

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.247/Chd/2018
Assessment Year: 2013-14

M/s The Nabha Primary Co-op
Agricultural Development Bank
Ltd. # Basantpura Mohalla
Nabha

Vs.

The Asst CIT
Circle,
Mandi Gobindgarh

PAN No. AAATN6364Q

(Appellant)

(Respondent)

Assessee By : Shri. Deepinder Singh
Revenue By : Smt. Chandrakanta

Date of hearing : 27/08/2018
Date of Pronouncement : 31/08/2018

ORDER

PER DR. B.R.R. KUMAR, A.M.:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A)-3 Ludhiana dt. 26/12/2017.

2. In the present appeal Assessee has raised the following grounds:

1) *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the addition of Rs. 1,24,519/- for alleged non deduction of TDS on account of Contractual Payments to the Gunman paid applying the provisions of section 40(a) (ia) which are not applicable and as such the addition is illegal, arbitrary and unjustified.*

2) *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the addition of Rs. 6,17,296/- for alleged Interest Payable as on 31st March 2013 by invoking provisions of section 43 B of the ACT, which are not applicable and as such the addition is illegal, arbitrary and unjustified.*

3) *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the disallowance of deduction equal to the assessed income u/s 80 P (2) (a) (i) of the ACT.*

4) *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts by not giving the effect to the application filed under Rule 46 A of the Income Tax Rules, 1962, regarding production of additional evidence regarding CBDT Circular and also not entertained the Certificate Issued by the Head Office of the Appellant Society.*

3. Brief facts of the case are that the assessee is a Co-op Society engaged in a business of providing credit facility to its member had failed its return of income for the year under consideration on 03/09/2013 declaring therein the total taxable income of Rs. NIL.
4. Ground nos. 1 and 4 are related. Ground no. 3 not pressed.
5. The Assessing Officer made addition of Rs. 1,24,519/- on account of non-deduction of TDS under section 194C on the contractual payment made to the Gunman. The Ld. CIT(A) confirmed the addition on the grounds that the CBDT Circular was not brought before the Assessing Officer regarding the non deduction of TDS.
6. Before us, the Ld. AR relied on the CBDT Circular No. 07/2015 dt. 23/04/2015.
7. Ld. DR relied on the assessment order.
8. We have gone through the facts and records. The CBDT Circular mentioned is as under:

Subject: Requirement of tax deduction at source in case of corporations whose income is exempt under section 10 (26BBB) of the Income-tax Act, 1961- Exemption thereof.

The Central Board of Direct Taxes (the Board) had earlier issued Citcuhu No. 4/2002 dated 16.07.2002 which laid down that in case of such entities, whose income is unconditionally exempt under section 10 of the Income-tax Act (the Act) and who are statutorily not required to file return of income as per section 139 of the Act, there would be no requirement for tax deduction at source (TDS) from the payments made to them since their income is anyway exempt under the Act.

2. Section 10(26BBB) came into existence after the issue of the said Circular dated 16.07.2002. The said section was inserted in the Income-tax Act vide Finance Act, 2003 (w.e.f. 01.04.2004; unconditionally exempting any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizens of India. The corporations covered under section 10(26BBB) are also statutorily not required to file return of income as per section 139 of the Act. References have been received in the Board requesting for extension of the aforesaid exemption from TDS granted vide Circular No.4/2002 to the corporations covered under section 10(26BBB) as well.

3. The matter has been examined by the Board. It has now been decided that since the corporations covered under section 10(26BBB) satisfy the two conditions of Circular No.4/2002 i.e. unconditional exemption of income under section 10 and no statutory liability to file return of income

under section 139, any corporation whose income is exempt under section 10 (26BBB) of the Act will also be entitled to the benefit of the said Circular. Hence there would be no requirement for tax deduction at source from the payments made to such corporations since their income is anyway exempt under the Act.

9. The assessee society had engaged M/S Punjab Ex Servicemen Corporation, Chandigarh [A Punjab Govt. Undertaking], for having a Gunman. The Gunman had duly served his duty in the appellant society i.e. M/S The Nabha Primary Co-Operative Agricultural Development Bank Ltd., Nabha, Patiala. The Gunman is employee of M/S Punjab Ex Servicemen Corporation, Chandigarh. The assessee society had made payment to M/S Punjab Ex Servicemen Corporation, Chandigarh, in response to the service rendered by M/S Punjab Ex Servicemen Corporation, Chandigarh. The payment for the period under consideration comes to Rs. 1,24,519/-, which had duly been paid to M/S Punjab Ex Servicemen Corporation, Chandigarh. The said payment was given without the deduction of TDS as the corporation i.e. M/S Punjab Ex Servicemen Corporation, Chandigarh had got Exemption U/S 10(26BBB) of the Income Tax Act, 1961 regarding deduction of Income Tax.

SECTION 10(26BBB) OF THE INCOME-TAX ACT, 1961 - CORPORATION ESTABLISHED FOR WELFARE AND ECONOMIC UPLIFTMENT OF EX-SERVICEMEN - REQUIREMENT OF TAX DEDUCTION AT SOURCE IN CASE OF CORPORATIONS WHOSE INCOME IS EXEMPT UNDER SECTION 10 (26BBB) EXEMPTION THERE OF CIRCULAR NO. 7 / 2015 [F.NO.275/50/2006-IT(B)], DATED 23-4-2015.

The CBDT Circular No. 4/2002, dated 16-7-2002 provides that in case of such entities, whose income is unconditionally exempt under section 10 and who are statutorily not required to file return of income, there would be no requirement

for tax deduction at source from the payments made to them since their income is any way exempt. Section 10 (26BBB) came into existence after the issue of the said Circular dated 16-7-2002. The said section was inserted in the Income - tax Act vide Finance Act, 2003 (w.e.f. 1-4-2004) unconditionally exempting any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizens of India. The corporations covered under section 10(26BBB) are also statutorily not required to file return of income as per section 139 of the Act. References were received in the Board requesting for extension of the aforesaid exemption from TDS granted vide Circular No.4/2002 to the corporations covered under section 10(26BBB) as well. The CBDT has now clarified that there would be no requirement for tax deduction at source from payment made to corporations enjoying exemption under section 10(26BBB). The Central Board of Direct Taxes, issued Circular No. 07/2015 no. F. No. 275/50/2006 IT(B) Dated April 23, 2015 on serial no 65 Any Income of a corporation for ex-servicemen [Section 10(26BBB)]. From assessment year 2004-05, any income of a statutory corporation established by Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen (being citizen of India) is exempt from tax under section 10 (26BBB).

10. Keeping in view the Circular issued by the CBDT the disallowance made by the Assessing Officer which was not based on the said Circular is hereby deleted.

11. The Ground No. 2 pertains to the disallowance of Rs. 617296/- under section 43B.

12. During the course of assessment proceedings the assessee was seen to have claimed interest expenses of Rs. 1,56,50,627/- payable to SADB as on 31st March 2013. But the assessee had failed to discharge its entire liability of payable as on 31st March 2013 before due date of filing of return. Accordingly,

the amount of Rs. 6,17,296/- (1,56,50,627 – 1,50,33,331/-) was disallowed by Assessing Officer invoking the provisions of section 43B of the Act.

Before us, the Ld. AR furnished a certificate given by DGM, Punjab State Co-operative Agricultural Development Bank Ltd. which says that

“ It is certified that as on 31/03/2013 interest receivable from PADB Nabha was Rs. 1,56,50,627/- (Rs. One Crore Fifty Six Lac Fifty Thousand Six Hundred and Twenty Seven Only). This amount was included in the income of The Punjab State Co-operative Agricultural Development Bank, Ltd. Chandigarh for the financial year 2012-13 and received during the financial year 2013-14”.

13. The Ld. AR argued that The Punjab State Co-operative Agricultural Development Bank, Ltd. doesn't fall under section 43B.

14. We have gone through the provisions of the Income Tax Act,1961 which specifically excludes the Co-operative Development Banks from the purview of the provisions of Section 43B. Hence, the addition made by the Assessing Officer without any legal basis is hereby directed to be deleted.

15. As a result, appeal of the Assessee is allowed.

Order pronounced in the open Court.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Sd/-

**(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

Dated : 31/08/2018

AG

Copy to:

1. The Appellant,
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR