

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.185/Lkw/2023
Assessment year:2014-15

Income Tax Officer, Gonda.	Vs.	Krishi Utpadan Mandi Samiti, Balrampur. PAN:AABTK1219Q
(Appellant)		(Respondent)

Appellant by	Ms. Shweta Mittal, C.A.
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) Appeal vide I.T.A. No.185/Lkw/2023 has been filed by the Revenue for assessment year 2014-15 against impugned appellate order dated 19/07/2022 (DIN & Order No.ITBA/NFAC/S/250/2022-23/1043917447(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. The grounds of appeal are as under:

"Whether the learned CIT(A) has erred on facts and in law in allowing exemption u/s 10(26(AAB)) of the I.T. Act, 1961 without claiming exemption under the aforesaid section in ITR by assessee without giving opportunity and calling for remand report from the Assessing Officer u/s 250(4) of the IT Act read with Rule 46A(3) of the I.R. Rules, 1962."

(B) The appeal filed by Revenue is beyond the time limit prescribed u/s 253(3) of the Income Tax Act, 1961 ("IT Act" for short). A petition vide letter dated 13/06/2023 has been filed by Revenue seeking condonation of

delay and explaining the reason for delay. At the time of hearing before us, learned A.R. of the assessee submitted that the assessee had no objection if the delay is condoned. Accordingly, the delay in filing of this appeal is condoned and the appeal is admitted for decision on merits.

(B.1) In this case the return filed by the assessee was processed u/s 143(1) of the IT Act wherein the assessee's total income was determined at Rs.3,90,11,484/- as against returned income of NIL. The aforesaid addition amounting to Rs.3,90,11,484/- was made u/s 143(1) of the IT Act by disallowing the relief claimed by the assessee u/s 26AAB of the IT Act. The assessee's appeal filed in the office of learned CIT(A) was disposed of vide impugned appellate order dated 19/07/2022, wherein the learned CIT(A) directed the Assessing Officer to allow the assessee's claim after verifying the conditions laid down u/s 26AAB of the IT Act. The second appeal has been filed by Revenue against the aforesaid impugned appellate order of the learned CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal, copy of order dated 22/05/2023 passed by the Assessing Officer giving effect to the aforesaid impugned appellate order of learned CIT(A) was filed from the assessee's side.

(B.2) At the time of hearing before us, the learned A.R. for the assessee submitted that in the aforesaid order dated 22/05/2023, the Assessing Officer has accepted the assessee's claim and has allowed the relief u/s 26AAB of the IT Act amounting to Rs.3,90,11,484/- entirely. She further drew our attention to the fact that the assessee's total income was assessed at NIL in the aforesaid order dated 22/05/2023 passed by the Assessing Officer. She also filed copy of regular assessment order dated 06/08/2019 for assessment year 2017-18 wherein, she submitted assessee's claim u/s 26AAB of IT Act was accepted and income was assessed at nil. Therefore, learned A.R. for the assessee submitted, the appeal filed by the Revenue is

infructuous and deserves to be dismissed. The learned Sr. D.R. for Revenue submitted that on perusal of the aforesaid order dated 22/05/2023 of the Assessing Officer, it was not clear whether the Assessing Officer had verified the conditions laid down u/s 26AAB. However, in response to a specific query from Bench, he accepted that Revenue did not have any remedy directly in Income Tax Appellate Tribunal, , even if the Assessing Officer had not verified the conditions. He fairly accepted that the appeal filed by the Revenue has become infructuous as the Assessing Officer has accepted the assessee's claim u/s 26AAB of the Act amounting to Rs.3,90,11,484/-entirely. In view of the foregoing, it is obvious that appeal filed by Revenue is become infructuous.

(B.2.1) We have heard both sides. We have perused materials on record. Relevant facts are not in dispute. It is not in dispute that the Assessing Officer has accepted the claim of the assessee u/s 26AAB of the IT Act in his order dated 22/05/2023 giving effect to impugned order dated 19/07/2022 of the learned CIT(A). It is also not in dispute that in regular assessment for assessment year 2017-18, vide assessment order passed u/s 143(3) of the IT Act, dated 06/08/2019, the assessee's claim u/s 26AAB of IT Act has been accepted. This fact effectively erases the case for disallowance of assessee's claim u/s 26AAB in prima facie processing u/s 143(1) of IT Act, when in regular assessment for assessment year 2017018, the claim has been accepted, and when no distinguishing facts and circumstances have been adduced for assessment year 2014-15 to take a view different from assessment year 2017-18. This is so, because the scope for rejecting assessee's claim in prima facie adjustment u/s 143(1) of IT Act is narrower than the scope in regular assessment order u/s 143(3) of IT Act. In view of the foregoing, and as representatives of both sides are in agreement that

this appeal filed by Revenue is infructuous; we dismiss the appeal, the appeal being infructuous.

(C) We notice that this appeal has been filed on 20/06/2023, which is after the aforesaid order dated 22/05/2023, wherein the Assessing Officer has accepted the assessee's claim u/s 26AAB of IT Act. When Revenue has already accepted the assessee's aforesaid claim, then there was no ostensible justification for filing of this appeal by Revenue. It is easy to infer that there was lack of application of mind, in the decision taken by Revenue to file this appeal. We are dismayed at this.

(D) Be that as it may, the appeal of Revenue is dismissed being infructuous.

(Order pronounced in the open court on 15/10/2024)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:15/10/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R. ITAT, Lucknow

Asstt. Registrar