

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 321/JP/2018
निर्धारण वर्ष / Assessment Year :2009-10

Jaipur Pensioners Hitkari Sahakari Samiti Ltd., D-264, Durga Marg, Banipark, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 3(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAJ 0276 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 23/08/2018
उद्घोषणा की तारीख / Date of Pronouncement : 27/08/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 01/11/2017 of Id. CIT(A)-I, Jaipur for the A.Y. 2009-10. The assessee has raised following grounds of appeal:

- "1. The Id. CIT(A) has erred on facts and in law in deciding the appeal ex parte by refusing the adjournment sought by the A/R of the assessee.
2. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 35,92,641/- on account of difference in receipts of Rs. 41,62,389/- shown in Form No. 26AS and receipt of Rs. 5,69,748/- shown in the return of income ignoring that the differential amount is on account of incorrect amount reported by the deductor in Form 26AS or on account of the fact that the receipt has already been

taken into account in the books in FY 2007-08 relevant to A.Y. 2008-09.

3. *The assessee craves to amend, alter and modify any of the grounds of appeal.*

3. *Necessary cost be allowed to the assessee."*

2. The assessee is a cooperative society engaged in the activity of collection of electricity and water bills of JVVNL/Public Health Department (PHD). The assessee received commission from these two government agencies against the services of collecting of electricity and water bills from the public/consumers. The assessee filed its return of income on 30th September, 2009 for net loss of Rs. 10,47,309/-. The Assessing Officer during the assessment proceedings noted that the assessee has shown gross receipt at Rs. 5,69,748/- whereas as per the Form 26AS, total receipts for the year is Rs. 41,42,389/-. The assessee explained that the receipt reflected in the Form 26AS is already accounted in A.Y. 2008-09 as the contract for collecting the electricity/water bills on behalf of the JVVNL/PHD was already expired and it was not renewed and therefore, there was no commission income for the year under consideration. The Assessing Officer did not accept this contention of the assessee and made addition of differential amount of Rs. 35,92,641/-.

3. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) but could not succeed.

4. Before us, the Id AR of the assessee has submitted that the assessee sought time to reconcile the differences between the receipts declared in the books of account and as per Form 26AS, however, the Id. CIT(A) without allowing such time, has confirmed the addition made by the Assessing Officer. The Id AR has further referred to the details of Form No. 26AS and submitted that the JVVNL has issued an amended Form No. 26AS wherein the correct receipt/payment is shown at Rs. 10,73,382/- as against Rs. 33,21,705/- shown in the original Form No. 26AS considered by the Assessing Officer. Thus, the Id AR has submitted that there was a factual mistake in the amount shown in the Form 26AS being receipt from JVVNL, which was subsequently rectified and the amended Form No. 26AS was issued, which is placed at page No. 13 of the paper book. The Id AR has further submitted that since during the year under consideration, the assessee has not rendered any service of collecting bills on behalf of the JVVNL and PHED as the contract was expired and it was not renewed, therefore, the entire receipt shown in the Form No. 26AS pertains to the earlier year. He has referred the amount as receivables as on 31/3/2008 at page No. 23 of the paper book shown in the balance sheet as on 31/3/2008 as well as the receivables as on 31/3/2009 as per the balance sheet as on 31/3/2009 and submitted that the differences of these two amounts of receivables on account of

commission from PHED and RESB is the same as shown in the amended Form No. 26AS. Hence, the Id AR has submitted that the entire amount was already considered in the income of the assessee for the A.Y. 2008-09 and therefore, no addition can be made for the year under consideration. Alternatively, the Id AR has submitted that since the assessee is eligible for deduction U/s 80P(2) of the Income Tax Act, 1961 (in short the Act), therefore, even if any addition is made by the Assessing Officer, there will be no tax liability as the assessee is eligible for deduction U/s 80P of the Act. In support of his contention, he has relied upon the decision of this Tribunal dated 24/10/2018 in assessee's own case for the A.Y. 2005-08 in ITA No. 915/JP/2008. Hence, the Id AR has submitted that the addition made by the Assessing Officer on account of difference in the receipts declared in the books of account and those shown in the Form No. 26AS may be deleted.

5. On the other hand, the Id DR has submitted that the despite sufficient opportunities were given by the Assessing Officer as well as by the Id. CIT(A), the assessee failed to reconcile the differences between the amount of receipts shown in the books of account and as per the Form No. 26AS. The assessee even failed to establish that the said amount as shown in Form No. 26AS pertains to the earlier assessment

year was already considered while computing the income for the earlier assessment year. The Id DR has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer proposed to make the addition on account of difference in the total receipts shown in the Form No. 26AS of Rs. 41,62,389/- as against the receipts shown in the books of account at Rs. 5,69,748/-. Thus, the Assessing Officer proposed to make the addition of the differential amount of Rs. 35,92,641/- while issuing the notice U/s 148 of the Act. We find that the original Form No. 26AS shows the total receipts for the year under consideration at Rs. 41,62,389/-, which comprises an amount of Rs. 33,21,705/- from JVVNL. Subsequently an amended Form No. 26AS was issued wherein the amount of receipt from JVVNL was shown at Rs. 10,73,382/- as against the amount of Rs. 33,21,705/-. Therefore, there was a factual mistake in the amount shown in the original Form No. 26AS which was rectified subsequently and amount of Rs. 10,73,382/- was shown as the correct amount of receipt during the year. Neither the Assessing Officer nor the Id. CIT(A) has considered this amended Form No. 26AS showing the correct amount of receipt. Further we find that the receivables as per the balance sheet as

on 31/3/2008, the assessee has shown the receivables on account of commission at Rs. 28,81,904/- and as per the balance sheet as on 31/3/2009 the receivables on account of commission has been shown at Rs. 13,15,501/-. Thus, there is reduction of about Rs. 15 lacs in the balance of commission receivables from 31/3/2008 to 31/3/2009. Since there was no commission income during the year under consideration in view of the fact that the contract was already expired and the assessee has not rendered any service during the year under consideration, therefore, the differential amount is the receipt during the year which pertains to the earlier year i.e. the assessment year 2008-09. However, all these facts were not considered by the authorities below due to the reason that the amended Form No. 26AS was not produced before the Assessing Officer and the Id. CIT(A) did not allow the time to the assessee to submit the reconciliation of receipts and supporting documents. Hence, in view of the facts and circumstances of the case, we find that prima facie the assessee has brought on record the material to show that the correct figure of receipts as per the amended Form No. 26AS is Rs. 19,14,066/- as against Rs. 41,62,389/- out of which the amount of Rs. 5,18,392/- was already declared by the assessee and not in dispute and hence the difference comes to about Rs. 14 lacs. As we have already noted that the amount at about Rs. 15 lacs was received by the assessee

from the receivables as on 31/3/2008 and the balance of receivables shown as on 31/3/2009 is Rs. 13,15,501/-. Hence the Assessing Officer is directed to consider the amended Form No. 26AS as well as these balances shown by the assessee as on 31/3/2008 as well as on 31/3/2009 on account of commission receivables and then to compute the difference, if any, to be added in the income of the assessee.

7. Further we find that in the A.Y. 2005-06, the Tribunal has considered the issue of eligibility of deduction U/s 80P(2) of the Act on the interest from FDR and held in para 4 as under:

“4. We have heard the rival contentions and perused the facts of the case. We concur with the views of Id.CIT(A). In the case of Kerala State Cooperative Marketing Federation Ltd. 231 ITR 814, the Hon'ble Supreme Court of India has observed that whenever a question arises as to whether any particular category of income of a Cooperative society is exempt from tax, what has to be considered is, as to whether the income falls within one of the several heads of exemption and if it falls within any one of the heads of exemption, it would be free from taxes notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. Thus each head of exemption enumerated in section would be treated as a separate and distinct head of exemption. The assessee's claim is that the income of the society falls under the category “the collective disposal of the labour of its members”. Thus the income of Cooperative society who is engaged in collective disposal of labour of its members will be exempted if amounts of profit and gains of business is

attributable to these activities. The question is whether the interest income arising from FDR can be considered as income attributable to collective disposal of labour of its members. In the case of Bihar State Cooperative Bank Ltd. Vs. CIT (1960) 39 ITR 114, the Hon'ble Supreme Court of India observed that it cannot be said that the funds of the bank which were not lent to borrowers but laid out in the form of deposits in another bank to add to the profit instead of lying idle necessarily ceased to be a part of the stock in trade of the bank or that interest arising therefrom did not form part of its business profits. Thus the Hon'ble Supreme Court of India has held that interest derived by the Cooperative Bank by putting the funds with some other bank will also form the part of its business profits. The Hon'ble Karnataka High Court in the case of I.T.O. Vs. Karnataka Central Cooperative Bank Ltd. 266 ITR 635, after considering above referred decision of Hon'ble Supreme Court of India in the case of Bihar State Cooperative Bank has held that income received out of reserve fund was exempted from payment of tax. Accordingly in the present case also, the income on FDRs may be considered as exempt income u/s 80P of the society. Therefore, we find no infirmity in the order of the Id.CIT(A) who has rightly deleted the addition made by the AO. Thus the solitary ground of the Revenue is dismissed."

Hence, even if any addition to be made on account of difference between the receipts shown in the books and the receipts shown in the Form No. 26AS, the said amount would be eligible for deduction U/s 80P of the Act in view of the decision of this Tribunal in assessee's own case for the A.Y. 2005-06. Accordingly, we set aside the orders of the authorities below and remit the matter back to the record of the Assessing Officer for

limited purpose of computing the differences if any after reconciliation of the balances.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 27/08/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 27th August, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- Jaipur Pensioners Hitkari Sahakari Samiti Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 3(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 321/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar