

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 830/JP/2017
निर्धारण वर्ष/Assessment Year : 2014-15

Ajmer Sahkari Upbhokta Wholesale Bhandar Ltd., Apna Bazar, Parao, Ajmer.	बनाम Vs.	The ITO, Ward-1(2), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAA 0383 R		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri G.C. Jain (Adv.)
राजस्व की ओर से / Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 16/05/2018
उदघोषणा की तारीख / Date of Pronouncement: 22/05/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 10.08.2017 of Id. CIT(A), Ajmer for the assessment year 2014-15. The assessee has raised the following ground under as under:-

"1. The learned Commissioner of Income Tax (Appeals) grossly erred-in law and on facts in confirming disallowance of Rs. 370454.00, in respect of contribution to reserve fund, made by the Income Tax officer, ward-1(2), Ajmer.

2. The order confirmed by the learned Commissioner of Income Tax (Appeals) is bad-in-law, based on surmises & conjectures, arbitrary & capricious, injudicious, against the settled principles of law, as such the same deserved to be amended."

2. The only issue arises in this appeal of the assessee is regarding disallowance of Rs. 3,70,454/- in respect of contribution to the reserve fund which was confirmed by the Id. CIT(A).

3. We have heard the Id. AR as well as the Id. DR and considered the relevant material on record. At the outset we note that an identical issue was considered and decided by this Tribunal in assessee's own case for the assessment year 2009-10 to 2013-14 in ITA No. 989 to 992/JP/2016 vide order dated 30.11.2017 and held in para 8 and 9 as under:-

"8. Having considered the rival submissions as well as the relevant material on record it is noted that as per section 48(1) of the Rajasthan Cooperative Societies Act, 2001, the Cooperative Society is required to transfer 25% of the profit to the reserve fund within such period as may be prescribed. For ready reference section 48 of Rajasthan Cooperative Societies Act, 2001 is reproduced as under:-

"Section 48 (1) A cooperative society shall, out of its net profit and within such period as may be prescribed:

a) transfer to the reserve fund, such twenty five percent of its profits and within such period as may be prescribed;

b) credit one portion of the profits, as may be prescribed to the cooperative education and training fund constituted under the rules;

c) credit such portion of the profits as may be prescribed in the bye-laws, in the fund created under bye-laws to meet out the losses, if any, and

d) Pay dividend to members on their paid up share capital at such rate, as may be prescribed;

(2) the balance of the net profit may be utilized for all or any of the following purposes namely:

a) payment of incentive to member....

b) constitution of, or contribution to, such special fund as may be specified in the bye-laws;

c) donations of amount not exceeding 10% of the net profit

d) payment of bonus to employees."

Therefore, it is statutory provision which contemplates the transfer of 25% profit of the Cooperative Societies to the reserve fund. However, neither the AO nor Id. CIT(A) has proceeded to examine the provisions of Rajasthan Cooperative Societies Act, 2001 requiring the assessee to transfer the profit equivalent 25% to the reserve fund. Further, the correctness of the quantum as claimed by the assessee and also the deposit in the FDRs as well as withdrawal of the amount has not been examined and verified by the authorities below.

9. As regards the allowability of such transfer to the reserve fund as required under the statute the issue has been considered by the Hon'ble MP High Court in case of Keshkal Cooperative Marketing Society Ltd. vs. Commissioner of Income (supra) in paras 11 to 16 is as under:-

"11. It is settled law that in order to claim deductible amount from the income, it must fulfill two essential conditions, viz., (i) that the amount must be laid out wholly and exclusively for the purpose of the business, and (ii) that it should not be expenses of capital

nature. Both these conditions must be complied with before the assessee claims deduction from the income. In the instant case, as stated aforesaid, the said amount of Rs. 1,66,763 does not comprise income of the assessee on account of its being diverted under the statutory provisions of section 43(2), then certainly, in our opinion, the assessee can claim deduction under section 37(1) which reads as under :

"(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and section 80VV and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head 'Profits and gains of business or profession'."

12. *The view taken in Poona Electric Supply Co. Ltd.'s case (supra) was followed by the Bombay High Court in Amalgamated Electricity Co. Ltd. v. CIT [\[1974\] 97 ITR 334](#) and reiterated by the Supreme Court in CIT v. Travancore Sugars & Chemicals Ltd. [\[1973\] 88 ITR 1](#). Further, in CIT v. Bombay State Road Transport Corpn. [\[1977\] 106 ITR 303 \(Bom.\)](#), it has been held that the contributions made under a legal obligation cast upon a statutory organization under a statutory provision, the sum will have to be allowed as deduction in computing its profits.*

13. *Therefore, in the instant case also, the deduction as claimed by the assessee-society amounting to Rs. 1,66,763 is allowable deduction, as the said amount does not comprise income of the assessee because the same having been diverted under the provisions of section 43(2) and can only be invested or utilised in such manner and on such terms and conditions as may be laid down by the Registrar in this behalf, as required under clause (2) of section 44. As such the said amount is not available for the use of the assessee-society at its option. Therefore, the real test for such deductible sum is that if by making statutory deposits, the assessee loses control over the said amount, being not available for its use,*

then such amount is certainly deductible from the income as contemplated under sections 36 and 37.

14. *On behalf of the revenue, Shri B.K. Rawat, the learned counsel, relying upon the decision of Vazir Sultan Tobacco Co. Ltd. v. CIT [\[1981\] 132 ITR 559 \(SC\)](#), argued that the said amount is not liable to deduction. In Vazir Sultan Tobacco Co. Ltd.'s case (supra), the main question raised was whether amounts retained or apportioned or set apart by the concerned assessee-company by way of making provisions (a) for taxation, (b) for retirement gratuity, and (c) for proposed dividends from out of profits and other surplus, could be considered as 'other reserves' within the meaning of rule 1 of the Second Schedule to the Super Profits Tax Act, 1963 for inclusion in the capital computation of the company for the purpose of levying super tax. Their Lordships of the Supreme Court remanded Vazir Sultan Tobacco Co. Ltd.'s case (supra) as was found that there was no sufficient material on record regarding whether the appropriation made by the Vazir Sultan Tobacco Co. towards gratuity reserve was based on any actuarial valuation of whether it was appropriation of an ad hoc amount. Such is not the position in the instant case wherein section 43(2)(a) specially speaks of 'transfer of an amount not less than 25 per cent of such profits to the reserve fund' and according to section 44(2) the said amount is not available for the use of the assessee and thus the facts of Vazir Sultan Tobacco Co. Ltd.'s case (supra) referred to by the revenue, are quite distinguishable from the facts of the instant case, hence, of no avail to the revenue.*

15. *From the discussion aforesaid, our answer to question No. 2 is in the affirmative, in favour of the assessee that the amount required to be transferred to the reserve fund under the statutory provisions, is liable to be deducted as business expenditure.*

16. *We, therefore, answer the questions of law referred to us thus :
Question No. 1 is answered in favour of the revenue that under the facts and circumstances of the case the activity of purchasing paddy*

from the members, milling it and selling the same did not amount to the marketing of the agricultural produce of the members as contemplated under section 80P(2)(a)(iii) of the Income-tax Act, 1961.

Question No. 2 is answered in favour of the assessee that under the facts and circumstances of the case the amount of Rs. 1,66,763 required to be transferred to the reserve fund under section 43(2) of the Societies Act was an allowable deduction either as a business expenditure or having been diverted by an overriding title. There will be no order as to costs in this reference."

Therefore, on principles this issue is covered by the decision of the Hon'ble MP High Court in case of Keshkal Cooperative Marketing Society Ltd. vs. Commissioner of Income (supra). No contrary precedent has been brought to the notice of the Tribunal. Accordingly by following the decision of the Hon'ble MP High Court the AO is directed to allow the claim of the assessee subject to the verification of the quantum being 25% of net profit and further to verify whether the assessee has complied with the provisions of Rajasthan Cooperative Societies Act or not by considering the withdrawal from the said amount transfer to the reserve fund and then to FDR. Needless to say while verifying the factual details the AO to give opportunity to the assessee."

Following the earlier order of this Tribunal in assessee's own case we direct the AO to allow the claim of the assessee subject to verify of quantum being 25% net profit and further to verify where the assessee has complied with the provisions of Rajasthan Cooperative Society Act or not.

In the result, the appeal of the assessee is allowed in above term.

Order pronounced in the open court on 22/05/2018.

Sd/-

(भागचंद)

(Bhagchand)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22/05/2018.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Ajmer Sahkari Upbhokta Wholesale Bhandar Ltd., Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 830/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar