

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 1054/KOL/2023
Assessment Year: 2017-18**

***Malda Zilla Regulated Market Committee.....Appellant
[PAN: AAABM 1889 R]***

Vs.

ITO, Ward-3(2), Malda.....Respondent

Appearances:

Assessee represented by: D. Kumar, CA.

Department represented by: Arup Chatterjee, Addl. CIT.

Date of concluding the hearing : May 8th, 2024

Date of pronouncing the order : June 5th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 27.07.2023 arising out of the assessment order framed u/s 144 of the Act dated 11.12.2019.

1. The brief facts of the case of the appellant is that the assessee is a regulated market committee constituted u/s 3(1) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. The appellant is controlled by the West Bengal State Agricultural Marketing Board and its

income is exempted u/s 10(26AAB) of the Act. It is further, case of the appellant that since appellant company is completely exempted hence, it has not filed return of income. It is alleged that the case of the appellant was selected for scrutiny u/s 144 of the Act issuing notices u/s 142(1) of the Act and after that behind the back of the appellant the AO passed order determining the total income of the appellant at Rs. 10,33,000/- by saying that the same amount was deposited in his account during the demonetization period and appellant failed to submit any explanation in this regard. It is further, submitted that the order of the AO has been challenged before the ld. CIT(A) but unfortunately, wherein also appellant in absence of service of notice could not be appeared as a result of which order of the AO has been confirmed by ld. CIT(A) without going over the submission of the appellant made in his appeal ground. Being aggrieved by the said order, the present appeal has been preferred.

2. Ld. Counsel for the assessee challenges the impugned order on the grounds that ld. CIT(A) was not justified in confirming the cash deposit of Rs. 10,33,000/- in old notes on 09.11.2016 into the bank accounts as unexplained money u/s 69A of the Act without considering the status of the appellant and the activities carried on by it the appellant is fully exempted u/s 10(26AAB) of the Act. Ld. Counsel for the assessee further, stated that the ld. CIT(A) was also not justified in only restricting the addition at the rate of 8% of the receipt of Rs. 4,24,44,068/- (excluding deposits of Rs. 10,33,000/- in old notes) without considering the fact that the income of the appellant is exempted u/s 10(26AAB) of the Act. The further prayer of the appellant is that since he had not been given an opportunity to place all these things hence, so an opportunity should be given to place all the grievance before ld. CIT(A). He has also submitted the copy of Circular No. 18/2017, Government of India, Ministry of Finance and copy of West Bengal Agricultural Marketing Department.

On perusal of the order of the AO, it appears to us that since the assessee did not furnish required return of income hence, case of the appellant was selected for scrutiny u/s 144 of the Act and show cause notice

has been issued. It appears from the order of the AO that assessee could not give any submission or explanation on the above notice or observation so it is presumed that the assessee has left nothing to say as a result of which AO has passed an order treating the amounts to be unexplained money u/s 69 of the Act as the assessee failed to produce the documents and explanation and also did not appear. We have also perused the order of Id. CIT(A) and find that herein also at para 4.1 of the order it has been mentioned that during the course of appellate proceedings notices for hearing were issued to the appellant and successfully delivered to appellant on e-mail ID. However, the appellant neither filed any submission nor any request for adjournments. The order of the Id. CIT(A) has also been passed behind the back of the appellant. It is an evident fact.

3. The submission of the Id. A/R is that deposits were from the activities of the committee duly constituted by the Government West Bengal and entire incomes were fully exempted u/s 10(26AAB) of the Act. He had filed the copy of the notification. Keeping in view the fact that it is a case of exemption u/s 10(26AAB) of the Act, copy of the notification has been filed by the appellant and further, it is evident from the order that both the orders have been passed behind the back of the appellant. Hence, for the interest of justice, both the orders are set aside and the case is remanded back to the file of Id. CIT(A) for *de-novo* adjudication.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 5th June, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 05.06.2024

Bidhan (P.S.)

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Copy of the order forwarded to:

- 1. Malda Zilla Regulated Market Committee, Principal Market Yard, PO Mokdumpur, PS English Bazar, Malda, West Bengal, 732103.**
- 2. ITO, Ward-3(2), Malda.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata