

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 2803/Bang/2017
Assessment Year :2014-15

The Income-tax Officer, Ward – 1 (2), Hubballi.	Vs.	M/s. The Annigeri Agricultural Produce Co-operative Sale & Processing Society Ltd., CTS-42, Gadag Navalgund Road, Annigeri, Navalgund, Dharwad – 582 201. PAN: AACAT2053R
APPELLANT		RESPONDENT

Appellant by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)
Respondent by	:	Shri E.S. Kiresur, Advocate

Date of hearing	:	20.03.2018
Date of Pronouncement	:	23.03.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the revenue which is directed against the order of Id. CIT(A), Hubli dated 31.08.2017 for Assessment Year 2014-15.

2. The grounds raised by the assessee are as under.

“i) Whether, on the facts and in the circumstances of the case and in law, the learned CIT(Appeals), Hubballi, was justified in allowing the assessee's claim for allowing deduction u/s.80P(2)(a)(iii) of the I.T.Act, 1961, of Rs.43,97,160/- for the Asst. Year 2014-15, by treating the income as exempt on account of marketing of agricultural produce of its members when the assessee-society has not directly marketed the raw cotton brought to the society by its members, whereas the cotton has gone through the process of ginning and pressing with the aid of power and thus falls under the provisions of section 80P(2)(a)(v) of the I.T.Act. Since the assessee has processed the agricultural produce i.e. the raw cotton has gone through the process of ginning and processing with the aid of power, the assessee is not eligible for deduction under the provisions of section 80P(2)(a)(v) of the I.T.Act, 1961.

ii) Whether on facts and in the circumstances of the case and in law, the CIT(Appeals) was justified in allowing the assessee's claim of deduction u/s.80P(2)(a)(iii) of the I.T.Act, 1961, of Rs.43,97,160/- for the Asst. Year 2014-15 by relying on the case laws viz. (i)Hon'ble Gujarat High Court's judgement in the case of CIT Vs. Karjan Co-op. Cotton Sale Ginning and Pressing Society Ltd. (1981) 129 ITR (Guj.); (ii)Judgement of Hon'ble High Court of Kerala in the case of Meenachil Rubber Marketing and Processing Co-operative Society Ltd. Vs. CIT (ITR 1992 - 193 ITR 108), and (iii)Judgement of Hon'ble High Court of Karnataka in the case of Addl.CIT Vs. Ryots Agricultural Produce Co-op. Marketing Society Limited (1978) (115 ITR 709), as the case laws are not applicable to the assessee's case as they are related to marketing of agricultural goods of the members of the co-operative society.

*iii) In view of the aforementioned grounds, the addition made on account of "**Disallowance of deduction claimed u/s.80P(2)(a)(iii) of Rs.43,97,160/-**" may be restored.*

iv) Any other ground that may be made during the appeal.

v) The appellant craves leave to add, alter, amend and delete any of the grounds of appeal."

3. The Id. DR of revenue supported the assessment order. He drawn my attention to page 2 Para 3 of the assessment order and pointed out that it is noted by AO in this Para that the assessee has received ginning charges of Rs. 13,10,008/- & Rs. 16,60,201/- in respect of Unit-I and Unit-II respectively and pressing charges of Rs. 38,66,620/-. He also pointed out that AO has further noted in course of assessment proceedings that assessee was asked to explain as to why the deduction claimed in respect of the above receipts should not be disallowed as the assessee has processed, with aid of power, the agricultural produce of its members. The AO has further noted that the assessee society vide its letter dated 10.12.2016 submitted that the society is engaged in the business of marketing of the agricultural produces grown by its members. It was explained before the AO that the society purchases the raw cotton from the farmers and then sell it in the open market by ginning the raw cotton. In this manner, the assessee is doing the business of marketing of agricultural produces of its members and therefore, it is contended that the assessee's business is covered by the provisions of section 80P(2)(iii) of the IT Act, 1961.

The AO was not satisfied and he rejected the claim of the assessee u/s. 80P(2)(iii). He further submitted that the Id. CIT(A) has decided the issue by following certain judgments without considering the facts of the present case brought on record by the AO. He submitted that therefore, the order of CIT(A) should be reversed and that of the AO should be restored.

4. As against this, the Id. AR of assessee supported the order of CIT(A). He also submitted that on pages 1 & 2 of the paper book is the trading account of assessee and on pages 3 to 5 of the paper book is P&L Account of the assessee and from the same, it can be seen that in trading account, the amounts of ginning charges and pressing charges are debited and the same amount is credited in the P&L Account and therefore, there is no income in respect of these charges and hence, even as per the AO's contention, no disallowance is justified out of the assessee's claim for deduction u/s. 80P(2)(iii). He also placed reliance on a judgment of Hon'ble Kerala High Court rendered in the case of Meenachil Rubber Marketing and Processing Co-operative Society Ltd. vs. CIT as reported in ITR-1992-193-108 dated 23.01.1990. He submitted a copy of this judgment. He also submitted that the facts of the present case are similar to the facts in that case.
5. I have considered the rival submissions. I find force in the submissions of the Id. AR of assessee that there is no actual income in respect of realisation of ginning charges and pressing charges because the same amount is debited in trading account and credited in the P&L Account. Moreover as per the judgment of Hon'ble Kerala High Court on which reliance has been placed by Id. AR of assessee, the matter in dispute is squarely covered in favour of the assessee because the facts are similar. In that case, the assessee is a co-operative society purchases raw latex from its members and processed the same by the centrifugal method and sold the commodity. In that case also, the assessee's claim was for deduction u/s. 80P(2)(a)(iii) of the IT Act and the AO declined to accept this claim of the assessee on the same reasoning that the sale was after processing and therefore, section 80P(2)(a)(iii) is not applicable. Hence it is seen that the facts of the present case and in that case are identical.

In that case, it was held by Hon'ble Kerala High Court that what is marketing is an expression of wide import. "Marketing" generally means "the performance of all business activities involved in the flow of goods and services from the point of initial agricultural production until they are in the hands of the ultimate consumer." It is also held that the marketing functions involve exchange functions, such as, buying and selling, physical functions, such as, storage, transportation, processing and other commercial functions, such as, standardisation, financing, market intelligence etc. Hon'ble Kerala High Court held that the term "marketing" is now commonly used in a wide sense to refer to the performance of business activities directed towards, and incidental to, the flow of goods and services from producer to consumer or user. Hence it is seen that processing is also held to be part of marketing. Ultimately the issue was decided by Hon'ble Kerala High Court in favour of the assessee. Hence respectfully following this judgment of Hon'ble Kerala High Court, I hold that no inference is called for in the order of CIT(A) in the present case.

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 23rd March, 2018.
/MS/

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.