IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH : RAIPUR

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.12/RPR/2018
Assessment Year: 2014-15

Chhattisgarh State Civil Supplies Corporation Ltd., The Hitavada Parisar, Avani Vihar, Raipur (CG).	Vs.	Assistant Commissioner of Income Tax 3(1), Aaykar Bhavan, Civil Lines, Raipur (CG).

PAN: AACCC1772C

(Appellant) (Respondent)

Assessee by	:	Shri Pauan Ved & Shri S.R. Rao, Advocates
Revenue by	:	Shri R.K. Singh, CIT, DR

Date of Hearing : 06.08.2018
Date of Pronouncement: 23.10.2018

ORDER

PER R.K. PANDA, AM:

This appeal by the assessee is directed against the order dated 30.11.2017 of the CIT(A)-I, Raipur, relating to Assessment Year 2014-15.

2. The facts of the case, in brief, are that the assessee is a nodal distribution agency of the Government of Chhattisgarh under Public Distribution System and is

incorporated under the provisions of the Companies Act, 1956 with the main object of carrying out activities relating to food grains, other commodities and distribution thereof under various welfare schemes of the government. The assessee derives income from procurement and distribution of commodities like wheat, rice, sugar, paddy, etc., under public distribution scheme. It filed its return of income on 31st March, 2016 declaring total income of Rs.1,46,40,870/-. During the course of assessment proceedings, the Assessing Officer, on perusal of Form 3CD Report, found that the assessee has changed its accounting policy for the year under consideration resulting in decrease in profit by Rs.194,31,98,824/- on account of subsidy income from Government of India and State. He, therefore, asked the assessee to explain as to why the same should not be disallowed and added to the total income of the assessee. It was explained by the assessee that:

> "a. Up to previous year, excess of provisional economic cost (as approved by Gov.) over sale realization has been accounted for as Price Difference claim/Claim of loss (hereinafter referred as "Subsidy") on accrual basis based on the quantity distributed (sold) under various scheme of PDS. Since excess/short subsidy received/claimed on the basis of provisional economic cost is refundable/receivable at the time of ascertainment of final economic cost hence during the year to recognize appropriate Subsidy Income, the Corporation has changed policy and according to new policy excess of actual cost (as reckoned by Corporation) over sale realization is accounted for as Subsidy Income and Excess/Short receipts of Subsidy on distributed (Sold) quantity on the basis of Provisional Economic Cost (as approved by Govt./ proposed to State Govt.) is recognized as refundable to/ recoverable from Governments. Hence due to change in policy of recognising Subsidy from Central/State Govt., the profit of the corporation has been decreased by Rs. 194,31,98,824,06 as disclosed in Note No. 25 of the Account.
>
> b. Provision of interest on DCP Rice is not required now due to change in accounting policy of recognizing subsidy and therefore

> provision of interest on DCP Rice is not made during the year and this resulted that profit for the year is increased by Rs. 111,94,86,414,08/-.

> Since the change in Accounting Policy was found to be appropriate and was changed to recognize appropriate Subsidy Income receivable from Government as per Accounting Standard AS-12 "Recognition of Government Grants" under Para 6 of such standards, there were no qualifications in our Auditors report under Companies Act. 1956 dated 30.03.2016 and our Report in Form 3CD dated 30.03.2016. There is no change in Method of Accounting, but the above matter is change of accounting policy to recognize appropriate revenue."

3. However, the Assessing Officer was not satisfied with the explanation given by the assessee. According to him, as per Accounting Standard-8, an entity is permitted to change an accounting policy only if the change is required by a standard or interpretation; or results in the financial statements providing reliable and more relevant information about the effects of transactions, other events or conditions on the entity's financial position, financial performance or cash flows. The A.O. observed that the assessee has suppressed its profit by change of policy on its own without following Accounting Standard-8. Further, the auditors who have audited this case has submitted a written submission on 21st December, 2016 relating to accounting policy, wherein they reported as under:-

> "The Report of C&AG dated 12.08.2016, does not have any qualifications for above changes in accounting policy, which confirms the facts that the said change in accounting policy was in consonance with Accounting standards and has no bearing on financial results of the Corporation."

4. Rejecting the various explanations given by the assessee, the A.O. added the sum of Rs.194,31,98,824/- on account of subsidy received from Government of India and State government to the total income.

5. Before CIT(A), the assessee made extensive arguments. It was submitted that the impugned amount was paid by government to run the Public Distribution Scheme to the assessee in the capacity of nodal agency and it does not belong to the assessee, therefore, it is not its income. It was argued that the assessee procures the commodities at notified prices and distributes at concessional rate prescribed by the government for which Government of India and Chhattisgarh Government paid the concession component (hereinafter referred to as subsidy) in advance to the nodal agency. The entire money paid to the assessee represents government money and not that of the assessee. The assessee is an outfit to operate in fiduciary capacity. The amount is not real income in character and, therefore, not assessable to tax. For the above proposition, the assessee relied on the decision of the Hon'ble Karnataka High Court in the case *of CIT vs. Karnataka Urban Infrastructure Development & Finance Corporation reported in (2006) 284 ITR 582 (Kar).* It was argued that in the present case, the assessee is a nodal agency for implementing PDS and the money paid to it by the Government was to operate Food Security Scheme of the Government of India and the State Government. There is no other business done by the assessee. Relying on various decisions, it was submitted that the amounts received being the money of

the government and at the most a form of advance refundable/adjustable against future grants is not liable to tax.

6. Without prejudice to the above, it was argued that in the process of implementation of PDS, government notifies both procurement price and sales realization price on year to year basis. Converse to normal business attribute, since commodities are necessarily distributed at concessional rates, the sale price is always lower than the procurement price. The payment of subsidy is governed by terms contained in Para-8 to 12 of MoU signed between Central Government and the Government of Chhattisgarh on 12th December, 2002. The Government of India pays subsidy on decentralized procurement as per above terms, however, the amount of subsidy shall never exceed the actual procurement cost. Accordingly, there will never be any profit accrued or received by the assessee.

7. It was further submitted that the assessee maintained regular books of account which was audited by the statutory auditors under the Companies Act and Income-tax Act. Being a government company, the Comptroller & Auditor General of India (CAG) also conducted audit and the said audit was completed for the assessment year under consideration which was filed during the assessment proceedings. It was submitted that on the basis of previous experience and applicable Accounting Standards, the statutory auditors advised the assessee to change its accounting policy with respect to revenue recognition for better depiction of the results. In the case of the assessee, Government of India notifies the final rates for procurement of rice after

passing over of several financial years from the relevant year that too with substantial variations with reference to PEC rates. Therefore, being an advice by the auditors, the assessee had to change its accounting policy with reference to recognition of subsidy rates from the government and it was accordingly changed bona fidely for depicting true and fair view of the accounts. Relying on various decisions, it was submitted that the addition made by the Assessing Officer is not justified.

8. However, the ld.CIT(A) also was not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer by observing as under:-

> "2.3 Facts being as above, the Ld AR has contended that the assessee being a Government concern entrusted to implement Government programmes, it cannot have income. It receives reimbursement of cost which is not income. However, as per the MOU of the corporation with the Government 95 percent of the economic cost is reimbursed immediately every year and 5 percent is reimbursed after submission of utilization certificate. Further a certain percentage fixed by the Government is paid to the corporation for acting as agency of Government. Thus it is not correct to say that the assessee corporation has no income. It works on commercial lines by purchase of produce from farmers and sale thereof to customers. Profit element is embedded in this commercial activity and received commission from government. The assessee has been registered as a company and therefore it has to be taxed as company maintaining is accounts on mercantile system of accounting. If fact assessee has been computing its income and offering the same for taxes of commercial lines till last AY 2013-14.
>
> As per accounting principal assessee has to account an income in the year in which it is accrued. On the facts of the case when the Government announces rates for a year and commits itself to pay to the State Government/corporation at such announced rates the income has accrued. Therefore, assessee must account that income for that year. Subsequently if and when the final rates are announced

and there is any change from the provisional rates, assessee will adjust the income. In the FY 2013-14 relevant to AY 2014-15 assessee has incurred total cost of Rs.7108,29,77,096/- and it has shown sales realization of Rs. 1413,26,44,196/- is the amount to be recovered or claimed as per the new accounting system which assessee wants to adopt. However, it has already claimed for received Rs. 5890,72,42,263/- as provisional reimbursement. The excess of Rs. 194,31,91,824/- has already been received and utilized by the corporation. On the one hand assessee has already received the reimbursement with embedded commission income from Government on the other had it does not want to pay Income Tax on this amount. Moreover, it has no separate sets of account about how much agency commission it received for working as Government agency. Thus the old method of computation of profit was an appropriate method.

In order to change the accounting of one of the items i.e receipt in this case, from mercantile to cash system and to account other items of expenditure and income on mercantile system is not a logical and appropriate way to complete the accounts. Moreover there is large time lapse between the announcement of provisional rates and final rates. For the year 2008-09 provisional rates were announced vide order dated 11/11/2008. Final rates were announced vide order dated 14/01/2016. The final rates were announced 8 years after the initial rates. In past except for two years 2009-10 and 2010- 11, in all other years final rates were always more than the provisional rates. If assessee is allowed to adopt the cash system, whenever final rates are announced and these are more than provisional rates, there is no recourse with the Department to tax the additional income in the hands of the assessee as a result of final order, as the case cannot be reopened beyond the period of six years. Such a situation will not be occasional or rare but will happen year after year. Therefore, in the interest of Government revenue and in accordance with the accounting principles, the change in the system of accounting to cash cannot be allowed. The addition made by the AO is therefore sustained and appellant's grounds are rejected."

9. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

"1. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) was not correct in confirming

the addition of Rs. 1,94,31,98,284/- made by Assessing Officer solely on the basis of Auditor's Observation in Form No.3CD without considering facts and circumstances of the case in their entirety?

Additional Grounds of Appeal

2. In the facts and in circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) was not correct in not appreciating the fact that concession component received by appellant Govt, company in the course of implementing Govt.'s project of Public Distribution System as its agent, the surplus of which, if any, was refundable or adjustable in future, was not income assessable to tax under the Income-tax Act, 1961.

3. In the facts and in circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in not appreciating the fact that there was no real income accrued or arisen to the assessee.

4. In the facts and in circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in rejecting the change in Accounting Policy to comply with Accounting Standard AS-12 "Recognition of Government Grants", without change in method of accounting.

5. The appellant reserves the rights to add, amend, omit or withdraw all or any of the grounds of appeal with permission of the Hon'ble appellate authority."

10. The ld. counsel for the assessee strongly opposed the order of the CIT(A). Referring to page 75 of the paper book, it drew the attention of the Bench to the note given by the auditors regarding change in accounting policy which read as under:-

"1.4 Change in Accounting Policy

a. Upto previous year, excess of provisional, economic cost (as approved by Govt.) over sale realisation has been accounted for as Price Difference claim /Claim of loss (herein after referred as "Subsidy") on accrual basis based on the quantity distributed (sold) under various scheme of PDS, Since excess/short subsidy

received/claimed on the basis of provisional economic cost is refundable/receivable at the time of ascertainment of final economic cost hence during the year to recognised appropriate Subsidy Income, the Corporation has changed policy and according to new policy, excess of actual cost (as reckoned by Corporation) over sale realisation is accounted for as Subsidy Income and Excess/Short receipts of Subsidy on distributed (Sold) quantity on the basis of Provisional Economic Cost (as approved by Govt/ proposed to State Govt.) is recognised as refundable to/ recoverable from Governments. Hence due to change in policy of recognisting Subsidy from Central/State Govt, the profit of the Corporation has been decreased by Rs.194,31,98,824.06 as disclosed in,Note No. 25 of the Account.

b. Provision of Interest on DCP Rice is not required now due to change in accounting policy of recognising subsidy and therefore provision of interest on DCP Rice is not made during the year and this resulted that profit for the year is increased by Rs. 111,94,86,414.08"

11. Referring to para 2.3 of the order of the CIT(A), he submitted that the CIT(A) has given a finding that the assessee has changed its system of accounting to cash system which is factually incorrect since the assessee is always following mercantile system of accounting. Referring to the certificate issued by the auditors, a copy of which is placed on page 98 of the paper book, he drew the attention of the Bench to the comments of the auditor regarding change in accounting policy. Referring to page 99 of the paper book, he drew the attention of the Bench to the accounting treatment of government grants where it has been mentioned that the grant and expenditure has to be taken simultaneously. Referring to page 100 of the paper book, he drew the attention of the Bench to para 6.5 of the Accounting Treatment of Government Grants. He submitted that there should be a matching principle for accounting the government grants and expenditure to be incurred thereon and the assessee has followed the same. Referring to page 109 of the paper book, he drew the

attention of the Bench to the comments of the CAG and submitted that nowhere the CAG has given any adverse comments. Referring to page 113 of the paper book, he drew the attention of the Bench to the MoU between the Central Government and the Government of Chhattisgarh and subsequently drew the attention of the Bench to para 8 of the said MoU which read as under:-

> "8. The economic cost of rice will be fixed by the Central Government on provisional basis subject to the final adjustment on the submission of audited annual accounts by the State Government, not later than six months after the close of the relevant marketing season.
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> ……………………………………………………………………… .
> ………………………………………………………………………….
> 10. Advance subsidy will be released based on quarterly claim of subsidy in the first month of every quarter. This advance will be based on the anticipated level of distribution of food grains in that quarter. The advance will be released subject to production of the utilization certificates for the previous quarter. For example, advance."

12. Referring to page 121A of the paper book, he drew the attention of the Bench to the following:-

> "State Government is requested to submit final subsidy claim for 2010-11 on the basis of this economic cost at the earliest after considering the opening stock. If no final subsidy claim is submitted within 30 days, final subsidy will be calculated on the basis of available information and any excess subsidy released will be adjusted from current year subsidy claim."

13. Referring to the decision of the Hon'ble Allahabad High Court in the case of *CIT vs. UP Upbhoktha Sahakari Sangh Ltd.*, he submitted that the Hon'ble High Court in the said decision has held that the amount received by the assessee, a cooperative society from the State Government for disbursement to its Bhandars to

meet out the expenses of salary of certain employees of Bhandars which has been distributed among the Bhandars in compliance of the Government order was not income of the assessee.

14. Relying on various other decisions, he submitted that the amount received by the assessee under no circumstances can be considered as income of the assessee. He further submitted that no addition has been made in subsequent years on this issue although the assessments have been completed u/s 143(1) of the Act. However, there was no reopening u/s 147 or u/s 263 of the IT Act. He, accordingly, submitted that the order of the CIT(A) be set aside and the grounds raised by the assessee be allowed.

15. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

16. We have considered the rival arguments made by both the sides and perused the relevant material available on record. We have also considered the various decisions cited before us. We find the assessee in the instant case is a nodal distribution agency of the Government of Chhattisgarh under PDS and is incorporated under the provisions of the Companies Act, 1956 with the main object of carrying out the activities relating to food grains and other commodities and distribution thereof under various welfare schemes of the Government. The assessee derives income from procurement and distribution of commodities like wheat, rice, sugar, paddy, etc. under PDS. During the impugned assessment year, the assessee has changed its

accounting policy resulting in decrease in profit by Rs.194,31,98,824/- on account of subsidy income from Government of India and Chhattisgarh State. We find the Assessing Officer rejecting the various explanations given by the assessee, brought the same amount to tax on the ground that the assessee has suppressed its profit by change of policy on its own without following Accounting Standard-8. We find the ld.CIT(A) upheld the action of the Assessing Officer which has been reproduced in the preceding paragraphs. It is the submission of the ld. counsel for the assessee that the assessee is following mercantile system of accounting, its accounts are audited, books of accounts are produced before the Assessing Officer and there is no adverse comment by the statutory auditors or the CAG. It is also his submission that for reflecting the true income the assessee has changed its accounting policy, but, at the same time, there is no suppression of profit. It is also his submission that the impugned amount was paid by Government to run the Public Distribution Scheme to the assessee in the capacity of a nodal agency and, therefore, it does not belong to the assessee and it cannot be treated as its income.

17. We find merit in the submission of the ld. counsel for the assessee. The assessee in the instant case procures the commodities at the notified price and distributes at concessional rate prescribed by Government for which the Government of India and Chhattisgarh Government pay the concession component which is referred to as ‘subsidy’ in the instant case. The entire money paid to the assessee represents government money and not that of the assessee. The assessee is an outfit

to operate in fiduciary capacity and the amount, in our opinion, is not real income in character and, therefore, not assessable to tax. We find the Hon'ble Karnataka High Court in the case of CIT vs. Karnataka Urban Infrastructure Development and Finance Corporation (supra), has held that where the assessee has been constituted by Central Government to act as a nodal agency for implementing Mega City Projects, interest from unutilized funds kept as deposit in bank is not chargeable to income-tax. The relevant observation of the Hon'ble High Court at para 6 of the order read as under:-

> "6. We have no doubt in our mind that the said judgment squarely covers the issue involved in this appeal. It has been held by the Division Bench of this Court in the aforesaid judgment in the relevant para as under (p. 584) :
>
> "The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of the mega city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and State shares out of which finance could be provided to various agencies such as water, sewerage boards, municipal corporations, etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore, the assessee is a nodal agency formed/created by the Government of Karnataka as per the guidelines; there is no profit motive as the entire fund entrusted and the interest accrued therefrom on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the nation/States as provided in the guidelines; the whole of the fund belongs to the State Exchequer and the assessee has to channelise them to the objects of the centrally sponsored scheme of infrastructural development for the mega city of Bangalore. Funds of one wing of the Government are distributed to the other wing of the Government for public purpose as per the guidelines issued. The

> monies so received, till they are utilised, are parked in a bank. The finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of the Central Government for implementation of these projects. It is not the case of the Revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the mega city scheme which is also permitted under the scheme. Therefore, in computing the total income of the assessee for any previous year the interest accrued on the bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of the mega city scheme.
>
> Therefore, we do not find any error in the conclusion reached by the Tribunal that there was no income earned by way of interest by the assessee and setting aside the order of the AO which is affirmed by the first appellate authority. The finding given by the Tribunal is purely a question of fact. We do not find any substantial question of law involved in this appeal and, therefore, this appeal is liable to be dismissed at the stage of admission itself."

18. We find the Hon'ble Allahabad High Court in the case of *CIT vs. UP Upbhoktha Sahakari Sangh Ltd., reported in 288 ITR 106 (All)* has held that the sum received by the assessee, a cooperative society from the State government for disbursement to its Bhandars to meet out the expenses of salary of certain employees of Bhandars which has been distributed among the Bhandars in compliance of the Government order was not income of the assessee. The relevant observations of the Hon'ble High Court read as under:-

> "8. After taking into account the facts, circumstances of the case and the entire material placed before us, we are of the opinion that the

> State Government has appointed the assessee as the disbursing agency for a sum of Rs. 2,75,000 vide GO order dt. 15th April, 1981, as referred to above to Kendriya Upbhokta Bhandar and as such the assessee was only the disbursing agency and the ITO was not at all justified in holding that a sum of Rs. 2,75,000 was the income of the assessee. The CIT(A) is accordingly justified in holding that the sum of Rs. 2,75,000 had been placed at the disposal of the assessee for disbursement to to the various Bhandars to meet the salary bills of the managers and secretaries. Therefore, it was not the income of the assessee and it was incorrectly added by the ITO towards the income of the assessee. We, therefore, uphold the finding of the learned CIT (A) on this issue.
>
> 9. From perusal of the aforesaid findings, we are of the considered opinion that the amount in question was given by the State Government for specific purpose. It did not partake the nature of the income of the respondent assessee. Even if it is to be treated as an income, it would not be liable to be taxed as it is stated that there was diversion of the income by way of overriding title on the said amount by way of a condition to distribute it as the salary to the employees of the Bhandars."

19. We find the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Civil Supplies Corporation Ltd., 280 ITR 148 (P&H), has held that:-

> "Reimbursable expenditure incurred by assessee, a nominee of the Government for distribution of levy sugar at notified prices, could not be disallowed as the assessee was following hybrid method of accounting consistently whereby the excess realisations which are payable to the Government are being debited to the trading account on the basis of payment and the subsidy is being accounted for on actual receipt basis."

20. We find the Ahmedabad Bench of the Tribunal in DCIT vs. Gujarat State Civil Supplies Corporation Ltd. in ITA No.334/Ahd/2014 & CO No.186/Ahd/2014, order dated 01.06.2017 has observed as under:-

> “5. We have heard the rival contentions perused the material as per record. We have noticed that the assessee company was set up by the Government of Gujarat under the companies Act, 1956. The assessee company manage the public distribution system and other public welfare scheme on behalf of the Government of Gujarat. The Government of Gujarat has been providing handling commission as per the Government of Gujarat (GR) Government Resolution .We observed that the surplus which was earned by the assessee for the activities carried out on behalf of the Government of Gujarat belonged to the Government and payable to the Government along with interest after deducting of commission earned by the assessee. We further observed that the commission income earned by the assessee on the activities carried on behalf of the Government and other income from its own activities are taxable in the hand of the assessee.
>
> 5.1 We have further noticed that in the earlier assessment year the assessing officer has accepted the similar accounting practices followed in the case of the assessee. We considered that surplus earned on behalf of the Government for carrying out function of Public Distribution System as agent of Government is not taxable in the hand of the assessee.
>
> 5.2 We have also perused the detail facts and findings elaborated in the order of the Ld.CIT(A) and considered that the Ld.CIT(A) is justified in deleting the addition made by the Assessing Officer by stating that surplus earned from functioning of PDS on behalf of Government cannot be taxed in the hand of the assessee. In view of the above stated facts and findings we uphold the order of the Ld.CIT(A).”

21. The various other decisions relied on by the ld. counsel for the assessee in the paper book also supports its case. The submission of the ld. counsel for the assessee that in subsequent years, since subsidy receipt has been accepted by the Revenue, although u/s 143(1), and no action u/s 147 or 263 has been taken could not be controverted by the ld. DR. We, therefore, are of the considered opinion that the concession component received by the assessee Government company in the course

of implementing government projects of PDS as its agent, the surplus of which, if any, was refundable or adjustable in future was not income of the assessee. We, therefore, set aside the order of the CIT(A) and the grounds raised by the assessee are allowed.

22. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 23.10.2018.

Sd/-	Sd/-
(SUCHITRA KAMBLE) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMFBER

Dated: 23rd October, 2018

dk

Copy forwarded to

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

Sr. Private Secretary
For Asstt. Registrar, ITAT, Raipur