

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM**

**SA No. 50/Mum/2024
Arising in ITA No.1843/Mum/2024
(Assessment Year: 2018-19)**

**ITA No. 1843/Mum/2024
(Assessment Year: 2018-19)**

**Manganga Sahakari Patsanstha
Ltd.**

**101/102 Shraddha Valencia,
Opp Dated. Francis Xavier
Church, Kanjurmarg East,
Mumbai-400 042**

(Appellant)

Vs.

**The Income tax Officer
Ward 26 (2) (1)
Mumbai**

(Respondent)

PAN No. AAAAM8224F

**Assessee by : Shri S.V. Apate, Adv
Revenue by : Shri H.M. Bhatt, DR**

**Date of hearing: 17.05.2024
Date of pronouncement : 27.05.2024**

ORDER

PER PRASHANT MAHARISHI, AM:

1. SA No. 50/Mum/2024 is filed by Manganga Sahakari Patsanstha Ltd. (petitioner) for A.Y. 2018-19 seeking stay off demands of ₹1,01,42,467/- arising out of the assessment order passed by the National e-Assessment Centre, Delhi, dated 10th March, 2021, confirmed by the National Faceless Appeal Centre, Delhi by passing an appellate order



dated 7th February, 2024, which is under challenged in appeal in ITA no.1843/Mum/2024, filed by the assessee.

2. The assessee submits that it is an entity having membership of more than 14,000/- persons as members. It collects various deposits from the members with an object to protect interest of such members by adopting co-operative principles. The petitioner submits that there is a ex-parte order passed by the learned Assessing Officer wherein huge additions were made and return income of the assessee of ₹6,86,460/- was assessed at ₹1,23,17,434/-. It is submitted that notices were issued during the period of F.Y. 2020-21, which was affected by Covid, and therefore, necessary replies could not be submitted. When the appeal was filed before the learned CIT (A), the appellate order was also passed ex-parte for the reason the appellate proceedings took place in e-appellate proceedings and assessee managed by the managing committee which are not so conversant could not respond to the notices, and therefore, the appellate authority firstly dismissed the appeal of the assessee for non prosecution and secondly, upholding the additions on the merits of findings of the learned Assessing Officer. Therefore, this appeal is result of ex-parte assessment order and ex-parte appellate order resulting into this demand.
3. The petitioner says that the demand outstanding is of ₹1,01,42,467/- out of which the assessee has pre-deposit 20% amounting to ₹14,68,442/- along with the adjustment of refund of ₹9,14,350/- totaling to ₹23,82,792/- and therefore, it deserves the stay of the balance demand.
4. The learned Authorised Representative reiterated the same facts and stated that the balance demand may be stayed.
5. The learned Departmental Representative vehemently objected to the same.



6. During the course of hearing, we find that the assessment order as well as the appellate order passed, in the case of the assessee for this assessment year are ex parte. Therefore, during the course of stay petition itself a question was put to both the parties that if the whole appeal itself, instead of deciding the stay petition, is restored back to the file of the learned Assessing Officer to decide afresh after hearing out the assessee whether any prejudice is caused to them. Both the parties agreed that they do not have any objections to the same. The learned Authorized Representative also assured that assessee will participate in assessment proceedings and co-operate with the Revenue authorities in completing assessment proceedings if given further opportunity.
7. In view of the above facts, we proceed to disposed off the appeal itself instead of stay petition.
8. The brief facts clearly show that assessee is an association of person carrying on the activities of credit co-operative society. It collects deposits from its members and also extend loan to the members. Assessee filed its return of income for A.Y. 2018-19, on 12th October, 2018, declaring a total income of ₹6,68,460/-. The return of income was selected for limited scrutiny by issue of notice under Section 143(2) of the Act dated 28th September, 2019, for verification of deduction under Chapter VI A and investments advances and loans. The learned Assessing Officer issued notices to the assessee under Section 142(1) of the Act on 2nd March, 2020, which was replied on 10th March, 2020, however, the learned Assessing Officer found it to be incomplete. Thereafter the learned Assessing Officer issued further notices to which assessee failed to reply and therefore, the learned Assessing Officer completed the assessment on the information available on record. He found that the total investment of the assessee on 31st March, 2017, was 13.3 crores and as on 31st March, 2018, it is 13.80 crores therefore, he



made the addition of ₹76,35,816/- being the difference in the total investment at the beginning of the year and at the close of the previous year. He further found that though the assessee has claimed the deduction of ₹1,27,49,896/- under Section 80P of the Act whereas in the ITR assessee has claimed deduction of ₹14,13,158/-, therefore, he disallowed the deduction in ITR of ₹40,30,158/-. The assessment order was passed on 10th March, 2021, under Section 143(3) of the Act on total income of ₹1,23,17,434/-.

9. The assessee preferred an appeal before the learned CIT (A) claiming that no opportunity was given to the assessee for hearing and therefore, the order is bad in law. Further assessee challenged that with respect to the addition of unexplained investment there is a new addition of ₹12,287/- new members and assessee has received 47 crores of as new deposits and therefore, the addition of ₹76,35,816/- is made out of that sum. It was further stated that during the deduction under Section 80P of the Act, assessee submitted on 10th March, 2020, that assessee is eligible to the above deduction, which was disallowed without considering the facts of the case reply for it.
10. The learned CIT (A) issued notices to the assessee admittedly, which was not attended to and therefore, he submitted that the assessee is not interested in pursuing the appeal and therefore, it is liable to be dismissed. He further held that there is no merit in the ground of the assessee about the violation of the principles of natural justice and therefore, ground no.1, 2 and 3 were dismissed. This order was passed in absence of any further material produced by the assessee.
11. Assessee is aggrieved with that and is in appeal.
12. We have heard the rival contentions. We find that the learned Assessing Officer issued notices to the assessee for the period of 18th August, 2020



till 4th January,2021. The assessee has given part reply earlier on 10th march, 2020 but after that it is matter of knowledge for everybody that it was a covid period. The learned Assessing Officer made the above impugned additions.

13. When the matter reached before the learned CIT (A), undisputedly the assessee did not furnish or response to any of the notices. Be that it may be, however the assessee has stated that there is a failure to give appropriate opportunity of hearing to the assessee and further the additions of unexplained investment is uncalled for in view of the sources of fund of ₹46.61 from 12,827 new members. Further deduction claimed under Section 80P of the Act was explained by response dated 10th March, 2020. The learned CIT (A) disposed off the matter holding that first ground that assessee is not interested in pursuing its appeal. We find that the learned CIT (A) according to provisions of Section 251 of the Act is duty bound to dispose off all the appeal on merits. On the second issue, it was held that neither there is a violation of principles of natural justice in giving an opportunity of hearing to the assessee and nothing is stated on the merits therefore, he confirms the order of the learned Assessing Officer. We failed to understand that if the learned CIT (A) is deciding the appeal on the merits of the case, how can he ignore the fact that notices for hearing were given during the Covid Period and further in the statement of facts itself the assessee has mentioned that it has collected deposit of ₹46.61 crores which is the source on investment made and further reply dated 10th March, 2020, with respect to the deduction under Section 80P could have been ignored. There is no mentioned of this fact while deciding appeal
14. As the order of the learned Assessing Officer as well as learned CIT (A) are passed without adequate opportunity of hearing, we are not inclined to sustain both these orders. The opportunity of hearing is mandatory



condition before making any order against the assessee. As the hearing opportunities were provided by the learned Assessing Officer during the Covid Period, naturally such kind of opportunity, if not availed by the assessee, could not be said to be proper opportunity of hearing. As nobody should be condemn without hearing, we set aside the whole issue back to the file of the learned Assessing Officer to decide it afresh after giving opportunity to the assessee to substantiate its return of income. We are also directing the assessee to submit these details at the first opportunity granted. Thereafter the learned Assessing Officer may decide the various ground of addition in accordance with the law.

15. In view of the above facts, the appeal of the assessee is allowed for statistical purposes and stay petition preferred by the assessee is dismissed as infructuous.

Order pronounced in the open court on 27.05.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.05.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai