



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'A' BENCH, PUNE



BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.392/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19

Kanifnath Gramin Bigar Sheti Sahakari Pathsanstha Maryadit

At Post: Maldad, Tal.:Sangamner,

Dist.: Ahmednagar-422608

PAN: ABBAK1395E

..... अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer

Ward-2, Ahmednagar

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Pramod Shingte ['Ld. AR']

Revenue by : Mr Ramnath Murkunde ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 30/05/2024

घोषणा की तारीख / Date of Pronouncement : 03/06/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

This appeal is filed u/s 253(1)(a) of the Income Tax Act ['the Act'] by the assessee challenging the order of National Faceless Appeal Centre, Delhi ['NFAC/CIT(A)'] DIN & Order ITBA/NFAC/S/250/2023-24/1059985481(1) dt. 21/01/2024 passed u/s 250 of the Act which in turn arisen out of order of assessment dt. 30/03/2024 passed u/s 143(3) of the Act.

2. Briefly stated facts anent to the case are that;

2.1 The appellant assessee is a Co-op. Society engaged in the business of providing credit facilities, for the year under consideration had filed its return



declaring NIL income. The case of the assessee was selected for scrutiny by service of notice u/s 143(2) of the Act. In the event of assessee's failure to substantiate its eligibility & entitlement for deduction u/s 80P(2) of the Act in relation to an interest of ₹1,75,07,429/- received/earned from its investment held with other Co-op. and commercial banks/financial institutions, the Ld. AO denied the deduction claimed u/s 80P(2) of the Act by placing reliance on Hon'ble Supreme Court decisions in '*Totgars Co-op. Sales Society Vs ITO*' [2010, 188 Taxman 282 (SC)], '*Southern Technologies Ltd. Vs JCIT*' [2010 167 Taxman 346 (SC)], '*Mavilayi Service Co-op. Bank Ltd. Vs CIT*' [2021, 431 ITR 1 (SC)], '*Citizen Co-op. Society Ltd. Vs ACIT*' [2017, 84 Taxmann.com 114 (SC)] and '*CoC(import) Mumbai Vs Dilip Kumar & Company*' [2018, 9 SCC 1 (SC)].

2.2 When aforesaid denial of 80P(2) deduction is assailed in an appeal before first appellate authority, the Ld. NFAC accorded as many as three clear opportunities of hearing vide notices dt. 06/10/2023, 03/01/2024 & 11/01/2024 which however remained un-responded. In absence of any representation or written submission from the assessee, the Ld. NFAC dismissed the appeal *ex-parte* for non-prosecution by relying on the catena of decision of including '*CIT Vs B.N. Bhattacharya*' [1997, 118 ITR 461 (SC)].

2.3 Aggrieved assessee society brought up this appeal challenging the action of Ld. NFAC on violation of principle of natural justice and denial of deduction on merits.



3. We have heard the rival contentions, perused the material placed on record in light of rule 18 of ITAT-Rules 1963. The record *prima-facie* reveals us that, the assessee could neither attend nor could appoint proper consultant to represent its case before the Ld. NFAC. When assessee failed to represent its case in appeal on merits with cogent evidences and submission etc., the Ld. NFAC was constrained to dismiss the appeal *ex-parte* for non-prosecution.

4. We are heedful to the restriction placed by clause (a) of sub-section (1) of section 251 of the Act which obligates the Ld. CIT(A) to adjudicate the issue either by confirming or annulling the addition or reducing or enhancing the addition made by the assessing officer without the right to remand the matter back. However, while exercising the jurisdiction u/s 251(1)(a) of the Act, the Ld. CIT(A) is mandated to ***state point of determination, its decision thereon and clear reasons therefore*** in terms of section 250(6) of the Act. This exercise by the Ld. CIT(A) is a pre-requisite and invariably necessary for each assessment year in each case irrespective of its repetition. This is because in taxation each assessment year *per-se* is a separate unit as is governed by its own peculiar facts & features and as such the principle of *res-judicata* is inapplicable in fiscal laws. Therefore, any adjudication in taxation reaches finality utterly for the year of adjudication only and in no case it does govern any later or subsequent year. This find fortified in '*Radhesham Satsang Vs CIT*' [1992, 193 ITR 321 (SC)], '*AkzoNobel India Pvt. Ltd. Vs Addl CIT*' [2022, in ITA 370/2022, (Del)].



5. It is a trite law as laid down by Hon'ble Supreme Court in case '*Chandra Kishore Jha Vs Mahavir Prasad*' reported in 8 SCC 266 (SC), that 'if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner'. Therefore, in our considered view, in the absence of clear authorisation in the statute permitting the Ld. NFAC to culminate proceedings without touching merits even in *ex-parte* proceedings is violative of provision of sub-section (6) of section 250 of the Act.

6. In view hereof, we hold that, the impugned adjudication by the Ld. NFAC sidestepping the dictate is not in consonance with the provision of sub-section (6) of section 250 of the Act. For the reason, without commenting on merits of the case, we set aside the impugned order and remand the matter back to the file of Ld. NFAC with a direction to deal therewith *de-nova* after according not more than two opportunities and pass a speaking order in terms of section 250(6) of the Act.

7. **The appeal in result is ALLOWED FOR STATISTICAL PURPOSE.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Monday, 03rd day of June, 2024

-S/d-

S. S. GODARA
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 03rd day of June, 2024

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The Concerned CIT (MH-India)
5. DR, ITAT, Bench 'A', Pune

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The CIT(A)-NFAC, Delhi (India)
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलार्थी न्यायाधिकरण, पुणे / ITAT, Pune.