

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI  
BEFORE MS. DIVA SINGH, JUDICIAL MEMBER**

**ITA No. 2282/Del/2017  
Assessment Year: 2013-14**

DCIT (Exemption) Exemption Circle Ghaziabad	<b>Vs.</b>	Uttaranchal State Seed Organic Production Agency 3 <sup>rd</sup> Floor, Krishak Bhawan, Nehru Colony, Dehradun  <b>PAN : AAJU0099B</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	None
Respondent by	Sh. T. Vasanthan, Sr. D.R.
Date of hearing	23-08-2017
Date of pronouncement	18-10-2017

**ORDER**

**PER DIVA SINGH, J.M. :**

The present appeal has been filed by the Revenue assailing the correctness of the order dated 31.01.2017 of CIT(A) Dehradun pertaining to 2013-14 assessment year on the following grounds:-

*“The learned Commissioner of Income Tax (Appeal) has erred in law and on facts in allowing the appeal of the assessee after deleting the addition of Rs. 13,22,303/- made an count of accumulation of income.*

*The learned Commissioner of Income Tax (A) has erred in law on facts in allowing the appeal of the assessee after deleting the addition of Rs. 34,24,224/- made an account of accumulation of income.*

*Appellant craves leave to modify / amend or add any one or more grounds of appeal.*

*The order of learned CIT(A) be cancelled and the order of the AO restored.*

2. At the time of hearing, no one was present on behalf of the assessee. The appeal was passed over. In the second round also no one was present. However, the considering the material available on record, it was considered appropriate to proceed with the present appeal *ex parte qua* the assessee appellant on merits after hearing the learned Sr. DR.

3. The assessee is a society as per record registered under the Societies Act with Registrar of Society U.P. vide certificate No. 118/2001 dated 17.4.2005 which was renewed for a period of five years with effect from 16.4.2011. The assessee society was granted registration u/s 12A of the Act, by the Commissioner of Income Tax, Dehradun vide order dated 25.07.2006. The assessee society has also been granted exemption u/s 10(23C)(iv) of I.T. Act, 1961 by CCIT, Dehradun vide order dated 17.03.2008. The objectives of the society are to certify seeds of any notified kind or varieties or crops which are eligible for seed certification under the Seeds Act. The assessee has claimed exemption u/s 10(23C)(iv) of I.T. Act, 1961.

4. A perusal of the assessment order shows that the Assessing Officer took note of the fact that the assessee had shown gross receipts at Rs. 8,76,87,493/- and claimed application of income at Rs. 7,12,33,389/-. The Assessing Officer considering the record hold that amount expended was Rs. 6,97,87,842/- and that there was a taxable surplus of Rs. 47,46,527/-. The assessee carried the issue before the CIT(A). The detailed submissions have been extracted in the said order at pages 2 to 4. Apart from that the following oral submissions as extracted in para 7 and 8 were advanced before the CIT(A). The same are reproduced hereunder:-

*“Shri Shobhit Jain, CA and Shri D.P. Ghildiyal, Accounts Officer appeared on behalf of the assessee and submitted that the assessee was claiming exemption u/s 10(23C)(iv) and cumulative of unspent fund was for the sole purpose of promotion of seed certification as per the objectives notified in the exemption notification. On consideration of the arguments of the assessee’s counsel, the counsel was asked to furnish:-*

1. *Copy of Balance Sheet and Audit Report.*

2. Details of investment made in bank deposits
3. Registration certificate evidencing the registration u/s 10(23C)(i).  
Section 12 of the I.T. Act, 1961.

*While filing these submissions, it was submitted that the society had kept its cumulative funds as part of the corpus of the society with investment in the form of term deposit in scheduled banks in compliance to clause (a) & (b) of third proviso to section 10(23C)(iv). It was submitted that the proviso to section 10(23C)(iv) did not specified the modes of advances to be kept. Further, it clearly specified that all the cumulative funds needs to be remain with the society and in compliance of the same the society transfer all its surplus to the corpus of the society and this could be verified from the audited financial statement. It was submitted that the AO had erred in her judgment by adopting the exemption calculation u/s 12AA where the accumulation of over 15% was disallowed. It was submitted that both the society was having registration under section u/s 12AA of the I.T. Act, 2016. However, it was claiming deduction u/s 10(23C)(iv) and it had complied with all its provisions including obtaining audit report in Form 10BB.”*

5. Considering these submissions, the CIT(A) proceeded which is held as under:-

*“I have duly considered the facts and circumstances of the case. The assessee has placed on record a copy of the order granting it exemption u/s 10(23C)(iv) of the I.T. Act, 1961 dated 17.03.2008. It has been stated, in the said order that the approval does not require renewal unless it is withdrawn as per the provisions of the I.T. Act, 1961. The AO has not brought on record any indication to the effect that this exemption has been withdrawn to the assessee society.*

*It is observed from a perusal of section 10(23C)(iv) that as per the third proviso to section 10(23C)(iv), it has been provided that the society should apply its funds or accumulates wholly or exclusively for the objects for which it is established and in a case where the accumulation of the amount exceeds 15%, sur accumulation should not exceed the period of 5 years. It has also been provided - the society should not invest or deposit its funds other than any assets held by trust or institution as part of its corpus, in any other manner than one of the forms modes specified in sub section (5) of section 11.*

*Deposit in any account with the scheduled bank or the cooperative society engaged in carrying on the business of bank is one of the mode prescribed under subsection (5) of section 11. It is noticed from the audit report that the surplus/deposit of the society is transferred to the corpus funds of the society. It is also noticed from a perusal of the balance sheet of the assessee as on 31.03.2013, that the entire excess of income over expenditure of Rs. 2,44,03,546.92 has been carried to the corpus funds and it is also noticed that the bank deposit of the assessee society have gone up by Rs. 2,82,67,322.52. Thus, it is quite clear that the accumulated funds invested in the modes as specified in section 11 sub-section 5 of the I.T. Act, 1961 which has also been confirmed by the auditor in the audit report in Form No. 10BB. As the AO has not brought anything on record to suggest any violation of the conditions governing accumulation and utilization and as no such eventuality emerges from the audit report also, it is hold that the addition made by the AO in taxing the surplus above 15%, without having regard to the fact that the assessee was entitled to the exemption u/s*

10(23C)(iv) and was compliant with the provisions was not justified. In the circumstances, the addition of Rs. 33,24,224/- on account accumulated fund is held to be not justified.

However, it is observed that the AO has disallowed depreciation of 13,22,303/- which is justified considering that the assessee is considering capital expenditure and capital advances as part of the utilization. Even, otherwise it is noticed that in the revised grounds of appeal filed during the hearing, the assessee has withdrawn this plea. However, since the money so claimed to be deposited, has actually been invested in deposits in scheduled bank(which exceed the excess of income over expenditure as reflected in P&L A/c), it may be treated as a part or accumulated surplus invested in the specified modes and will not therefore have tax implications.  
In the result, the appeal is partly allowed.”

6. Though the learned Sr. DR relied upon the assessment order however no infirmity in the aforementioned finding has been pointed out by him. On a consideration of the peculiar facts and circumstances of the case and the reasoning of the learned CIT(A). I find that in the absence of any infirmity in the said order, the departmental grounds are not maintainable accordingly these are dismissed.

7. In the result, the appeal of the Revenue is allowed.

**The order is pronounced in the open court at the time of hearing itself on 18<sup>th</sup> October, 2017.**

Sd/-  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**

SH

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR,  
ITAT NEW DELHI

		Date	
1.	Draft dictated on	23.08.2017	PS
2.	Draft placed before author	17.10.2017	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

