



।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1299/PUN/2024

निर्धारण वर्ष / Assessment Year: 2015-16

Krushni Sadhna Vividh Karyakari Sahakari Vikas Seva Sanstha Maryadit, Kurundwad Shirol, Kolhapur – 416106. PAN: AAAAK7380E	V s	The Income Tax Officer, Ichalkaranji.
Appellant/ Assessee		Respondent / Assessee

Assessee by	Shri Pramod S Shingte – AR
Revenue by	Shri Ramnath P Murkunde, IRS – DR
Date of hearing	23/10/2024
Date of pronouncement	04/11/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] dated 13.05.2024 under section 250 of the Income tax Act 1961 for A.Y.2015-16. The Assessee has raised the following grounds of appeal :

*“1. On the facts and circumstances of the case and in law the CIT(A), NFAC erred in, **sou motu**, making addition of business*



income of the appellant society, holding the society not being eligible for deduction u/s 80P in respect thereof, not realizing that the powers of the First Appellate Authorities do not extend to making addition in respect of an altogether a new source of income as held by Delhi High Court in the case of CIT vs Sardari Lai & Co., 251 ITR 864 (Delhi).

2. *The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing.”*

Additional Grounds of appeal :

“1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in making a disallowance of the claim of deduction u/s 80P, being profit from specified business activity, without issuing the notice of enhancement which is a prerequisite for such action and therefore, subsequent action of enhancement becomes null and void and accordingly consequential order deserves to be quashed.

2. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in applying the provisions of section 80A(5) of the IT Act, and further erred in denying the deduction u/s 80P without appreciating the scope of section 80A(5). Your appellant prays for allowing the deduction.”

Submission of ld.AR :

2. Ld.AR at the outset submitted that assessee has raised additional grounds. Ld.AR submitted that ld.CIT(A) has made an enhancement of income without giving any opportunity. No notice was issued by ld.CIT(A) before enhancing the income. The issue of taxing profit without granting deduction u/sec.80P was not discussed by the Assessing Officer(AO) in the assessment order. The AO discussed only the issue of cash deposits of Rs.74,16,500/- in the assessment order and made an addition of Rs.74,16,500/-.

However, ld.CIT(A) disallowed the claim of assessee u/sec.80P of the Act and directed the AO to tax the net profit declared by assessee in the Profit and Loss Account of Rs.10,93,629/-. This act of ld.CIT(A) is nothing but enhancement. No notice has been issued by the ld.CIT(A) before making the enhancement, therefore, the order of ld.CIT(A) is bad in law.

2.1 Ld.AR submitted that section 80A(5) was not applicable for A.Y.2015-16. Hence, ld.CIT(A) erred in invoking section 80A(5) of the Act.

2.2 Ld.AR also submitted that the CIT(A) does not have any power to add a new source of income which has not been considered by the AO. In this case the CIT(A) has considered the Net profit which was never considered by the AO hence CIT(A) does not have jurisdiction to consider it .

2.3 Ld.AR relied on the following decisions:

- Vijay Builders Vs. ITO 863 /PUN/2013
- CIT Vs. Lotte India Corporation Ltd 212 CTR 543(Madras)
- CIT Vs. Sardari Lal &Co 251 ITR 864(Delhi)

Submission of Id.DR :

3. The Id.DR relied on the order Id.CIT(A).

4. Findings & Analysis :

4.1. We have heard both the parties and perused the records. The assessee is a Co-operative Credit Society engaged in the business of providing Credit Facilities to its members. The assessee is registered under Co-operative Societies Act vide registration certificate dated 04.12.1985. Copy of Registration Certificate is at the page no.6 of the paper book. Admittedly, the assessee has not filed any Return of Income for AY 2015-16. The assessing officer (AO) had issued notice u/s 148 but assessee had not complied to it. The AO then issued various notices but the assessee failed to comply. The AO had received information that assessee had deposited cash of Rs. 74,16,500/- in the bank account maintained with Kolhapur Dist.Central Co-op Bank Ltd. Since the assessee failed to file any reply, the AO made an addition of Rs.74,16,500/- u/s 69A of the Act and assessed the Total Income of the assessee at Rs.74,16,500/- . AO specifically observed that no return of income has been filed by the assessee hence Returned Income was taken at Nil. Aggrieved by the Assessment Order, the Assessee filed an

appeal before the Ld.Commissioner of Income Tax (appeal). The assessee produced copy of Bank statement, copy of cash book list of depositors who made cash deposits with their account numbers, profit and Loss account, etc. On verification of the details filed by the Assessee, the Ld.CIT(A) arrived at the conclusion that nature and source of cash deposits is explained hence directed the AO to delete the addition of Rs.74,16,500/-.

4.2. However, then in Paragraph 7.5, ld.CIT(A) observed that as per the Profit & Loss Account filed by the assessee, the Net Profit was Rs.10,93,629/-. The Ld.CIT(A) observed that assessee had not filed any return of income hence the assessee will not be eligible for any deduction u/s 80P of the Act as per section 80A(5) of the Act. The Ld.CIT(A) directed the AO to add Rs.10,93,629/- and assess the said amount as business income of the Assessee.

4.3. Aggrieved by the Order of the Ld.CIT(A) the assessee has filed appeal before this Tribunal. The moot question raised by the assessee is that the Ld.CIT(A) has no jurisdiction to consider the new source of income.

4.4 In this case admittedly the profit and Loss Account was not filed by the assessee before the Assessing Officer during the assessment proceedings. It means the Profit and Loss account was not part of the Record of the Assessment. However, the CIT(A) considered the Profit and Loss Account suo-moto and directed the AO to assess the Net Profit shown in the Profit and Loss account and Tax it.

4.5 Section 251 of the Income Tax Act 1961 as applicable at the point of time is reproduced here as under :

Powers of the Commissioner (Appeals).

251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(aa)

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

4.6 Thus, the CIT(A) has powers of enhancement in an appeal against an assessment. Thus, the subject matter of appeal in this

case is an Assessment Order. When we read the ‘*Explanation*’ of the Section 251, it says the CIT(A) may consider any matter arising out of the proceedings in which the order appealed was passed, it means for the case under consideration, the explanation to section 251 says that CIT(A) may consider any matter arising out of the Assessment Proceedings. Thus, when we read the entire section 251 with its explanation it emanates that CIT(A) may consider any matter arising out of the Assessment proceedings when Assessment order is subject of appeal.

4.7 In this context, when we analyse the facts of the case, it is observed that the impugned Profit and Loss account considered by the CIT(A) was not part of the record of Assessment Proceedings as it was never filed before the AO. Therefore, by considering the figure of “*Net Profit*” mentioned in the impugned Profit and Loss Account the Ld.CIT(A) has travelled beyond the jurisdiction granted by section 251 of the Act as the impugned profit and Loss account was never part of the Assessment Record. Therefore, Ld.CIT(A) has erred in giving the directions to the Assessing Officer to assess the “*Net Profit*”.

4.8 We derive support from the Hon'ble Supreme Court's analysis of Section 31 of the Income Tax Act 1922 in the case of Commissioner of Income-Tax, Calcutta Vs. Rai Bahadur Hardutroy Motilal Chamaria. The Section 31 of the Income Tax Act 1922 and the Section 251 of the Income Tax Act 1961 are exactly identical except the 'Explanation' which is inserted in the Income Tax Act 1961. However, we have already interpreted the effect of the 'Explanation' to section 251. Similarly, we find support from the ITAT Pune's decision in the case of Vijay Builders Vs. ITO ITA 863/PUN/2013 wherein the ITAT has followed the Hon'ble Supreme Court's decision in the case of CIT vs Shapoorji Pallonji Mistry 44 ITR 891(SC).

4.9 The Hon'ble Supreme Court in the case of Commissioner Of Income-Tax, Calcutta Vs. Rai Bahadur Hardutroy Motilal Chamaria on 7th April, 1967, [1968 AIR 153] held as under :

Quote, "The principle that emerges as a result of the authorities of this Court is that the Appellate Assistant Commissioner has no jurisdiction, under s. 31(3) of the Act, to assess a source of income which has not been processed by the Income- tax Officer and which is not disclosed either in the returns filed by the assessee or in the assessment order, and therefore. the Appellate Assistant Commissioner cannot travel beyond the subject- matter of the assessment. In other words, the power of enhancement under s. 31 (3) of the Act is restricted to the subject-matter of assessment or the sources of income which have been considered expressly or by clear implication by the Income-tax Officer from the point of view of the



taxability of the assessee. It was argued by Mr. Vishwanath Iyer on behalf of the appellant that by applying the principle to the present case, the Appellate Assistant Commissioner had jurisdiction to enhance the quantum of income of the assessee. It was pointed out that the fact of alleged transfer of Rs.5,85,000 to Forbesganj branch was noted by the Income-tax Officer and also the fact that it did not reach Forbesganj on the same day. So, it was argued that in the appeal the Appellate Assistant Commissioner had jurisdiction to deal with the question of the taxability of the amount of Rs.5,85,000 and to hold that it was taxable as undisclosed profits in the hands of the assessee. We are unable to accept the argument put forward on behalf of the appellant as correct. It is true that the Income-tax Officer has referred to the remittance of Rs.5,85,000 from the Calcutta branch, but the Income-tax Officer considered the despatch of this amount only with a view to test the Genuineness of the entries relating to Rs. 4,30,000 in the books of the Forbesganj branch. It is manifest that the Income-tax Officer did not consider the remittance of Rs.5,85,000 in the process of assessment from the point of view of its taxability. It is also manifest that the Appellate Assistant Commissioner has considered the, amount of remittance of Rs.5,85,000 from a different aspect, namely, the point of view of its taxability. But since the Income-tax Officer has not applied his mind to the question of the taxability or nontaxability of the amount of Rs.5,85,000, the Appellate Assistant Commissioner had no jurisdiction, in the circumstances of the present case, to enhance the taxable income of the assessee on the basis of this amount of Rs.5,85,000 or of any portion thereof. As we have already stated, it is not open to the Appellate Assistant Commissioner to travel outside the record, i.e., the return made by the assessee or the assessment order of the Income-tax Officer with a view to find out new sources of income and the power of enhancement under s. 31(3) of the Act is restricted to the sources of income which have been the subject-matter of consideration by the Income-tax Officer from the point of view of taxability. In this context "consideration" does not mean "incidental" or "collateral" examination of any matter by the Income-tax Officer in the process of assessment. There must be something in the assessment order to show that the Income-tax Officer applied his mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection. In the present case it is manifest that the Income-tax Officer has not considered the entry of Rs.5,85,000 from the point of view of its taxability and therefore the Appellate Assistant Commissioner had no jurisdiction, in an appeal under s. 31 of the Act, to enhance the assessment. For these reasons we hold that the High Court rightly answered the question in favour of the assessee and this appeal must be dismissed with costs." Unquote.

4.10 In the case under consideration the impugned source of income which was '*Net Profit*' shown in the impugned Profit and Loss Account was never before the Assessing Officer. Hence the Assessing Officer had not applied his mind on the Taxability/ non taxability of the impugned '*Net Profit*', hence the Ld.CIT(A) had no jurisdiction to consider the said amount of '*Net Profit*' and enhance the income of the Assessee. Therefore, respectfully following the decision of Hon'ble Supreme Court (supra) we hold that the Ld.CIT(A) has erred in directing the AO to tax the impugned Net Profit and erred in enhancing the income of the assessee. Accordingly, the AO is directed to delete the addition of Rs.10,93,629/which was directed by Ld.CIT(A). In the result the ground number 1 raised by the Assessee is allowed.

4.11 Since we have allowed Ground No.1 raised by the Assessee, the other grounds of appeal become academic in nature hence dismissed unadjudicated. However, it is a fact that the Ld.CIT(A) had not provided any opportunity to the assessee before making the enhancement of income which is mandatory as per section 251(2) of the Act. However, we are not adjudicating the Additional

Ground of appeal raised by the assessee regarding not providing opportunity as it becomes academic in nature.

5. In the result appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 4th November, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 4th Nov, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.