

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI
BENCH, RANCHI**

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.236/Ran/2017
Assessment Year : 2011-2012

DCIT, Circle-1, Ranchi	vs	M/s The Jharkhand State Co-operative Lac Marketing and Procurement Fed. Ltd. JHASCOLAMPF Building Purulia Road, Bharatpuri, Ranchi-834001
PAN No. : AAACC 7476 R		
(Appellant)	..	Respondent

AND

ITA No.199/Ran/2017
Assessment Year : 2012-2013

M/s The Jharkhand State Co-operative Lac Marketing and Procurement Fed. Ltd. JHASCOLAMPF Building Purulia Road, Bharatpuri, Ranchi-834001	vs	DCIT, Circle-3, Ranchi
PAN No. : AAACC 7476 R		
(Appellant)	..	Respondent

Revenue by Shri A.K.Mohanty, JCIT(Jr. DR)
Assessee by Shri Nitin Pasari, Adv.

Date of Hearing : 27.11.2018
Date of Pronouncement : **29.11.2018**

ORDER

Per Pavan Kumar Gadale, JM:

The Revenue and assessee have filed the above appeals against the order of CIT(A), Patna, both dated 08.06.2017 for the assessment year 2011-2012 & 2012-2013.

2. First we shall take the appeal of the Revenue for the assessment year 2011-2012 i.e. ITA No.236/Ran/2017, wherein the Revenue has taken the following grounds of appeal :-

The ITR of the assessee for the A.Y. 2011-12 was processed u/s 143(1) of the Act at a total assessed income of Rs. 1,04,04,450/- without taking into account the exemption of Rs. 1,04,04,450/- claimed by the assessee u/s 10(27) of the I T. Act. Being aggrieved, the assessee filed an appeal before the Id. CIT (A), Ranchi who has given relief to the assessee on the mere ground that fulfilment of the condition for the claim of exemption would require examination of facts which was not possible u/s 143(1) of the Act.

In the above context, it is to bring on record that similar issue was involved in the A.Y. 2012-13 also. Where, the case of the assessee was assessed u/s 143(3) of the Act and the exemption claimed by the assessee u/s 10(27) of the Act was disallowed and added back to the total income of the assessee by the A.O. For the A.Y. 2012-13 too, the assessee went to the 1st appeal before the Id. CIT (A), Ranchi. But, the Id. CIT (A), Ranchi did not allow any relief to the assessee in respect of exemption claimed u/s 10(27) of the Act and confirmed the disallowance made in this regard by the A.O.

The above facts make it quite clear that exemption of Rs.1,04,04,450/- u/s 10(27) of the Act by the assessee for the A.Y. 2011 -12 is not allowable

3. Brief facts of the case are that the assessee is a Federation of Co-operative Societies registered under the provisions of Jharkhand State Co-operative Societies Act, 1935 and is engaged in the activity of promoting the marketing and procurement of LAC of its member societies. The assessee filed return of income for the A.Y. 2011-2012 declaring Nil income. Subsequently, the case was processed u/s.143(1) of the Act assessing total income of assessee at Rs.1,04,04,450/- and raised a demand of Rs.42,94,300/- vide intimation u/s.143(1) of the Act, dated 30.03.2013.

4. Aggrieved by the demand raised by the AO, assessee preferred an appeal before the CIT(A). In the appellate proceedings, the AR of the assessee appeared and argued the grounds and reiterated the submissions made before the AO. The CIT(A) after considering the submissions of the assessee and the findings of AO, allowed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), the Revenue has filed this appeal before the Tribunal.

6. Before us Id. DR emphasized that the CIT(A) has granted a relief on the ground of fulfilment of conditions for claim of exemption. Based on the intimation u/s.143(1) of the Act and also submitted that in the subsequent assessment year the CIT(A) has not granted relief, and, therefore, called for the explanations and allowed the appeal of the assessee, whereas Id. AR relied on the orders of CIT(A) and submitted that the assessee has claimed relief in the original return and, therefore, the assessee is entitled for the same and prayed for dismissal of the revenue's appeal.

7. We have heard rival submissions and perused the material on record. Prima facie, the assessee- cooperative marketing society has claimed exemption u/s.10(27) of the Act and the Id. AR submitted that the assessee has claimed in the computation of income. When the query was raised from the bench with respect to claim, we found that the assessee has appealed against the order u/s.143(1) of the Act before the CIT(A) and no disallowance as contemplated by the Revenue and the Bench required

the department to produce the assessment record. It was found that the assessee has filed the return of income and a copy was produced in the course of hearing proceedings that the assessee has claimed deduction and filed return of income whereas on comparing the intimation u/s.143(1) of the Act, dated 30.03.2013, Id. DR submitted that wrong database has been entered and return of income and assessed income has wrongly been disclosed. Ld. DR submitted that it is mistake apparent on the feeding the information and the assessee has made a claim in the return of income and furnished the copy of return from the assessment record. We found that the CIT(A) has dealt on the provisions of Section 143(1) of the Act and after going through the applicability of provisions, finally concluded at para 6.9 and allowed the appeal. The observations of the CIT(A) in this regard are as under :-

*“[6.9] However, if the mandate of section 10(27) of the Act is seen the fulfilment of the condition for the claim of exemption would require examination of facts as stated in para-6.5 which was not possible u/s. 143(1) of the Act. It would require examination of the Bye Laws of the appellant as well as examination of the membership of the appellant society to see whether those consists of only other co-operative societies formed for similar purposes and the finances of the society are provided by the Government and such other societies. These enquiries are beyond the scope of the section. Accordingly, the grounds of appeal are **allowed.**”*

From the above observations we find the CIT(A) after a detailed discussion has passed a reasoned order and we do not see any good reason to interfere with the above findings of the CIT(A), and accordingly, we uphold the same and dismiss the grounds of appeal of Revenue.

8. Thus, the appeal of Revenue is dismissed.

9. Now, we shall take appeal of the Assessee in ITA No.199/Ran/2017 for the assessment year 2012-2013, wherein the assessee has raised the following grounds of appeal :-

- I. FOR THAT the Learned Appellate Authority as also the Assessing Officer failed to take into consideration that Lac is a "Forest Minor Produce" and the same is so produced in the tribal dominated regions and the appellant being a Co-operative Board, has been so established for the overall development of the Tribals and the societies / lamps affiliated with the appellants are so situated in the tribal areas for the welfare of the schedule tribes.*
- II FOR THAT the Learned Appellate Authority as also the Assessing authority failed to take into consideration that the tribal and the members of the lamps are tribals to the tune of almost 95% and are the primitive tribal group, which continues living near isolation in virtually inaccessible habitats and" the purpose and objective of creation of the appellant is only with a view to give the most under privilege national in a coordinated and planned manner in order to extend maximum fiscal benefits to the members of the society who are non-else but tribals and to give them the edge in order to develop themselves with the prevailing socio-economic growth.*
- III FOR THAT the Learned Appellate Authority as also the Assessing authority failed to take into consideration that only because, it is not mentioned in the bye-laws that the federation shall be working exclusively for the benefits of the schedule cast and schedule tribe within the State of Jharkhand, would not render the purpose and objective of establishment of this appellant nugatory in the eyes of the Income Tax Department or any other statutory department, unless it is established that the federation is working otherwise for the benefits of general mass.*
- IV. FOR THAT the Learned Appellate Authority as also the Assessing Officer failed to take into consideration that the locational area of operation cannot be ruled out, only because the exclusive benefits to be extended to ST/SC was initially not mentioned in the bye-laws and the Learned Assessing Officer exceeded its jurisdiction by holding that having the reasoning assigned by the Assessee, if upheld the same would open flood gate for similarly situated federation/ society/ association.*

However the Appellate Authority as also the Assessing Officer failed to take into consideration that unlike the appellant the

other federation/ society/ association is not created under the Ministry of Tribal Affairs and has been recognized as a State Nodal Agency.

V. *FOR THAT the Learned Appellate Authority as also the Assessing Officer failed to take into consideration the scheme of the Act as envisaged in Section 10(27) of the Act, which provides for promotion of interests of the members of the either schedule caste or schedule tribe or both and it further provides that the membership of the cooperative society shall consist of another cooperative societies formed for similar purpose, which in the instant case the Learned Assessing Authority has failed to discharge the obligation and has failed to point out as to, if at all, the creation of the appellant has been for benefits of SC/ST or for general mass.*

VI. *FOR THAT the Learned Appellate Authority as also the Assessing Officer has given an example that the Scrutiny assessment in the case of M/s Ekta Mahila Kukkut Palan Samity was completed by the undersigned for the A.Y. 2012-13 and A.Y. 2013-14. Majority of the members of the assessee were Scheduled Tribes, but the assessee did not claim the benefit of exemption u/s 10(27) of the I.T. Act, 1961.*

Merely because another Samity or similarly situated Society did not claim exemption does not in any manner restrict the claim of the Appellant barred, on the contrary the requirement under Section 10(27) of the Act is being stretched too far by the Assessing Officer.

VII. *FOR THAT the Learned Appellate Authority as also the Assessing Officer failed to take into consideration that the recommendation of initiating penalty proceedings in terms of Section 271(l)(c) of the Income Tax Act is directly in conflict with the ratio laid down by the Hon'ble Supreme Court in the matter of Dilip N Shroff v. Joint Commissioner of Income Tax reported in (2007) 6 SCC 329.*

VIII. *FOR THAT the Learned Appellate Authority as also the Assessing Officer failed to take into consideration that the recommendation to make penalty proceeding only on the basis that the appellant is not eligible for exemption under Section 10(27) of the Act, 1961 is bad in law and is in conflict, since the question of levying penalty has been tested before the Hon'ble Supreme Court in catena of cases the recent being M/s. Reliance Petro Products, wherein the Hon'ble Court taking into consideration the earlier judicial pronouncements on the issue of penalty has been pleased to hold that the penalty can be levied only if, it is proved that there is presence of guilty,*

dishonest and wilful intent either to defraud revenue or evade the payment of duty on our part. In other words, there has to be positive act on part of Appellant to evade duty.

But where the issue concerning grant of exemption and benefits accruing out of said exemption is in controversy, there is no reason to levy penalty, since there is no suppression or willful concealment of tax.

- IX. *FOR THAT, the Learned Appellate Authority as also the Learned Assessing Officer failed to take into consideration that the provision of uncollected income concerns accrued income of interest accrued on the fixed deposits of the Assessee with Scheduled Banks and the same is duly reflected on the either side of the Profit & Loss Account.*

However, after actual receipt of the accrued income in the next financial year, the entry is reversed, meaning thereby that the provisions made after actually receiving the same from the Bank, is reduced in the next financial year and although there is no impact of the provisions so made inasmuch as the income is duly accounted for, and the adjustment entry is also reflected in the Profit & Loss Account in the Audited Balance Sheet and the tax impact, (if any, subject to exemption) shall be borne in the next financial year, hence in any eventuality there is no evasion/ suppression/ concealment or mis-declaration of income.

- X. *FOR THAT the other & further grounds of appeal, if any, shall be urged at the time of hearing of this appeal.*

10. Ld. AR before us submitted that the AO has not granted relief in respect of claim u/s.10(27) of the Act, though the assessee has made submissions. Ld. AR further submitted that one more opportunity may be provided to substantiate its claim.

11. On the other hand, Id. DR relied on the orders of lower authorities.

12. We have heard rival submissions and perused the material on record. Prima facie, the AR's contention that the AO has not considered the facts which are necessary in the course of assessment and in the course of appellate proceedings information was filed and the CIT(A) also

based on certain information has not granted relief. Therefore, considering the facts and circumstances of the case and in the interest of substantial justice, we remit the entire disputed issue to the file of AO to verify the facts and call for the information and pass a speaking order. The assessee is also directed to cooperate in submitting the information for early disposal of the case. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

13. Thus, appeal of the assessee is allowed for statistical purposes.

14. In the result, appeal of the Revenue i.e. ITA No.236/Ran/2017 is dismissed and appeal of assessee i.e. ITA No.199/Ran/2017 is allowed for statistical purposes.

Order pronounced in the open court on 29/11 /2018

Sd/-

(N.S.SAINI)

ACCOUNTANT MEMBER

Ranchi, Dated 29/11/2018

Prakash Kumar Mishra , Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
2. The Respondent –
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

BY ORDER,

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SR.PS, ITAT, RANCHI