

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA Nos.53 To 55/Chd/2024  
निर्धारण वर्ष / Assessment Years: 2014-15 To 2016-17

The Saha Primary Agriculture Cooperative Society Ltd. VPO Saha, District- Ambala (Haryana)	बनाम	The ITO Ward-4, Ambala
स्थायी लेखा सं. / PAN NO: AACAT0964F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA Nos.56 To 58/Chd/2024  
निर्धारण वर्ष / Assessment Years: 2014-15 To 2016-17

The Saha Primary Agriculture Cooperative Society Ltd. VPO Saha, District- Ambala (Haryana)	बनाम	The ITO Ward-4, Ambala
स्थायी लेखा सं. / PAN NO: AACAT0964F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Jaspal Sharma, Advocate  
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 28/08/2024  
उदघोषणा की तारीख/ Date of Pronouncement : 29/08/2024

**आदेश/Order**

**PER VIKRAM SINGH YADAV, A.M. :**

All the above appeals are filed by the Assessee against the respective orders of Ld. CIT(A)/ NFAC, Delhi each dt. 23/11/2023 pertaining to Assessment Years 2014-15 to 2016-17.

2. All these cases were heard together and are being disposed of by this consolidated order.

3. During the course of hearing, the Ld. AR submitted that the assessee has filed three appeals against quantum proceedings for assessment years 2014-15, 2015-16 and 2016-17 and three appeals against penalty u/s 271(l)(c) for the same years against the ex-parte orders of the Ld.CIT(Appeals)NFAC. The Ld.CIT(Appeals) NFAC dismissed all the six appeals ex-parte holding that "since the assessee has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted." In this regard, it was submitted that all the appeals were fixed by the Ld.CIT(Appeals)NFAC for the first time for hearing on 21.11.2023 and the assessee sought adjournment which is admitted fact as mentioned in para 3.5 of the impugned orders. The Ld.CIT(Appeals) passed ex-parte orders for all the years without giving any further opportunity of hearing. It was further submitted that the assessee society was not liable to pay any advance-tax for all the three years as the assessee had been suffering heavy losses in earlier years as well as for the AY 2015-16 and 2016-17 except AY 2014-15 where profit of Rs.14,66,990/- was declared as per Profit & loss account. This profit includes interest to the tune of Rs.18,32,532/- on FDRs placed with The Ambala Central Coop. Bank Ltd which is allowable as deduction u/s 80P of the Act. Therefore the taxable income for all the three years would be NIL and the assessee society was not liable to pay any advance tax for all the three years under reference. It was submitted that the same is further evident from Col. No.6(d) and 6(e) of Form 35 that whole of the addition made by the AO as well as whole of the demand created against assessee vide assessment order passed u/s 147 w.r.s. 144 read with section 144B, has been disputed by the assessee in first appeals and thus admitted tax is NIL in all the years involved in present appeals. In these circumstances it was submitted that all the appeals may kindly be sent back to the file of the Ld.CIT(Appeals) with a direction to verify the facts and to admit the appeals if it is found that the assessee was not having taxable income.

4. The Ld. DR was heard and he did not raised any specific objection where the matters are set aside to the file of the Ld. CIT(A) to decide the same afresh.

5. After hearing both the parties and considering the material available on the record, we find that for A.Y 2014-15, the Id CIT(A) has issued the first notice on 14/11/2023 fixing the hearing in the matter for 21/11/2023 and on the said date, the assessee sought time to collate all relevant documents, however, the Id CIT(A) didn't adjourn the matter and provided any further opportunity to the assessee and the impugned order was passed within next two days i.e, on 23/11/2023. Similar fact pattern exist for other assessment years. We therefore find that the assessee has not been granted adequate opportunity to represent its case and the matter has thus been decided ex-parte by the Id CIT(A). We therefore deem it appropriate that in the interest of justice and fair play, the matter for all the assessment years deserve to be set-aside to the file of the Id CIT(A) for deciding the same afresh as per law after providing reasonable opportunity to the assessee.

6. Regarding the findings of the Id CIT(A) that the assessee has not filed its return of income and has not paid advance tax which was payable as per the provisions of the Act and as a result, the appeal is not liable to be admitted and has been dismissed at the threshold, the Id AR has submitted that in view of huge brought forward losses and eligibility under section 80P of the Act, the taxable income for all the three years would be NIL and the assessee society was not liable to pay any advance tax for all the three years under reference and therefore, assessee's appeal deserve to be admitted and the assessee's rightful right to be heard on merits of the case cannot be denied. We find that since the assessee has not been granted adequate opportunity to represent its case before the Id CIT(A) and all the relevant material/submissions couldn't be placed before the Id Id CIT(A), he has reached and record the findings regarding liability to pay advance tax by the assessee having not been met and in absence of which, the appeals have been dismissed. We find that proviso to section 249(4) also provides that Id CIT(A) has the jurisdiction to exempt the assessee from the operations of provisions of clause (b) to section 249(4) on an application to be moved by the assessee and for good and sufficient reasons to be recorded in writing by the Id CIT(A). We therefore find that the statute has envisaged situations where the assessee who is otherwise liable to pay advance tax has not paid advance tax and even in such cases, the necessary flexibility has been provided by empowering the Id CIT(A) to exercise his

jurisdiction to admit the appeal and the same is of course, subject to specific facts and circumstances of each case and for sufficient reason to be recorded in writing. In our view, before arriving at such a finding which has resulted in denial of right of appeal to the assessee, the assessee deserves to be heard and adequate opportunity has to be provided. We however do not deem it appropriate to delve on the matter further and leave it open for the Id CIT(A) to examine various contentions so raised by the Id AR and decide it judiciously after providing necessary opportunity to the assessee and where the same is found to be in order, admit the appeals for all these years; and hear and record his findings on merits of the case.

7. Though none of the parties have pointed out during the course of hearing, however, from perusal of Form 35 filed by the assessee society before the Id CIT(A) for all these cases, we find that there was delay in filing appeal before the Id CIT(A) in all these cases and the assessee has also submitted its explanation as part of Form 35. The Id CIT(A) has not recorded any findings regarding the delay in filing these appeals as well. Unless and until the delay is condoned and the appeal is admitted, the matter cannot be proceeded further. Since we are set-aside all these matters, the Id CIT(A) is also directed to examine the explanation so submitted by the assessee regarding the delay in filing of appeals and where the same is found to be in order, admit the appeals and decide on merits of the case.

8. In light of aforesaid, the matter in all these cases are set-aside to the file of the Id CIT(A) to decide on the admissibility of the appeal in terms of section 249(4) as well as delay in filing of the appeals and where the same is found to be in order, admit the appeals and decide on merits of the case as per law after providing reasonable opportunity to the assessee.

9. Since we have set-aside the appeals in the quantum proceedings, appeals relating to penalty matters are also set-aside to the file of the Id CIT(A) to decide the same afresh on maintainability as well as merits of the case as per law after providing reasonable opportunity to the assessee.

10. In the result, all the above appeals filed by the Assessee are allowed for statistical purposes.

Order pronounced in the open Court on 29/08/2024

**Sd/-**

**आकाश दीप जैन**  
**(AAKASH DEEP JAIN)**  
**उपाध्यक्ष / VICE PRESIDENT**

**Sd/-**

**विक्रम सिंह यादव**  
**(VIKRAM SINGH YADAV)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

**AG**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar