



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI**



**BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**ITA Nos. 304/PAN/2024**

**Assessment Year : 2018-19**

The Kabbur Purvbhag Prathamik  
Krushi Pattin Sahakari Sangh Niyamit  
At Post: Kabbur, Tal.:Chikodi,  
Dist.:Belgaum.  
PAN : AADAT9192J

..... *Appellant*

V/s

Income Tax Officer  
Ward-1, Nippani.

..... *Respondent*

**Appearances**

Assessee by : None

Revenue by : Mr S Manikandan ['Ld. DR']

Date of conclusive Hearing : 04/03/2025

Date of Pronouncement : 05/03/2025

**ORDER**

**PER G. D. PADMAHSHALI, AM;**

The assessee is in appeal against DIN & Order No. ITBA/NFAC/S/250/2024-25/1069069880(1) dt. 25/09/2024 passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereafter] by the National Faceless Appeal Centre, Delhi ['Ld. CIT(A)/NFAC' hereafter] which in turn arisen out of order of assessment dt. 10/03/2021 passed u/s 143(3) of the Act by the National Faceless e-Asstt. Centre, Delhi ['Ld. AO' hereafter] for assessment year 2018-19 ['AY' hereafter].



2. The case was called twice; none appeared at the behest of the appellant. The appellant vide email dt. 03/03/2024 expressed its inability to appoint a counsel to represent its case and therefore prayed for adjudication ex-parte on the basis of material placed on records. Upon the Revenue's no objection and after recording the same we advanced accordingly u/r 24 of ITAT-Rules, 1963.

3. First thing first, the postal delay of ten days as endorsed by the Registry is supported by well-reasoned affidavit dt. 07/12/2024 executed by the appellant. The undeliberate reason as explained in the sworn affidavit is supported by medical certificate. The reason explained in our considered view is sufficient to pass the test of sufficiency as laid in '*Vijay V Meghani Vs. DCIT & Anr*' [2017, 398 ITR 250 (Bom)] and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' [1987, 167 ITR 5 (SC)]. Therefore, the insignificant postal delay occurred in filing this appeal is condoned and advanced for adjudication on merits.



4. **The long and short of the case is that;** the assessee is an agricultural co-operative society filed its return of income [‘ITR’ hereafter] on 15/07/2018 declaring NIL income after claiming chapter VI-A deduction u/s 80P(2) of the Act. The said return without variation was in first place processed summarily u/s 143(1) of the Act and then subsequently subjected to scrutiny by service of notice u/s 143(2) of the Act. In the course of assessment proceeding, Ld. AO noted that, the assessee had earned an interest of ₹13,57,254/- from its investment with entities other than co-operative society. The findings were confronted to showcase as to why such % of amount not to be disallowed as non-business income. The assessee’s submission & explanation could hardly inspire to the Ld. AO. As a result, the Ld. AO denied claim for 80P(2)(d) deduction and assessed income accordingly u/s 143(3) of the Act wherein two bullet additions were made viz; (1) profit from trading of water cans ₹82,476/- and (2) ₹6,24,337/- being 46% of interest on total investment accrued to assessee (₹13,57,254/-) as non-business income.



5. Aggrieved assessee futilely contested 46% disallowance of 80P(2)(d) claim by the Ld. AO in an appeal before first appellate forum. Thus, hurt by the orders of tax authorities below, the assessee before us with a sole and substantive ground that treating the interest income as non-business & restricting the deduction 80P(2)(d) deduction in its case is bad in law and devoid of merits.

6. We have heard the Revenue & considered the appellant's written submission; and subject to rule 18 of ITAT-Rules, 1963 perused material placed on record, case laws relied by both the rival parties. At the outset we note that, when the matter of 46% disallowance of 80P(2) travelled in first appeal, the Ld. NFAC considered the material placed before him and without conclusively adjudicating it u/s 251 of the Act, re-directed the same to the Ld. AO vide para 6.2.3 placed on pg 16 of the order.

7. We are heedful to the restriction placed by clause (a) of sub-section (1) of section 251 of the Act which obligates the Ld. NFAC to adjudicate the issue conclusively either by **confirming**



***or annulling the addition or reducing or enhancing*** the addition made by the assessing officer without the power to remand the matter back to the file. And in exercising the jurisdiction u/s 251(1)(a) of the Act, the Ld. NFAC is also required to state point of determination, its decision thereon and clear reasons therefore in terms of section 250(6) of the Act. This twin exercise by the Ld. NFAC is a pre-requisite and invariably necessary for each assessment year in each case irrespective of its repetition.

8. The former provisions of Act empowers Ld. NFAC to remand the case or issue back to the file of Ld. AO only where the original assessment is framed u/s 144 of the Act and not where the assessment is framed otherwise than u/s 144 of the Act. It is a trite law as laid down by Hon'ble Supreme Court in the case of '*Chandra Kishore Jha Vs Mahavir Prasad*' reported in 8 SCC 266 (SC), that 'if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner'.



9. In the present case the assessment was framed u/s 143(3) of the Act therefore the Ld. NFAC had no explicit power to remand the issue back to the file of Ld. AO for effective assessment. *Per contra* the Ld. NFAC has simply ceased the appeal of the assessee by remanding the issue for effective assessment to the file of Ld. AO. This action of the Ld. NFAC is not only inconsonance with the provisions of s/s (6) of section 250 of the Act but contradictory to the provisions of section 251 of the Act, hence cannot be continued to stand. Therefore, without offering our comments on merits of the case, we set-aside impugned order and remit the case back to the Ld. NFAC with a direction to deal therewith *de-novo* in accordance with law.

**10. In result, the appeal stands allowed for statistical purposes.**

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

**-S/d-**

**PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

**-S/d-**

**G. D. PADMAHSHALI  
ACCOUNTANT MEMBER**

Panaji/Dt: 05th March 2025.

**Copy of the Order forwarded to :**

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|-------------------|-----------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent.                | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File                |

By Order,  
Sr. Private Secretary / AR ITAT, Panaji.