. CIT(A). *Per contra* without first recording the satisfaction in terms of rule 46(2) (supra), the Ld. CIT(A) dealt with the submission and adjudicated the issue without calling for the remand from the Ld. AO who culminated the proceedings *ex-parte*. This in our considered view suffered from former compliance, therefore, this adjudication by the first appellate authority in our considered view is not in consonance with the provision of sub-section (6) of section 250 of the Act. For the reasons, without commenting on merits of the case, we set-aside the impugned order and remit the matter back to the file of Ld. AO with a direction to deal frame the assessment *de-nova* in accordance with law after according Two effective opportunities and pass a speaking order on the basis of appellants submission.

5. In result, the appeal is **ALLOWED FOR STATISTICAL PURPOSE.**

u/r 34 of ITAT Rules, order pronounced in open court on this Friday, 10th day of May,2024

-S/d-

ASTHA CHANDRA
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE; दिनांक / Dated : 10th day of May,2024

आदेश की प्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr. CIT, Pune

4. The NFAC / CIT(A) Concerned

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

6.गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठनिजीसचिव / Sr. Private Secretary

आयकरअपीलीयन्यायाधिकरण, पुणे / ITAT, Pune.