

Decision of HC having jurisdiction over AO to be followed by NFAC

The Hon'ble ITAT, Agra in ***M/S Mahadev Cold Storage v. Assessing Officer [ITA No. 41 & 42/Agr/2021 and ITA No. 20 & 21/Agr/2021 dated June 14, 2021]*** held that the National Faceless Appeal Centre (“NFAC”) should follow and apply the decision of jurisdictional High Court having jurisdiction over Assessing Officer (“AO”) before passing any appellate order by way of draft or final appellate order. Any relief should not be refused to assessee by NFAC merely because there was some conflicting decision of non-jurisdictional High Court.

Facts:

M/s Mahadev Cold Storage (“**the Appellant**”) is engaged in the business of cold storage of potatoes and filed a return of income for Assessment Year (“AY”) 2018-2019, on September 9, 2018, declaring net taxable income of Rs. 1167861/-. The return was processed by the AO and he disallowed the expenditure of Employees contribution to ESI and PF on the grounds that these were not credited to employees account on or before the due date as per Section 36(1)(va) of the Income Tax Act, 1961 (“IT Act”).

Aggrieved by the above disallowance, the Appellant filed an appeal in NFAC. The CIT(Appeals), NFAC also disallowed the above amount vide order dated February 27, 2021 (“**Impugned Order**”) following the judgement of non-jurisdictional Hon'ble High Court, Gujarat in ***CIT v. State Road Transport Corporation [Tax Appeal No. 637 of 2013 dated December 26, 2013]*** and not relying on the judgement of jurisdictional Hon'ble High Court, Allahabad in ***Sagun Foundry Pvt. Ltd v. CIT [Income Tax Appeal No. 87 of 2006 dated December 21, 2016]***.

Being aggrieved by the Impugned Order, the Appellant has filed the present appeal.

Issue:

Whether NFAC can disallow the contribution made by the Appellant in the employees account following the decision of non-jurisdictional High Court instead of jurisdictional High Court?

Held:

The Hon'ble ITAT, Agra in ***ITA No. 41 & 42/Agr/2021 and ITA No. 20 & 21/Agr/2021 dated June 14, 2021***, has held as under:

- Held that though, centralized NFAC, had been created however it should be ensured ,that whenever any appellate order is passed by NFAC, then the decision of jurisdictional High Court, having the jurisdiction over the AO should be followed and applied by the NFAC.
- Merely because there is some conflicting decision of a non-Jurisdictional High Court, the relief should not be refused to the assessee.
- Observed that, the **appeal against the tribunal (i.e., Agra in the present case), shall lie in Hon'ble High Court, Allahabad** as per Section 260A of the IT Act and therefore, the decisions of **Hon'ble High Court, Allahabad** are not only binding on the tribunal but also on NFAC.
- Noted that, despite the binding decision of the jurisdictional High Court and tribunal, NFAC choose to contemptuously ignore the binding precedent of jurisdictional High Court and applied the non-jurisdictional High Court decision to deprive the Appellant from the benefit of the judicial High Court decision.
- Further, the purpose of setting up centralized NFAC is to ensure efficiency, transparency and accountability. Further, NFAC was set up with good intentioned and well thought notification but the same is not yielding the desired result on account of incorrect application of law.
- Directed that, the artificial intelligence and data analytic should be used for the smooth functioning of NFAC in all aspects. Further, appropriate remedial measures should be taken by the CBDT at the earliest for recalling such kind of orders, by issuing comprehensive guidelines for NFAC and giving relief to the honest assessee.
- Hence, set aside the Impugned Order and allowed the appeal of the Appellant by respectfully relying on the decision of jurisdictional High Court, Allahabad.

Online GST Course by Bimal Jain

Recorded: Certified Advanced GST Course

Course Details: Certificate of Participation will be Provided, Free GST Updates on E-mail, WhatsApp, Telegram for 1 Year, Background Material and PPT will be Provided on the

downloadable basis, Total 21 Recorded Sessions (60 Hours), will be available for 120 hours or 60 Days whichever expires earlier.

For Registration:- <https://cutt.ly/hxjl5Cu>

Recorded: GST Course on Exports, Deemed Exports, SEZ, Imports, Merchandise Exports, Inverted Duty Structure (including Refunds)

Course Details: 6 Online Recorded Sessions of 2.30Hrs each with Background Material (BGM)

For Registration:- <https://cutt.ly/pvw7mzl>

For more details, Call: +91-8076563802, E-mail: intern@a2ztaxcorp.com, Web: www.a2ztaxcorp.in

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.