

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL
MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.918/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

Atpadi Education Societiys Employee Sahkari Path Mandal Limited, Dighanchi Road, Atpadi, Sangli, Maharashtra, 415301 PAN NO. AAAAA6827A	Vs	Income Tax Officer, Ward 5, Sangli
Appellant/Assessee		Respondent/Revenue

Assessee by	None
Revenue by	Shri Ramnath P Murkude
Date of hearing	10/10/2024
Date of Pronouncement	15/10/2024

आदेश / ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee Atpadi Education Society's Employee Sahakari Path Mandal Limited for AY 2017-18 against the order of Ld. Commissioner of Income Tax (appeal) (NFAC)'s order u/s 250 of the Act dated 04-03-2024 emanating from the Assessment Order u/s 144 of the Act dated 12/12/2019.

2) The Assessee has raised following grounds of Appeal :

1) On the facts and circumstances of the case and in law Assessing Officer (AO) has erred in disallowing and CIT(A) by confirming the disallowance of assessee's claim of deduction u/s.80P of the Act amounting to Rs. 1,34,17,516/- in order dated 04.03.2024 against the principle of consistency. For A.Y. 2020-21 AO in scrutiny assessment out of total claim of deduction of Rs. 1,49,31,702 had disallowed only interest received from bank amounting to Rs. 14,46,842 which was further allowed by Ld. CIT(A) vide order dated 04.12.2023. In regular scrutiny assessment proceedings for the A.Y. 2004-05 to 2009-10 and 2013-14 the claim of the assessee was accepted by Ld. Assessing Officer.

2) *That the learned CIT(A) has erred in passing order against the principle stare decisis, rule of consistency, audi alteram partem, without application of mind, and unjust hurried manner by non-speaking order and without providing fair opportunity of hearing and personal opportunity of being heard which was specifically requested by the assessee, which are contrary to the principle of natural justice. Ld. CIT(A) has failed to seek the explanation of the assessee before taking adverse view which is against the ratio laid down by TLG India (P) Ltd. vs. Deputy Commissioner of income tax & Ors. (2020) 421 ITR 418 (Bom). The order passed is unsustainable in law, bad in law and hence liable to be quashed and may please be quashed or otherwise set aside and remanded back.*

3) *The CIT(A) has erred in not allowing deduction under section 80P of the Act, of Rs. 1,34,17,516 which was denied by Ld. Assessing Officer due to non submission of copy Bye laws, registration certificate which were duly submitted along with details of nature of business of the assessee to the Ld. CIT(A) on 31.08.2021. The copies of by laws and registration certificate were also available with the department which were furnished by the assessee during the past assessment years.*

4) *The assessee craves the right to add, alter, delete, and modify all or any of the grounds of appeal.*

3) Non appeared for the assessee on 10/10/2024.No adjournment letter on record. On 03/09/2024 also no one had appeared on behalf of the assessee. Hence, we proceeded Ex-Party.

4) **Findings and Analysis :**

We heard Ld. Departmental representative for the revenue , perused the case records. It is observed from the submission of the assessee reproduced by Ld.CIT(A) in his order , that the Assessee had requested for personal hearing before the Ld.CIT(A) . However, it is observed from the Order of the CIT(A) that no personal hearing was granted to the assessee. Also it is observed that assessee had claimed that it had submitted the details called for on 31/08/2021 to the CIT(A). However, the Ld.CIT(A) had not considered the details filed by the assessee.

4.1) The Hon'ble ITAT Mumbai in the case of Bank of India Vs ACIT 112/Mum/2022 held as under ;

Quote, “ the grant of personal hearing through video conferencing is now virtually on-demand. While rule 12(2) of the Faceless Appeals Scheme

2021 (hereinafter referred to as „the new rules’) provides that “(t)he appellant or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the Commissioner (Appeals), through the National Faceless Appeal Centre, under this Scheme”, rule 12(3) ensures that such a personal hearing will invariably be granted, on-demand, through video conferencing by providing that “(3) The concerned Commissioner (Appeals) shall allow the request for personal hearing and communicate the date and time of hearing to the appellant through the National Faceless Appeal Centre” and “(4) Such hearing shall be conducted through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board”. As a result of these provisions in the new rules, the opportunity of a personal hearing, through video conferencing, is to be granted in all such cases in which the request for a personal hearing is made. There is no question of any discretion about allowing or not allowing the opportunity of a personal hearing, as upon a request being made by the assessee for a personal hearing, such an opportunity is required to be afforded to him. In any event, it is an amendment in the faceless appeal rules which is meant to obviate the undue hardships of the assessee in presenting their cases to the first appellate authority, and when such an amendment is made to cure the shortcomings of the scheme, and thus obviate the unintended hardships to the taxpayers, the amendment is to be treated as retrospective in effect. It is for the reason of the well-settled legal position that a curative amendment in the law is to be treated as retrospective in nature even though it may not state so specifically. In the Hon'ble Supreme Court's five-judge constitutional bench's landmark judgment, in the case of CIT v. Vatika Townships Pvt Ltd. [(2014) 367 ITR 466 (SC)], the legal position in this regard has been very succinctly summed up by observing that "(i)f a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive

construction, would warrant it to be given a retrospective effect" Hon'ble Supreme Court has observed that "This (the foregoing analysis) exactly is the justification to treat procedural provisions as retrospective", that, "In Government of India & Ors. v. Indian Tobacco Association (2005) 7 SCC 396 the doctrine of fairness was held to be a relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation" and that "The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra & Ors. (2006) 6 SCC 286. It was held that where a law is enacted for the benefit of the community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature." Their Lordships also noted that this retrospectively being attached to benefit the persons, is in sharp contrast with the provision imposing some burden or liability where the presumption attaches towards prospectivity. What logically follows from the law so settled by a constitutional bench of the Hon'ble Supreme Court, is that when an opportunity of presenting the case, through the video conferencing in the faceless appeal proceedings, is now available to every taxpayer, on-demand, the same must also be held to be admissible in the proceedings, if so demanded by the assessee, in the old rules as well.

In view of these discussions, as also bearing in mind the entirety of the case, we deem it fit and proper to remit the matter to the first appellate authority after giving an opportunity for a personal hearing, in terms of rule 12 of the Faceless Appeals Rules 2021, for adjudication de novo in accordance with the law and by way of a speaking order. Ordered, accordingly. As the matter stands restored to the file of the first appellate authority for adjudication all other issues raised in the cross-appeals are rendered academic and infructuous, and these issues do not call for any adjudication as of now."

Unquote

4.2) Thus faceless Appeal Scheme 2021 has made it mandatory to provide Virtual Hearing if asked by the Assessee. In this case the assessee had asked for personal hearing which has not been provided by the CIT(A)(NFAC).

In these facts and circumstances of the case, respectfully following the

Hon'ble ITAT Mumbai's decision (supra) , we set aside the order of the Ld.CIT(A)(NFAC) to the Ld.CIT(A) for de-novo adjudication after granting opportunity of virtual hearing as asked by the assessee. Ld.CIT(A) shall also consider the documents filed by the assessee and the earlier assessment orders/appeal orders in the case of the assessee.

Accordingly, the appeal of the assessee is allowed for statistical purpose.

5) Order pronounced in the open Court on 15th October, 2024

Sd/-

(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Sd/-

(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे/Pune;

/Dated : 15th October, 2024

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

1. अपीलार्थी/The Appellant.
2. प्रत्यर्थी/The Respondent
3. The CIT(E), concerned.
4. The Pr. CIT, concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे/DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फाइल/Guard File.

//TRUE COPY//

आदेशानुसार/BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण/ITAT, Pune.