

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.63/Asr/2023
Assessment Year: 2019-20**

The Nakodar Primary Cooperative Agriculture Development Bank Ltd. C/o Sh. Sameer Bhatia, [PAN:AAAJT0597M] (Appellant)	Vs.	Income Tax Officer, Ward-Nakodar. (Respondent)
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Appellant by	None.
Respondent by	Dr.Vedanshu Tripathi, Sr. DR

Date of Hearing	24.05.2023
Date of Pronouncement	30.05.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id.
Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT

(A)’, order passed u/s 250 of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2019-20. The impugned order was emanated from the order of the CPC, Bengaluru [in brevity ‘the AO’] order passed u/s 143(1)/154 of the Act.

2. The assessee has taken the following ground:

“1. That in the facts and circumstance of the case and in law, the order passed by NFAC is arbitrary, whimsical, intractable and without any substance, therefore deserves to be set-aside to the file of NFAC (CIT-A).

2. That in the facts and circumstances of the case and in law, the NFAC erred in confirming the order passed by learned AO as no opportunity as provided in section 154 was provided to the assessee which had the impact of enhancing the assessment made under section 143(1).

3. That in the facts and circumstances of the case and in law, the order passed by NFAC deserves to be set-aside on the footing that grounds raised in the appeal memo were not independently disposed while deciding the fate of the case.

4. That in the facts and circumstances of the case and in law, the NFAC erred in confirming

order passed by AO as it was an attempt to step into the garb of review via rectification which is wholly not permissible and sustainable in the eyes of law.

5. *That in the facts and circumstances of the case and in law, the NFAC erred in confirming order passed by AO as it flouts the principle of consistency on the footing that any addition to the income will only affect profit duly entitled for deduction under section 80P.*

6. *That in the facts and circumstances of the case and in law, the NFAC erred in confirming order passed by AO on the footing that opinions given by the Chartered Accountants are not binding on the assessee or the AO as per assertion of the Union Govt.*

7. *That in the facts and circumstances of the case and in law, the NFAC erred in confirming the order passed by AO without thoughtfully going into the facts of the case wherein the claim of gratuity was paid as admissible per Common Cadre Rules 1978 notified by the principal body of the assessee.*

8. *That without prejudice to any adverse consequences that may follow, the assessee in the facts and circumstances of the case and in law presses into force for due adjudication of the matter all grounds pressed in appeal before the NFAC i.e. CIT(A) for due consideration of the Hon'ble Bench.*

9. *The assessee reserves his right to add, amend, waive, substitute, delete any additional ground of appeal prior to its adjudication by the Hon'ble Bench.*

10. *Any other relief as the Bench may feel appropriate in the facts & circumstances of the case and in law.”*

3. When the appeal was called for hearing none was present on behalf of the assessee. The assessee had filed adjournment petition. But bench has rejected the adjournment petition as without supporting any proper evidence. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* the assessee after hearing the learned DR and on the basis of material available on the record.

4. Brief fact of the case is that during processing the return u/s 143(1) the provision for payment of gratuity, u/s 40A(7) of the Act was rejected amount to Rs.3,22,425/-. The assessee filed a rectification petition before the CPC u/s 154. But the CPC has rejected the rectification petition u/s 154 of the Act. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the observation of the CPC and rejected the appeal of the assessee. Being aggrieved assessee filed an appeal before us.

5. The Id. DR first invited our attention in CIT(A) order page 5 para 8 to 12 which are extracted as below:

*“8. In the Memorandum to the Finance Bill 2016, while inserting sub clause (iv) to section 143(1)(a), it was explained as under:
Clause (a) of sub-section (1) of section 143 provides that, a return filed is to be processed and total income or loss is to be computed after making the adjustments on account of any arithmetical error in the return or on account of an incorrect claim, if such incorrect claim is apparent from any information in the return. In order to expeditiously remove the mismatch between the return and the information available with the Department, it is proposed to expand the scope of adjustments that can be made at the time of processing of returns under subsection (1) of section 143.It is proposed that such*

adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. However, before making any such adjustments, in the interest of natural justice, an intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

9. Para 21 (e) of the Tax audit report (Form 3CD) requires the auditors to provide details of provision for gratuity not allowable u/s. 40A(7). In this case, the Auditor has reported as under-

<i>Provision for payment of gratuity not allowable under section 40(A(7))</i>	<i>322425</i>
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10. That being so, the fact that an adjustment relating to disallowance of expenditure u/s 40A(7) indicated in Form No.3CD of the Audit Report was not made in the intimation u/s 143(1)(a) is a mistake apparent from record which can be rectified u/s 154 of the I.T. Act. It is not mandatory that such a rectification process gets initiated only at the request of the assessee. The Department can also take suo-moto cognizance of any mistake apparent from record and take suitable

action to rectify this mistake. I find no infirmity in the order u/s 154 of the I.T. Act.

11. The appellant has not stated as to how the disallowance indicated by the Auditor in Col. 21(e) of Form No. 3CD relating to provision for payment of gratuity not allowable u/s 40A(7) of Rs.3,22,425/- is not disallowable. The appellant has been silent on this issue. That being so, I find that the adjustment made to the total income u/s 154 on account of provision for payment of gratuity is not allowable u/s 40A(7) and is required to be added back. The action of the AO, CPC is upheld.”

6. We heard the submission of the Id. DR and relied on the order of revenue authority. During processing of return u/s 143(1) the provision for payment of gratuity is added back with total income by contravening section 40A(7) amount to Rs.3,22,425/-. As per the revenue the CPC has a power to disallow the amount on basis of the tax audit report, sated in Col. 21(e) of Form No. 3CD which is not come under purview of mistake apparent from the record, u/s 154. So, section 154 will not be applicable in this case. But the assessee prayed that a reasonable opportunity was denied by the revenue authorities. So, in our considered view, before going for addition u/s 40A(7) the assessee should get a reasonable opportunity before the revenue authority for processing of rectification u/s 154.

Accordingly, we remit back the matter to the Id. AO for further adjudication related to the addition made by the CPC.

7. In the result, the appeal of the assessee bearing **ITA No. 63/Asr/2023** is allowed for statistical purposes.

Order pronounced in the open court on 30.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order