

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

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.99/Nag./2024**  
(Assessment Year : 2017-18)

Asstt. Commissioner of Income Tax  
Circle-3, Nagpur ..... Appellant

v/s

The Wardha District Central Co-operative  
Bank Ltd., Opp. Railway Station ..... Respondent  
Wardha 442 001 PAN - AAAAT6426G

Assessee by : Shri Mahavir Atal  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing - 13/02/2025

Date of Order - 21/03/2025

**ORDER**

**PER K.M. ROY, A.M.**

This appeal by the Revenue is emanating from the impugned order dated 03/01/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. The Revenue has raised following grounds:-

*"1. The Learned CIT(A) erred in law and in facts in annulling the assessment when show cause notice was duly Issued by the Assessing Officer and duly responded to by the assessee and the response of the assessee was considered while framing the assessment order.*

*2. The Learned CIT(A) erred in law and in facts in annulling the assessment without going into the merits of the case on which additions were made.*

*3. Any other ground that may be taken at the time of hearing."*

3. This is a case where the learned CIT(A) annulled the assessment by holding as under:-

*"7.5 the other contention of the appellant that the A.O. did not follow the CBDT's instruction no.20/2015 dated 29/12/2015. In this regard, I find that in the assessment order, AO has made additions based on uploaded written submission along with computation of income, audit report and its annexures, audited financial statements, details of all bank account, details of investments and other details documents. It is evident from record that no such proposed addition or disallowance was intimated to the appellant by way of issuing show, cause notice to provide a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. Now the vital question is whether the above instruction of CBDT is mandatory procedure or informative in nature. The appellant has put his reliance upon the CBDT's Instruction no. 20/2015 dated 29/12/2015 & decision of Hon'ble Supreme Court in case of Tin Box Co. vs. CIT [249 ITR 216]. The relevant para no. 4 of CBDT's Instruction no. 20/2015 dated 29/12/2015 is being reproduced below:-*

*"4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show-cause notice."*

*7.5.1 It is notable that in the above direction, the CBDT has used word 'the assessing officer shall issue an appropriate show cause notice', which shows that the CBDT is clear in mind that the said instruction should be strictly adhered in order to complete assessment order. Thus, it is clear from above direction of CBDT that the AO is bound to issue show cause notice to assessee before making any addition or disallowance to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. Also, I find that the Hon'ble Supreme Court in case of Tin Box Co. vs. CIT [249 ITR 216], has held that Assessment order must be made after the assessee has been given reasonable opportunity of setting out his case; assessment made without giving the assessee such an opportunity was liable to be set aside. Further, I find that in the case of Lal Construction Company. Secunderabad v/s the DCIT, Circle-10(1), Hyderabad, in ITA No. 980/HYD/2019, AY 2016-17, date of order 12/10/2020, the Hon'ble ITAT, Hyderabad Benches 'B', Hyderabad, has remitted the issue to the file of CIT(A) for reconsideration of the issue in accordance with law and if the CIT(A) feels that the assessment has to be enhanced, then, he shall issue a notice to the assessee and after considering the assessee's objections, if any, filed by the assessee in writing, thereafter only, the CIT(A) shall adjudicate the appeal. Needless to mention that assessee shall be given a fair opportunity of hearing.*

*In the above case before Hon'ble ITAT, Hyderabad, the matter is that the CIT(A) has enhanced the income of appellant without giving opportunity of being heard in writing, only oral opportunity was given. In the present case, it is evident from assessment order that no such show cause notice indicating proposed additions or disallowances was issued to the appellant at the time of assessment proceedings. In view of above discussion, I am of the opinion that the said instruction of CBDT is mandatory procedure in nature. Hence, I find merit in the second contention of the appellant.*

*7.6 The provisions of section 251(1) (a) of the Act empowers the CIT (A) to confirm, reduce, enhance or annul the assessment order in the course of disposing the appeal. In the present case, the AO has not followed the instruction of CBDT's instruction no. 20/2015 dated 29/12/2015. Hence, I annulled the assessment order in question.*

*8. Since the assessment order in question is annulled in above paras, there is no requirement for adjudicating other substantial & general issues raised by the appellant in ground nos. 2 to 9.*

*9. As a result, the appeal is allowed for statistical purposes."*

4. Per-contrā, the assessment order clearly depicts multiple dates of hearing coupled with issuance of notice / questionnaire on different dates. The assessee had uploaded written submissions along with accompanying documents. The relevant portion of the order is culled out below:–

*"The assessee is co-operative bank, engaged in the business of banking. It has e-filed its return of income on 01/11/2017 declaring total income at (loss) Rs. 19,33,28,507/-. This return was processed by CPC as such. The case was picked up by CASS for complete scrutiny for the main reasons "closing stock, disallowance for payment of gratuity, deduction and deposit of TDS, investments /advances/loans, expenses incurred for earning exempt income, business expenses, bonus or commission paid to employee, refund claim". Notice u/s 143(2) was issued on-line 09/08/2018. Subsequently, notice/questionnaire was issued on different dates requiring the assessee to furnish details / documents with regard to the CASS reason.*

*2. In response to the notices, the assessee has uploaded written submission along with computation of income, audit report and its annexures, audited financial statements, details of all bank account, details of investments and other details documents, which are verified."*

5. The impugned order passed by the learned CIT(A) is blatantly opposite repugnant and erroneous and the same cannot be countenanced, because it

is clearly against the assessee and the facts manifest from the assessment order. Accordingly, we reverse the impugned order passed by the learned CIT(A). Since the learned Authorised Representative for the assessee refrained from arguing on merits of the case by assailing the justifiability of additions, the case is set aside to the file of the learned CIT(A) to decide the issues on merits.

6. In the result, Revenue's appeal stands allowed for statistical purposes.

Order pronounced in the open Court on 21/03/2025

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 21/03/2025**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur