

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 813/Kol/2023
Assessment Year: 2017-18

Deputy Commissioner of Income Tax, Circle - 49(1), Kolkata	Vs	The Rifle Factory Co-operative Society Limited Nawabganj, P.O.- Ishapore Dist. - North 24 Parganas Pin - 743144 [PAN : AAAAT6436E]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Somak Basu, Advocate
Revenue by :	Shri Arun Kanti Dutta, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 18/04/2024
घोषणा की तारीख /Date of Pronouncement: 21/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the revenue against the order of the National Faceless Appeals Centre, Delhi, (hereinafter the "ld. CIT(A)"), dated 11/05/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18.

2. The revenue has raised the following grounds of appeal:-

"1. That on the facts and circumstances of the case, the order passed by the Ld. CIT(A), INF AC has passed the order in favour of the appellant society without giving the due opportunity to the AO as no letter calling for remand report was either sent/triggered through name-based/designation based email of the AO, but in the appellate order, It is mentioned that the AO was directed to submit a remand report in this case on 20.04.2023 when the Ld. CIT appeal, IMF AC accepted additional/fresh documents like bank statement of SBI bank having account no. 11223335284 furnished by the assessee.

2. *That on the facts and circumstances, the order of the Id. CIT(A), NFAC has erred in deciding the case based upon the contention of the appellant assessee and in violation of the rudimentary principles of contemporary jurisprudence.*

3. *That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of the hearing of the appeal."*

3. Facts in brief are that the assessee is a co-operative society and filed its return of income for Assessment Year 2017-18 on 13/01/2018 declaring Nil income. Case selected for scrutiny through CASS followed by notices u/s 143(2) and 142(1) of the Act. The Id. Assessing Officer based on an information observed that during the demonetisation period, the assessee has deposited Rs.3,77,62,052/- in the bank account no. 11223335284 held with State Bank of India, Ishapore, Store Bazar branch. During the assessment proceedings, the assessee failed to furnish any details. Consequent to that, the Id. Assessing Officer completed the assessment assessing income at Rs. 3,77,62,050/- after making total addition of the alleged deposit appearing of Rs.3,77,62,052/- appearing in the information available with the Id. Assessing Officer. The assessee thereafter preferred appeal before the Id. CIT(A) but since the appeal was not getting disposed off by the Id. CIT(A), assessee filed a writ before the Hon'ble Jurisdictional High Court praying for disposal of the appeal. Hon'ble Court, directed the PCIT to personally grant an opportunity to the petitioner and thereafter pass an order. In direction thereto Id. Pr. CIT carried out the verification and found that the assessee had furnished all the bank accounts for the financial year in question through which it is claimed that in the bank account held with State Bank of India only a sum of

Rs. 4,28,500/- has been deposited. The ld. Pr. CIT accordingly stayed the recovery proceedings and directed the ld. CIT(A) to dispose off the appeal. Thereafter, the ld. CIT(A) carried out the appellate proceedings and asked the ld. Assessing Officer to file a remand report on multiple occasions but no such report was submitted. Ld. CIT(A) accordingly carried out the factual verification and after being satisfied that in the bank account held with SBI, referred to by the ld. Assessing Officer in the assessment order, the cash deposited during the demonetisation period was Rs.4,28,500/- instead of Rs.3,77,62,052/- and cash deposit of Rs.4,28,500/- has duly been explained, the ld. CIT(A) deleted the addition made by the ld. Assessing Officer u/s 69A of the Act.

4. Aggrieved the revenue is now in appeal before this Tribunal.

5. (a) The ld. D/R vehemently argued supporting the orders of the lower authorities.

(b) The ld. Counsel for the assessee on the other hand, vehemently argued referring to various details furnished in volume 1 and 2 of the paper book containing 75 and 132 pages respectively as well as the written submissions and relied heavily on the finding of the ld. CIT(A).

6. We have heard rival contentions and perused the material placed before us. The issue in dispute is regarding the alleged cash deposit during the demonetisation period in the bank account held by the assessee with State Bank of India, Ishapore, Store Bazar branch bearing no. 11223335284. We note that before the ld. Assessing Officer,

assessee failed to make proper compliance but then after the directions of the Hon'ble Jurisdictional High Court, assessee furnished all the details before the ld. Pr. CIT claiming that only Rs.4,28,500/- was deposited and stated that the ld. Assessing Officer has made a high pitched assessment and the impugned addition deserves to be deleted. The ld. Pr. CIT after considering the submission and verifying the details of cash deposited during the demonetisation period in the SBI Bank account directed the ld. CIT(A) to dispose off the appeal at the earliest, observing as follows:-

"4. I have gone the records of the case. The assessment u/s 144 (Best Judgement Assessment) of the I.T. Act, 1961 was completed on an assessed income of Rs. 3,77,62,050/- for AY 2017-2018 raising a demand of Rs.3,96,72,780/-. The income determined on assessment u/s 144 of Act was substantially higher than the returned income. The assessee has filed an appeal before the 1st Appellate Authority, which has not been disposed of till date. The assessee is a Cooperative Society registered under the West Bengal 'Cooperative Societies Act, 1983, and is stated to have been carrying on the business of providing Credit facilities to its members.

From the submission of the assessee, AGP, it is noticed that it had made a petition on 17/03/2020 before CIT(A)-15 praying for fixation of an early date. The case was fixed for compliance in NFAC platform on 22/03/2021 and it had responded on the date as desired by NFAC. Afterwards, neither any date was fixed for compliance from NFAC end nor the case has been disposed off by NFAC till date.

5. It is seen that the matter regarding which the addition has been made was investigated by the Assistant Director of Income Tax,, DSD Kolkata by a notice dated 29/03/2017 issued under Section 131 (1A) of the Act and no adverse inference was drawn. Further, notice dated 13/12/2018 was issued on the same issue under Section 133(6) by the Income Tax Officer (1 & C1)-4, Kolkata, on account of high value Financial Transaction in form of cash deposit during the financial year 2016-17. In view of this, the assessee by a covering letter dated 21.12.2018 submitted all bank statements for financial year ending 31.03.2017, maintained & operated by the petitioner and other documents as were asked for. Again no adverse inference in the matter was communicated to the assessee by the AO.

6. In view of the facts of the case, the addition so made appears to be unreasonably high pitched, and the demand for depositing 20% the disputed demand amount would lead to a genuine hardship being caused to the assessee.

7. After considering the facts and circumstances, the assessee is directed to file an application before the CIT(appeal), NFAC for early disposal of the Appeal, as per the direction of the Hon'ble High Court of Calcutta dated 30/03/2023.

8. In my considered view, I prefer to stay the recovery proceeding till 30-11-2023 or the disposal of the case by the 1st appellate authority, whichever is earlier.

9. This order is made in pursuance to the direction of the Hon'ble High Court of Calcutta dated 30.03.2023 in the Writ petition being No. 5958 of 2023."

7. We further note that subsequent to the direction given by the Id. Pr. CIT appellate proceedings were carried out by Id. CIT(A). The documents filed by the assessee were sent to the Id. Assessing Officer for giving the remand report but even after directions and reminders given to the Id. Assessing Officer on multiple occasions, the same was not received and the Id. CIT(A) considering the directions of the Hon'ble High Court directing the Id. CIT(A) to pass the appellate order within six weeks from 30/03/2023 and to complete the proceedings concluded the appellate proceeding after considering the contentions of the assessee and the documents placed before him and deleted the impugned addition observing as follows:-

"5.4 The contentions of the appellant have been considered and it is observed from the bank statement submitted by the appellant of account no. 11223335284 of State Bank of India, Ishapore Branch that there are cash deposits of only Rs.4,28,500/- during the demonetization period as against the AO's finding and addition of Rs.3,77,62,052/- as unexplained cash deposits under the demonetization period. Therefore, the AO was directed to submit a remand report in this case on 20.04.2023 and to comment on the written submissions and the supporting evidences filed by the appellant on or before

30.04.2023. However, till date the AO has not submitted any remand report in this case and, since, as per the directions of Hon'ble High Court (Kolkatta) the order has to be passed by the CIT(A) within a period six weeks from 30.03.2023, the issue is decided on the basis of the submissions and evidences filed by the appellant before the First Appellate Authority. The appellant has already submitted the copies of the bank statement wherein there are cash deposits of Rs.4,28,500/- during the demonetization period instead of Rs.3,77,62,052/-. The AO has not responded to the request for remand report and has also failed to discuss and refer any material or evidences collected by him in the assessment order for adding an amount of

Rs.3,77,62,052/- u/s 69A of the IT. Act. The addition made by the AO seems to be an inadvertent error as evident from the bank statement filed by the appellant before the First Appellate Authority. Therefore, in view of the above facts, the addition made by the AO of Rs.3,77,62,052/- u/s 69A of the I.T. Act is hereby deleted. The grounds of appeal filed by the appellant are hereby allowed."

8. Before us also, assessee has furnished copies of bank statement of SBI Ishapore branch and the details of cash deposits in this bank account during the demonetisation period and perusal of the same indicates that only Rs.4,28,500/- was deposited and there is no evidence to show that during the demonetisation period, assessee has deposited Rs.3,77,62,052/- in the bank account held with SBI Ishapore branch. The ld. D/R failed to controvert this fact. However, he stated that it is quite possible that the total cash deposited during the demonetisation period by the assessee company in various bank accounts held by it should have been referred to by the ld. Assessing Officer. But since the ld. Assessing Officer has only referred to State Bank of India, Ishapore branch and the alleged sum was not found to be deposited in the said account and whatever funds have been deposited during the demonetisation period, the assessee has duly explained the source of the same referring to the copy of all the bank accounts along with audited financial statements.

8.1. We also note that in the grounds of appeal one of the contentions of the revenue is that the Assessing Officer was not provided opportunity to examine the addition evidence but the said ground of revenue is devoid of any merit because sufficient opportunity was given by the ld. CIT(A) to which the ld. Assessing Officer failed to

rebut/file a report and thereafter, the ld. CIT(A), who has got co-terminus power to that of the ld. Assessing Officer has rightly examined the bank statement and arrived at the conclusion thereby deleting the addition made by the ld. Assessing Officer.

9. We, therefore, are of the view that impugned addition is uncalled for and thus no interference is called for in the findings of the ld. CIT(A) and the same is upheld and effective grounds of appeal raised by the revenue are dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 21st June, 2024 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 21/06/2024

SJS

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata