

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.2219/PUN/2016
निर्धारण वर्ष / Assessment Year : 2012-13

Agricultural Produce Market Committee,
1st Floor, Kisan Kranti Building,
Market Yard, Station Road,
Ahmednagar – 414001

.... अपीलार्थी/Appellant

PAN: AAALA0304R

Vs.

The Dy. Commissioner of Income Tax,
Ahmednagar Circle, Ahmednagar

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishore Phadke
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 15.02.2018	घोषणा की तारीख / Date of Pronouncement: 26.02.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-2, Pune, dated 18.07.2016 relating to assessment year 2012-13 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT(A)-2 erred in law and on facts in denying exemption u/s 10(26AAB) of ITA, 1961 on rental income earned by the appellant on letting out of premises to non-members amounting to Rs.17,29,598/-.*
2. *The learned CIT(A)-2 erred in law and on facts in holding that the exemption u/s 10(26AAB) is allowed only to such income which is derived from activities which are for promoting the agriculture marketing activities. The learned CIT(A) ought to have appreciated that section 10(26AAB) provides exemption to **any** income earned by an assessee for the purposes of regulating the marketing of agricultural produce.*
3. *The learned CIT(A)-2 erred in law and on facts in not appreciating that activities for which said shops are let out, are only for benefit & facilitation to the members of APMC and the revenue arising from the same is utilized for the purposes for which appellant is formed.*
4. *Without prejudice to the ground no.1 & 2, the learned CIT(A)-2, Pune erred in law and on facts, in treating rent income from letting out of properties as 'Income from House Property' instead of 'Business Income'. Further learned IT Authorities ought to have allowed corresponding expenditure like repairs / depreciation & other direct & indirect cost incurred to earn such income.*

3. The issue arising in the present appeal is against the claim of exemption under section 10(26AAB) of the Act.

4. Briefly, in the facts of the case, the assessee is a local authority which was providing facilities for marketing of agricultural produce. The profit arising from such activities was exempt in the hands of assessee. During the course of assessment proceedings, the Assessing Officer noted that the assessee had shown rent receipts from parties other than the members / farmers. The assessee was asked to provide the details of such rental income. In response, the assessee provided details of premises given on rent, from whom the assessee had received aggregated rent of ₹ 17,29,598/-. The Assessing Officer noted that the premises of Agricultural Produce Market Committee (in short 'APMC') was given on rent to various parties which were not doing business related to agricultural activities i.e. electronic show rooms, medical shop, building material & hardware shop, Excise Office, etc. The assessee was thus, show caused as to why the said rent should not be treated as income other than the activity of APMC and be not taxed in its hands. The assessee in

reply, relying on the provisions of section 10(26AAB) of the Act emphasized that the word 'any income' in the section covers activities undertaken by the assessee. However, the Assessing Officer did not accept the contention of assessee since the intention of Legislature was to allow exemption to APMC for promoting marketing of agricultural produce and not for other activities. He further observed that the rental income received from farmers and members of APMC as well as other incidental activities were already considered as incidental income of assessee and exemption under section 10(26AAB) of the Act was allowed. However, the rental income received from other persons which were not related to even agricultural activities could not be considered as incidental income of the assessee. Hence, the assessee was held to be not eligible for exemption under section 10(26AAB) of the Act on rental income of ₹ 17,29,598/- and the same was added as income of the assessee.

5. The CIT(A) observed that as per section 10(26AAB) of the Act, any income of APMC would be treated as exempt which was constituted for the purpose of regulating the marketing of agricultural produce. Upholding the order of Assessing Officer, the CIT(A) held the assessee not eligible for exemption relating to such rental income on shops / premises which had been let out to outside parties, where the activities of parties were not at all related to promotion of agricultural activities. However, the CIT(A) allowed the alternate plea of assessee that once the rental income had been treated as income from house property, then appropriate deduction under section 24 of the Act should be allowed to the assessee.

6. The assessee is in appeal against the order of CIT(A) on the first issue of claim of exemption under section 10(26AAB) of the Act. The alternate plea

of the assessee is that rental income should be assessed as business income and not as income from house property.

7. The learned Authorized Representative for the assessee pointed out that the wording of section 10(26AAB) of the Act provides 'any income' which is for the purpose of regulating marketing of agricultural produce means the 'activities carried on by a concern which is regulating the marketing of agricultural produce'. In this regard, reliance was placed on the decision of Amritsar Bench of Tribunal in Market Committee Vs. DCIT in ITA No.241(Asr)/2015, relating to assessment year 2010-11, order dated 17.12.2015. He further relied on the ratio laid down by the Hon'ble Bombay High Court in Trustees of Vanita Vishram Vs. CIT (2005) 148 TAXMAN 546 (Bom) and pointed out that the proposition laid down was what is the meaning of term of 'any income'. He thereafter, drew attention to the latest Circular No.18/2017 issued by CBDT dated 29.05.2017, copy of which is placed on record.

8. The learned Departmental Representative for the Revenue on the other hand, pointed out that the assessee had let out the shop for activities which were much different from the marketing of agricultural produce. He referred to the order of CIT(A) with emphasis on his observations in para 4.2.1 and pointed out that where the activities of rented premises were not related to agricultural produce, then the income is to be assessed in the hands of assessee.

9. The learned Authorized Representative for the assessee in rejoinder stressed on the definition provided in section 10(26AAB) of the Act.

10. On perusal of record and after hearing rival contentions, the issue which arises in the present appeal is in relation to the claim of exemption under

section 10(26AAB) of the Act. Section 10(26AAB) of the Act provides as under:-

“Section 10(26AAB): “Any income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce.”

11. The expression used in the said section is ‘any income’ of Agricultural Produce Market Committee or Board constituted under any law for the purpose of regulating marketing of agricultural produce. In other words, exemption is to be provided to APMC or Board constituted for the purpose of regulating marketing of agricultural produce in respect of any income of such APMC or Board. The term ‘for the purpose of regulating the marketing of agricultural produce’ is connected to the body constituted for the purpose i.e. APMC or Board and it is provided that ‘any income’ arising to such body is exempt from tax. Narrow interpretation of Revenue authorities that the income arising to APMC should be for the purpose of regulating marketing of agricultural produce is incorrect.

12. The Amritsar Bench of Tribunal in Market Committee Vs. DCIT (supra) had held as under:-

“6. Having considered the rival contentions in the light of the material placed on record, I find the grievance of the assessee to be justified. Section 10(26AAB) of the Act runs as follows:

“Section 10(26AAB): “Any income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce.”

7. Thus, there is no ambiguity in the provisions of the section, in as much as it makes no distinction as made by the Authorities below. It talks of any income of an agricultural produce Market committee as being exempt there under, for the purpose of regulating the marketing of agricultural produce. The Taxing Authorities have gone wrong in observing that since the rent in question was not from the assessee’s main activities with regard to the Marketing of agricultural produce, it was not exempt under the section. There is no legal force behind this observation and the consequential disallowance made.

8. *The Hon'ble Finance Minister was categorical in his speech (supra) on the Finance Bill, 2008 made in the Lok Sabha, proposing to insert section 10(26AAB) in the Act.*

“Clause 3 of the Finance Bill, 2008 seeks to amend the definition of ‘charitable purpose’ so as to exclude any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature or use of application, or retention of the income from such activity. The intention is to limit the benefit to entities which are engaged in activities such as relief of the poor, education, medical relief and any other genuine charitable purpose, and to deny it to purely commercial and business entities which wear the mask of a charity. A number of Hon'ble Members have written to me expressing their concern on the possible impact of the proposal on Agricultural Produce Market Committee (APMC) or State Agricultural Marketing Boards (SAMB). Since there is no intention to tax such committees or boards, and in order to remove any doubts, I propose to insert a new clause (26AAB) in section 10 of the Income tax Act to provide exemption to any income of an APMC or SAMB constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produced. I once again assure the House that genuine charitable organizations will not in any way be affected. The CBDT will, following the usual practice, issue explanatory circular containing guidelines for determining whether an entity is carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as “advancement of any other object of general public utility.”

9. *Further, in “Agricultural Market Committee, Tanuku & Ors.” (supra), the Hon'ble Andhra Pradesh High Court has observed that a plain reading of section 10(26AAB) of the Act, shows that from the date of coming into force of section 10(26AAB), the income of an Agricultural Market Committee shall not be included in the computation of income of a previous year for the purpose of the Act, that is to, so to say the entire income by an Agricultural Market Committee stands exempted from charge to income-tax.*

10. *No decision contrary to “Agricultural Market Committee, Tanuku & Ors.” (supra), has been placed before me by the Department.”*

13. Further, the CBDT has vide Circular No.18/2017, dated 29.05.2017 while issuing the Circular on requirement of tax deduction at source in case of entities whose income is exempt under section 10 of the Act vide para 4 noted as under:-

“4. Accordingly, it has been decided that in case of below mentioned funds or authorities or Boards or bodies, by whatever name called, referred to in section 10 of the Income-tax Act, whose income is unconditionally exempt under that section and who are also statutorily not required to file return of

income as per section 139 of the Income-tax Act, there would be no requirement for tax deduction at source, since their income is anyway exempt under the Income-tax Act –

(i)....

(ii)....

.....

(xiii) Agricultural Produce Marketing Committee referred to in clause (26AAB);

.....”

14. The CBDT has thus, clarified that in the case of APMC referred to in section 10(26AAB) of the Act, income is unconditionally exempt under that section.

15. The Hon'ble Bombay High Court in Trustees of Vanita Vishram Vs. CIT (supra) while deciding the case of an educational institution, dealt with the issue of taxability of interest derived by the trust from and out of investment, of its surplus income / funds and whether the same is exempt under section 10(22) of the Act. Reference was made to provisions of section 10(22) of the Act, wherein the expression 'any income' of university or other educational institutions, was used. The Hon'ble High Court held that *In our opinion, both words “any” and “of” carry a definite meaning. It is not income from the educational institution that is exempt but any income of the educational institution. If the word had been “from”, the position would have been that the income should have been derived from the actual running of the school itself. What appears to be relevant is that the income should reach the school to be utilized by it for educational purposes and; not for the purposes of profit.* The Hon'ble High Court further held as under:-

“24. It is, thus, obvious that granting exemption to the income of the educational institutions is to enable such institutions to utilize the moneys available with them for the purpose of running the educational institutions. The source from which the moneys are received is of no consequence, what is relevant is the application of income. So long as the income of the institution, which solely exists for educational purpose and not for earning profit, as applied for the educational purpose, such income of the institution is exempted under section 10(22) of the Act.”

16. Applying the said ratio to the facts of the present case, where it is not case of Department that the rental income earned by APMC i.e. assessee has not been used for the promotion of its activities and merely on the ground that rental income was earned from entities which were not engaged in carrying out marketing of agricultural activities, cannot stand. Accordingly, the Assessing Officer is directed to treat the aforesaid rental income as income of APMC, which in turn, is eligible for exemption under section 10(26AAB) of the Act. The ground of appeal raised by the assessee is thus, allowed and the issue raised on without prejudice basis thus, becomes academic.

17. In the result, appeal of assessee is allowed.

Order pronounced on this 26th day of February, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 26th February, 2018.
GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune