

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.318/PUN/2024
निर्धारण वर्ष / Assessment Year : 2010-11

Mahakalika Nagari Sahakari Pat Sanstha, 1380, Pawale Chowk, Kasba Peth, Pune-411011	Vs.	Income Tax Officer, Ward – 6(1), Pune
PAN : AAALM0552H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Mahavir Jain
Department by :	Shri Ramnath P. Murkunde
Date of hearing :	01-07-2024
Date of Pronouncement :	18-09-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 14.11.2023 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**"CIT(A)"**] pertaining to Assessment Year (**"AY"**) 2010-11.

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

"On facts and in law,

- 1] *The Ld. AO has erred in passing an ex-parte assessment order u/s. 144 r.w.s. 147 of the Act determining income at Rs.1,28,75,451/- without serving a notice U/S. 143(2) of act upon filing of return which is mandatory as per law.*
- 2] *The assessment order passed in hurried / haphazard manner without giving sufficient opportunity of being heard is patently illegal and void ab-initio.*
- 3] *The Ld. AD failed to appreciate that the appellant has maintained proper books of account wherein all the cash deposits transactions were duly accounted for.*
- 3.1] *The Ld. AO ought to have appreciated that cash deposits of Rs.1,28,75,451/- were sourced out of daily deposits collection from*

members accepted during the year in the course of its banking business.

3.2] *The Ld. AO has further erred in not considering the fact that income of the co-operative society is eligible for deduction u/s 80P(2)(a)(i) and accordingly no income is chargeable to tax.*

4] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Ground No. 1 raised by the assessee is not pressed. Accordingly, the same is dismissed as not pressed.

4. It is the case of assessment framed u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (**the “Act”**). From the NMS data available in computer system, it was found that during the relevant AY 2010-11, the assessee deposited cash of Rs.1,28,75,451/- in the bank account of Sampada Sahakari Bank Ltd. Since, the assessee had not filed its return of income for AY 2010-11, notice u/s 148 of the Act was issued on 30.03.2017 which was duly served upon the assessee. For the lack of compliance in response thereto as also to the show cause notice requesting the assessee to submit the necessary explanation regarding the sources of cash deposits in his bank account and rejecting the adjournment letter of the assessee on account of limitation of time, the Ld. Assessing Officer (**“AO”**) added the same to the income of the assessee and completed the assessment ex-parte on total income of Rs.1,28,75,451/- on 05.12.2017 u/s 144 r.w.s. 147 of the Act.

5. The assessee challenged the ex-parte order before the Ld. CIT(A). Before the Ld. CIT(A), the assessee filed its detailed written submission on 28.02.2023 in support of its claim, the relevant extract of which reads as under :

“3] Ground No. 2 – No sufficient opportunity of being heard was granted to the appellant :

3.1] As clarified above, the committee members of the appellant society were not aware of the income tax laws at the initial stage. It was only after the Ld. AO issued a notice dated 14.11.2017 that the chairman of the society visited income tax office to show cause understand the consequences and repercussions of notices issued Thereafter, the appellant immediately consulted a chartered accountant and filed a return of income on 02.12.2017. Meanwhile, the Ld. AD issued another show-cause notice dated 29.11.2017 requiring the appellant to attend on or before 05 12 2017. On the stipulated date when the authorized representative and committee members of the appellant went to attend the matter, the Ld. AO had refused to accept the return fled on 02.12.2017 and also rejected the request for adjournment. On the contrary, the Ld. AO hurried up to pass an ex-parte order immediately without even waiting for the period given in the notice to get over. As per

notice the appellant was given time to file response till 05.12.2017. On the contrary, the AR of the appellant visited the Ld. AO on 05.12.2017, he has already completed the proceedings. The Ld. AO did not wait for the appellant to file the submission or to explain its case. The Ld. AO also totally Ignored the request of the appellant to grant some time The Ld. AO passed the order on 5th December 2017 itself even when ample time was available with the Ld. AO to complete the assessment till 31st December 2017 Thus, the order passed without giving sufficient opportunity of being heard and without taking into request made, is devoid of principal of natural justice and hence, the order may please declared null and void.

4] Ground No. 3, 3.1 to 3.2: Addition of Rs.1,28,75,451/- on account of Cash deposit in Saving Bank A/c.:

4.1] *Without prejudice to the above, the Ld. AO has failed to appreciate that the appellant was Co-operative Society engaged in carrying on the banking services. It accepts the deposits and grants loans and advances to its members. During the course of its day to day business activities, certain cash was being collected by the employees and agents of the society from its members under daily deposit scheme etc. This cash is being deposited into the bank account on regular basis. During the year under consideration, the appellant society has deposited a cash amounting to Rs.1,28,75,451 in its Saving Bank Alc. No 001002300031657 with Sampada Sahakari Bank Ltd, Budhwar Peth Branch, Pune. A copy of the bank statement is attached herewith for reference. It may kindly be noted that the cash deposits represents deposits accepted from member which are repayable to the respective members on demand. Thus, in no circumstances this amount can be considered as income in the hands of the appellant society. It may kindly be appreciated that the said cash deposits transactions as well as the impugned bank account is duly accounted for in the books of accounts and the same are also being audited by a GDCA as per the applicable laws. The assessee was maintaining the cash book in manual system of account. A copy of extract from the cash register is attached herewith on sample basis. It can be seen from the receipt side of the attached Cash Register that the primary source of cash was in the nature of Daily (Dainandin Bachat) Deposits, Fixed (Mudat Thev) Deposit, Recurring deposits, Members Loan account (Sabhasad Karja) etc. from the members of the society. After deducting the cash utilized for expenses or for refund of deposits, the balance cash amount was periodically deposited into Saving Bank Account with Sampada Sahakari Bank Ltd. The entries of cash deposits are reflected in right side of the cash register i.e. Disbursement side. Thus, it is clear from Cash register that all the cash deposit transaction are duly accounted for in the books and its sources are also explainable. Further, the said bank account was also appropriately reflected in the audited balance sheet of the society. A copy of audited financials are also attached herewith. The Ld. AO has therefore erred in treating these cash deposits transactions as unexplained credit and erred charging the same as taxable income.*

4.2] *The Ld. AO ought to have appreciated that the funds from the deposits accepted are then utilized to grant the small advances/loans to the needy members of the society. The interest is charged at relatively higher rate on these advances as compared to interest paid to the member depositing the money. A part of the deposit is also kept in interest earning deposits with banking companies as per applicable law. The differential interest represents the income of the appellant from which administrative expenses are incurred. Then after deducting such expenses, the net profit of the society is derived at. For the year under consideration, the appellant has earned net profit of Rs.5,95,187 Thus, it is not the cash deposit but interest earned on such advances given to members which is in the nature of income for the appellant society. It can be seen from the audited financials that Gross income including interest etc. amounted to Rs.22,75,778/-for the year under consideration and the Net profit after considering the expenses was only*

Rs.5,95,187/-, Further, being a credit co-operative society engaged into providing banking and credit facilities to its members, the appellant was eligible for claiming deduction as per provisions of section 80P(2)(a)(i) of the act in respect of its entire income from the specified business of banking activities. Therefore, all the income earned by the appellant by the banking activities was eligible for deduction under the act. Thus, as per the return filed by the assessee on 02/12/2017 for A.Y 2010-11 the total income of Rs. 5,95,187/- was claimed as deduction u/s. 80P(2)(a)(i) of the Act and no tax liability was held for the year under consideration. However, the Ld. AO completely disregarded the return of income filed in response to the notice u/s. 148 of the Act and made an unjustified addition merely on presumption and surmises. The addition made without considering the true facts therefore deserves to be deleted.

We hope the above information will suffice the purpose. In case, if any further clarification/information is required, the same would be submitted on hearing from Your Honour. The appellant also reserves the right to provide further submissions, in continuation of the said submission. The appellant request that an opportunity of being heard through video conference may please be granted to the appellant so as to explain facts of the case property.”

6. The assessee further filed its written submission on 24.05.2023 and 07.08.2023 with regard to its alternate claim of deduction u/s 80P of the Act.

7. After considering the submissions of the assessee, the Ld. CIT(A) dismissed the appeal of the assessee by observing as under:

“Ground No. 2-Appellant claimed that no sufficient opportunity of being heard was granted to the appellant. I fairly disagree with the contention for the reasons already discussed in para 6.2.3 above. The notice of re-opening of assessment was issued on 30.03/2017 followed by (1) notice u/s 142(1) dated 07.06.2017, (ii) first show cause notice dated 14.11.2017 and (ii) final show cause notice dated 29.11.2017 but the appellant did not bother to make any effective representation other than seeking adjournment on 02.12.2017. On record, almost a years time was provided to the appellant to file a return and to explain the single issue of cash deposit in bank account. In the first show cause notice dated 14.11.2017, the AO had clearly narrated his intention of best judgment assessment and reason thereof but the appellant was sleeping on the said show cause notice and now, canvassing an argument that adequate opportunities was not given by the AO. I find that the AO issued a notice u/s 142(1) but appellant failed to comply with the terms of the said notice and by virtue of second proviso to section 144(1), the AD was free to conclude the assessment without issuing any show cause notice. But he issued back-to-back two show cause notices to the appellant which proves his act of fairness. Appellant had displayed a series of failure to comply with notices without explaining reasons other than 'ignorance' and as discussed earlier, this self-serving contention of the appellant does not stand in the eye of law. It is not only apparent but sure that the appellant consciously disregarded the assessment procedure by not filing its ITR in time. It has miserably failed to display a single reason before me as to why a return of income was not filed either u/s 139 or in response to notice u/s 148 despite having opportunities to file such return for the period from 01.04.2010 to 31.03.2012 and again on 30.03.2017 to 13.11.2017 prior to first show cause notice. Thus, this ground of appeal also fails and accordingly dismissed.

6.4.1 Ground No. 3, 3.1 to 3.2 are against addition of Rs.1,28,75,451/- on account of Cash deposit in Saving Bank A/c. The appellant has explained before me that certain cash was being collected by the employees and agents of the society from its members under daily deposit scheme etc and collected cash was deposited into its Saving Bank A/c. No. 001002300031657 with Sampada Sahakari Bank Ltd, Budhwar Peth Branch, Pune on regular basis and during the year under consideration, the appellant society had deposited cash amounting to Rs.1,28,75,451/- in the said bank account. Furnishing a copy of extract from cash register, the appellant has further stated that it was maintaining the cash book in manual system of account and that the primary source of cash was in the nature of Daily (Dainandin Bachat) Deposits, Fixed (Mudat Thev) Deposit, Recurring deposits, Members Loan account (Sabhasad Karja) etc. from the members of the society. On the basis of the extract of cash register, appellant has claimed that the entries of cash deposits are reflected in right side of the cash register ie Disbursement side and thus it is clear from Cash register that all the cash deposit transaction are duly accounted for in the books and its sources also explainable and further, the said bank account was also appropriately reflected in the audited balance sheet of the society.

6.4.2 The bold and underlined words sources are also explainable in the above submission are interesting to note that even at this stage, it is appellant's belief that source of cash is explainable but not actually not explained. The extract of the cash register does not display the identity of the person(s) from whom cash was collected by agents. Nothing is placed before me so as to disclose the identity of members and that cash was actually collected from them. Appellant has withhold these vital information and suo motu presumed a self-serving belief that source of cash is explainable. It has also not explained as to why said cash register was not furnished before the AO and why it is submitted now without any prayer/ request to entertain such additional evidences under Rule 46A of the IT Rule. This is more akin to a contumacious conduct of the appellant which indicates that the so called cash register was fabricated at a later stage, not available at the time of assessment to be submitted before the AO. Above all, the relevant bank account was not disclosed before the Department before 02.12.2017. In other words the bank account remained undisclosed before completion of assessment. No ITR is found available in the system prior to A.Y. 2014-15. The ITR for A.Y. 2014-15 was filed on 02.12.2017/validated on 05.03.2018. Returns for A.Y. 2015-16, 2016-17 and 2017-18 were filed on 29.12.2016, 10.04.2017 and 09.02.2018 respectively. Thereafter, no return was filed/available in the e-filing portal.

6.4.3 I note that the appellant failed to file a return for A.Y. 2010-11 either u/s 139 or in response to notice u/s 144 and I have strong reason to believe that no return was filed prior to A.Y. 2014-15. The appellant had not shown the details of the bank account in Sampada Sahakari Bank Ltd prior to assessment. It was thus clear that it had maintained an undisclosed bank account and deposited unaccounted income in such account. The appellant had failed to explain the source of cash deposited in the said account. Neither the identities of the persons from whom cash received, nor their creditworthiness has ever been disclosed or explained in any manner, not to speak of genuineness of transactions. It could not give any confirmation from its members along with their names, addresses, PANs and copies of ledger accounts as appearing in its books of accounts in respect of each cash deposit in savings bank account. In that view of the matter, I disbelieve that such cash was received from members and hold that the said sum of Rs.1,28,75,451/- represented the appellant's unaccounted and unexplained money chargeable to tax. I draw support from the decision of the Hon'ble Gujarat High Court [2017] 87 taxmann.com 41 (Gujarat) in the case of Truptiben Bakulbhai Patel v. Income- tax officer wherein, under identical facts, it is held as under-

"Section 68 of the income-tax Act, 1961 Cash credit (Bank deposits) Assessment year 2009-10-Through internal information system, Assessing Officer learnt that assessee had deposited cash amount in bank account which she had not reflected in her return Assessee had claimed that she had received cash gifts from four different persons but she could not give confirmation of each donor along with name, address. PAN and copies of ledger accounts as appearing in her books of account Assessing Officer disbelieved such cash gifts and held that said sum represented assessee's unaccounted investments - Neither in return filed for relevant assessment year nor in earlier assessments, assessee had disclosed said bank account Moreover, cash gifts were not backed by any supporting documents of donors - Whether said sum was rightly treated as unaccounted income of assessee Held, yes [Para 4] [In favour of revenue]"

Accordingly, I confirm the decision of the AO and all grounds of appeal on this issue are hereby being dismissed."

8. Dissatisfied, the assessee is in appeal before the Tribunal.

9. The Ld. AR submitted that no sufficient opportunity of being heard was granted to the assessee to present its case before the Ld. AO and that the assessee had duly explained the source of cash deposits before the Ld. CIT(A) which has not been taken into account by the Ld. CIT(A). According to the Ld. CIT(A) the assessee failed to explain the identity and creditworthiness of the person from whom the cash was received. The Ld. AR reiterated the same submissions which were made before the Ld. CIT(A) (reproduced above) before us also. The Ld. AR, therefore, urged that the matter may be sent back to the file of Ld. AO and an opportunity be granted to the assessee to present its case before him with all the requisite details/information available with the assessee and submitted before the Ld. CIT(A).

10. The Ld. DR, however, relied on the order of Ld. CIT(A).

11. We have considered the submissions of the Ld. Representatives of the parties and perused the records. It is an admitted fact that due to non-compliance of the statutory notice(s) issued by the Ld. AO, he proceeded to complete the assessment ex-parte. The Ld. CIT(A) has upheld the order of Ld. AO mainly for the reason that the assessee had failed to explain the source of cash deposits in the bank account with Sampada Sahakari Bank Ltd. It is the submission of Ld. AR that given an opportunity, the assessee is in a position to file all the requisite details to substantiate its case. Considering the totality of the facts and on the facts and circumstances of the case and in the interest of justice and fair play, we deem it proper to

restore the matter back to the file of Ld. AO with a direction to grant one more opportunity to the assessee to substantiate its case by filing the requisite details regarding the source of cash deposits in the bank account of the assessee and decide the issue afresh on merits as per the fact and law. The assessee is hereby directed to submit the details as called for by the Ld. AO on the appointed date without seeking any adjournment under any pretext failing which the Ld. AO is at liberty to pass appropriate order as per law. We hold and direct accordingly. Thus, the ground Nos. 2 to 3.2 raised by the assessee are allowed for statistical purposes.

12. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 18th September, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th September, 2024.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune