

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC, CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER

ITA Nos. 964 & 1367/Chd/2017
(Assessment Year: 2010-11)

Bara Coop Agricultural Service
Society Ltd. Bara Tehsil Nadaun
Distt: Hamirpur (H.P.)

Vs.

The ITO
Hamirpur
H.P.

PAN No. AAAAT6360P

(Appellant)

(Respondent)

Assessee By : Shri M.R. Sharma
Revenue By : Shri Manoj Kumar
Date of hearing : 20/06/2018
Date of Pronouncement : 28/06/2018

ORDER

PER DIVA SINGH, J.M.

Both these appeals have been filed by the assessee assailing the correctness of the separate orders dated 06/03/2017 and 12/06/2017 of CITA, Palampur pertaining to 2010 – 2011 assessment year.

2. Addressing ITA No. 964/Chd/2017 it was the prayer of the Ld. AR that the issues may be sent back to the Assessing Officer for reconsideration of the full and correct facts as the AO while making the additions lost tract of the income of the assessee which was exempt. It was his submission that in terms of the Rules of the specific co-operative society there was business income of the assessee which was exempt. It was also his submission that the assessee has raised additional ground in the said appeal wherein the AO and the CIT(A) have made and sustained respectively the addition of Rs. 28,500/- paid to the Chartered Accountant treating it incorrectly to be the payment towards income tax paid. Accordingly it was his prayer that the said fact may also be verified by the assessing officer. Inviting attention to the income computed by the assessing officer which has been a subject matter of consideration by the CIT(A) it was his submission that the AO has wrongly inferred that the assessee is engaged in the business of banking activities. It was his submission that the assessee is a Co-operative society engaged in running a depot and providing

credit facilities to its members. It was his submission that no doubt the judgement of the Apex Court in the case of Totgar's Co-operative Sale Society Ltd Vs. ITO (2010) 322 ITR 283 (SC) would apply however the correct facts need to be taken into consideration.

3. The Ld. senior DR Mr. Manoj Kumar on going through the record submitted that he was unable to address how the computation of income has been carried out by the assessing officer. Accordingly he submitted that he would have no objection if the issue is remanded back for considering the correct facts. Similarly qua the payment stated to have been made to the Chartered Accountant towards his fees and not for paying income tax paid he stated that he would have no objection if the decision is taken on considering the correct facts by the officer after verification.

4. Accordingly in the light of the submissions the parties before the bench the issues are restored back to the file of the assessing officer with a direction to pass a speaking order in accordance with law. The assessee in its own interests is directed to place full and complete facts in support of its claim before the assessing officer along with supporting documents etc. Said order was pronounced in the open court at the time of hearing itself

5. In the result, the appeal of the assessee is allowed for statistical purposes.

6. Addressing the issues raised in ITA No. 1367/Chd/2017, the Ld. AR submitted that Assessing Officer has passed the order under section 143 (3)/147 whereby the provision for NPA has been considered as a contingent liability similarly on the other issues addressed in the grounds raised the AO has proceeded to pass the order under section 147 wherein facts have not been correctly appreciated. It was his prayer that it may also be appropriate to consider the fact that when these outstanding amounts were returned by the creditors to the assessee this would be part of its exempt income accordingly the assessee may be permitted to place full facts on record which may need to be verified. It was his prayer that since the issues are to be considered by the assessing officer let these facts also be verified and considered. The Ld. senior DR Mr. Manoj Kumar had no objection to the said prayer however it was his submission that the specific fact of debiting an amount of Rs. 9,42,500/- on

account of NPA had been a subject matter of discussion by the assessing officer in the reassessment proceedings and the assessee was required to reconcile the difference of Rs. 6,49,919/- between NPA disclosed by the auditor of ROC and the CA of the society. It was submitted that the assessee as per its reply quoted by the Assessing Officer stated that the ITR for 2010 – 11 Assessment Year had been filed by the CA of the society as the accounts of the society had not been audited by the auditor of ROC and ultimately after hearing the submissions of the assessee the addition was made. Similar was the position of the other addition. Accordingly it was his prayer that the submissions may be taken on record and he would have no objection if the issue is remanded and the issues are decided after considering the full and correct facts.

7. I have heard the submissions and perused the material available record. On a consideration of the material available on record and noting the specific facts which the Sr. DR wants to be taken note of which have been noticed by the assessing officer in the reassessment proceedings and addressed hereinabove accepting the prayer of the parties since the main issue itself is influx on account of bringing correct facts on record these issues also are restored back to the file of the Assessing Officer with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The assessee in its own interests is advised to participate fully and fairly in the proceedings before the Assessing Officer. Said order was pronounced in the open Court at the time of hearing itself.

8. In the result both the above appeals of the assessee are allowed for statistical purposes

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated : 28/06/2018

AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR