

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 704/Ind/2017

Assessment Year 2009-10

Income Tax Officer-1, Aayakar Bhawan, Dewas	Vs.	M/s. Santosh Beej Utpadak Sahakari Sanstha Mydt, Gram Lohari, Dewas)
(Appellant)		(Respondent)
PAN No.AAFTS2656F		

Revenue by	Smt. Ashima Gupta
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	19.03.2019
Date of Pronouncement	22.03.2019

ORDER

PER MANISH BORAD, AM.

The above captioned appeal is filed at the instance of Revenue pertaining to Assessment Year 2009-10 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals) (in short 'Ld.CIT(A)'], Ujjain dated 28.08.2017 which is arising out of the order u/s 263/144 of the Income Tax Act 1961(In short the 'Act') dated 24.03.2015 framed by ITO01, Dewas.

2. Revenue has raised following grounds of appeal;

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.46,82,429/- made on account of subsidies received.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.2,37,00,000/- made on account of withdrawal from bank.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.6,36,33,239/- made on account of creditors.

(Note:- The issue No.1 is covered under the exceptions mentioned in para 8(c) of circular 21/2015 due to revenue audit objection on subsidies received).

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the appeal is finally heard for disposal”

3. Briefly stated facts as culled out from the records are that the assessee is a Cooperative Society registered under the Madhya Pradesh Cooperative Societies Act and is founded by the farmers for the enhancement of agriculture produce and engaged in grading of seeds under the seeds certification programme run by the Govt. of Madhya Pradesh. For Assessment Year 2009-10 income of Rs.28,640/- declared in the income tax return submitted on 30.09.2009. Assessment u/s 143(3) of the Act was completed on 23.12.2011 assessing income at Rs.1,86,158/-. Thereafter Ld. Commissioner of Income Tax passed order u/s 263 of the Act dated 28.3.2014 setting aside the order passed by Ld. A.O and directing to assess the income of the assessee afresh in the light of the

direction given in the order issued u/s 263 of the Act and in compliance there to Ld. A.O initiated the assessment proceedings by issuance of notices u/s 143(2)/142(1) of the Act. On the date of hearing representative of the assessee society made a submission that the society is dissolved and showed its inability to file any details. Ld. A.O therefore had no option except to frame an ex-parte assessment order u/s 144 r.w.s 263 of the Act and on the basis of finding of Ld. CIT(A) in the order u/s 263 of the Act made the following additions;

(i) Un accounted subsidy not credited to the profit and loss account	Rs. 46,82,429/-
(ii) Unexplained cash withdrawal	Rs.2,37,00,000/-
(iii) Unexplained creditors	<u>Rs.6,36,33,293/-</u>
Total	Rs. 9,20,15,722/-

Income assessed at Rs.9,22,02,280/-.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) and placed various details in support of its contention that Ld. A.O erred in making the additions and based on these submissions as well as the Remand report Ld. CIT(A) deleted all the additions.

5. Now the Revenue is in appeal before the Tribunal.
6. Ld. Departmental Representative vehemently argued and supporting the orders of Ld. A.O.
7. Per contra Ld. Counsel for the assessee relying on the orders of Ld. CIT(A) also submitted that the alleged addition for Rs.46,82,429/- related to subsidy is the liability at the end of the year and not the income. For the addition for unexplained cash withdrawal of Rs.2,37,00,000/-, he submitted that the alleged amount was withdrawal from the bank account of the society for the purpose of making payment to the farmers against the purchases and their claims. This amount in no case can be treated as income. Further with regard to the unexplained creditors of Rs.6,36,33,239/- Ld. Counsel for the assessee firstly made a reference to the Society's dissolution certificate stating that during the financial year 2013-14 the society was dissolved and all the amounts were cleared which itself proves that all the liabilities were paid for. Reference was also made of the copies of vouchers and ledgers placed before the Ld. CIT(A) to justify the genuineness of the transactions.

8. We have heard rival contentions and perused the records placed before us and gone through the written submission filed by Ld. Counsel for the assessee. Revenue is aggrieved with various deletion made by Ld. CIT(A).

9. As regards Ground No.1 for the alleged addition of Rs.46,82,429/- relating to subsidy received by the assessee, we find that Ld. CIT(A) deleted this addition giving following finding of fact; “6.1 **Ground No.1** :- Through this ground of appeal the appellant has challenged the addition of Rs,46,82,429/-- on account of subsidies received. The appellant was a cooperative society registered under the MP Cooperative Societies Act by the farmers and has been dissolved by the farmers through the Competent Authority on 09- 10- 2013 closer certificate has been submitted. The society was engaged in grading of seeds certification programme run by State Government Seed Certification Agency. This society was working as a nodal agency between the farmers and the Seed Certification Agency to run seed certification program as per the norms of Government to facilitate the farmers for getting full and true value of their seeds by certifying. For such operations of the society, the state government provide subsidy to the cooperative society.

During the year also, the appellant received subsidy from Madhya Pradesh Kisan Kalyan and Krishi Vikas Vibhag, Bhopal. Such subsidy is given to the societies for distribution of the same to the farmers. As per the guidelines issued by Madhya Pradesh Kisan Kalyan and Krishi Vikas Vibhag, Bhopal, seed subsidy of Rs. 500/per quintal is paid to the nodal agency (i.e. the appellant) from which, Rs. 400/- is meant for payment to the farmers from whom seeds are purchased by the society and remaining Rs. 100/- is kept with the society for meeting out its administrative expenses. The system of subsidy and its distribution is clearly laid down by the department for the nodal cooperative societies.

For the year under consideration, the appellant received the following subsidy amounts:

S.No.	Date	Bank	Amount
-			
01	25-11-2008	Axis Bank Dewas	4,00,000/-
02	03-02-2009	Axis Bank Dewas	4,17,280/-
03	19-02-2009	Axis Bank Dewas	1,91,499/-
04	25-02-2009	Axis Bank Dewas	36,73,650/-
		TOTAL	46,82,429/-

Subsidy of seed certification is paid by Madhya Pradesh Kisan Kalyan and Krishi Vikas Vibhag, Bhopal.

Subsidy is fixed @ Rs. 500/- per quintal from which Rs. 400/- is meant for payment to farmers who take part in seed certification program and supply seed to the appellant and remaining Rs. 100/- is meant for taking care the administrative expenditure of the societies.

The subsidy is released on the basis of supplies made by the society in the year. On the basis of supply of seeds subsidy is calculated and in the

due course paid to the societies. Such payment of subsidies on seed supply takes one or two years of release from the State Government Department.

After receiving subsidy by the Seed Certification Societies, the farmers' share of Rs. 4001- per quintal is paid as per their supplies and after making payment to the farmers, the balance portion of Rs. 1001- per quintal is recognized by the appellant as its income. During the year under consideration, the aforesaid amount of subsidy Rs. 46,82,429/- was received by the appellant pertaining to earlier years and the same was paid in the next financial year i.e. 2009-10.

Therefore, the aforesaid amount of Rs. 46,82,429/- is shown as liability by the appellant in its balance sheet as of 31-03-2009. Farmers' share @ Rs. 400/- per quintal from the aforesaid amount of Rs. 46,82,429/- was paid during the financial year 2009-10 and an amount of Rs. 31,89,3811- shown in Profit and Loss Account along with other payment of subsidies to the farmers.

During the Financial Year 2008-09 i.e. AY 2009-10 a sum of Rs. 22,33,6701- was shown as subsidy income in the Profit and Loss Account of the appellant.

As per Schedule - 1 'Current Liabilities' of the Balance Sheet as of 31-03-2009 wherein a sum of Rs. 5,77,169/- is shown as Subsidy Payable break-up of which is as under:

c.	Opening Balance on 01-04-2008	Rs.4,94,740/-
d.	Subsidy Received during the year	Rs.46,82,429/-
	Total	Rs.52,77,169/-

Therefore, in view of the above, it is clear that the sum O 46,82,429/ ... is

liability and not income of the year. The income of the year i.e. Rs. 22,33,670/- is duly shown in the Profit and Lo Account of the appellant. The payment of subsidy has been duly supported by evidences regarding payment of subsidy amount from the above to the farmers in the next following year i.e. FY 2009-10. The appellant furnished the copies of vouchers duly receipted by the farmers and beneficiaries who have received subsidy payment @ 4001- per quintal from the appellant. The Ledger Account "Upsanchalak Krishi (Subsidy) and "Subsidy" Account wherein, your honor will find that after payment of subsidy to the farmers, remaining amount of Rs. 31,89,381.15 is shown as income in the Profit and Loss Account for the year 2009-10 has been furnished. The above evidences have been forwarded to the AO for his comments. The AO in the remand report submitted only that the evidences have not been submitted during the course of assessment proceedings. The AO has not made any adverse comments on the submission made by the appellant. Therefore, the addition made by the AO amounting to Rs. 46,82,429/- is **Deleted**. Therefore, the appeal on this ground is Allowed."

The above finding of fact has not been controverted by the revenue authorities by placing any adverse material on records and the same is verifiable from the financial statements placed in the paper book. We therefore find no reason to interfere in the findings of Ld. CIT(A) of deleting of Rs.46,82,429/-. Ground No.1 of Revenue's appeal stands dismissed.

10. Apropos Ground No.2 wherein the Revenue challenged the deletion of Rs.2,37,00,000/- on account of withdrawal. We find that there is no dispute by the revenue authorities that the alleged amount was withdrawn from the bank account of the society wherein regular sales are credited. Merely making a withdrawal of cash from the bank cannot give it a shape of unexplained credit as made by the Ld. A.O. Ld. CIT(A) has rightly appreciated the fact that the alleged amount withdrawn from the bank for making payment to the farmers cannot be treated as income of the appellant. We find no inconsistency in the finding of Ld. CIT(A). Ground No.2 of the revenue stands dismissed.

11. Apropos Ground No.3 by which the Revenue challenged the addition of Rs. 6,36,33,239/- on account of creditors. Records shows that as on 31.03.2009 under the head Schedule-I for Current Liabilities an amount of Rs.6,46,48,296/- has been shown in the Audited Balance Sheet which includes the subsidy payable of Rs.51,77,169/- and the sundry creditors of goods at Rs.5,94,71,127/-.

12. Ld. A.O on the basis of the direction given in the order u/s 263 of the Act made an addition for unexplained cash credit of Rs.6,36,33,239/- which has been deleted by Ld. CIT(A) making following observation;

“6.3 **Ground No.3** :- Through this ground of appeal the appellant has challenged the addition of Rs.6,36,33,239/- on account of creditors. As per the Balance Sheet as of 31-03-2009 of the appellant, total 'Sundry Creditors' vide Schedule - 1 "Current Liabilities" is Rs. 6,46,48,296/-. However, the Assessing Officer has added a sum of Rs. 6,36,33,239/- under the head of Sundry Creditors which differs from the amount of the balance sheet of the appellant.

As per the practice of the appellant and other seed certification societies, seeds are purchased in the season which is financial year end and kept in stock. Seeds are purchased on credit and such credits are standing in the account of Sundry Creditors. Further, the creditors are also standing for purchases made during the year which are sold and payment of sales also received after a long time. Due to this delay in the cycle of purchases on credit and sales on credit, the figures of sundry creditors pile-up year after year. During the year under consideration, the appellant was having stock of Rs. 3,87,72,468/- which was on credit purchases from the farmers. Apart from this, creditors already standing in the books of the appellant made the closing balance as on 31-03-2009 to Rs. 6,46,48,296/-.

The Assessing Officer added a sum of Rs. 6,36,33,239/- under this head stating that the appellant fails to get the verification of sundry creditors and did not offered any explanation for the same.

The society was dissolved on 09-10-2013 and the competent Government Authority certified that all the claims and liabilities or the society were already paid and at the time of dissolution, there was no dues over the appellant society.

The appellant society paid to all such creditors against their balances.

Therefore, making payment of the liability in the following years proves that the liability is genuine and created by a routine business transaction.

The society is formed by the farmers for farmers and therefore, taking seeds on credit and making payment for the same after receipts from sale proceeds is a prudent genuine business transaction.

During the course of original assessment proceedings, the learned Assessing Officer asked the appellant society to produce some sundry creditors which were produced before him but the same were rejected due to unavailability of ID proofs by the creditors.

To establish genuineness of the sundry creditors, the appellant society presented the following evidences *a. Society dissolution certificate stating that there is no liability of the society on the date of dissolution and all earlier liabilities have been duly paid by the society.*

b. Copies of vouchers and ledgers: of the creditors to whom payments have been made in the next following years justifying the genuineness of transaction.

c. Copies of sample purchase bills from the farmers against which such sundry creditors have been created.

Therefore, in view of the above, it is established that the creditors of Rs. 6,46,48,296/- are created out of genuine business transaction, have been paid in the next following years and have been certified by another Government Authority as genuine liability of the society.

Therefore, the addition made by the AO amounting to Rs.6,36,33,239/- is **Deleted**. Therefore, the appeal on this ground is **Allowed**".

From the perusal of the above finding of Ld. CIT(A), we observe that specific reference has been made to the dissolution certificate of the society dated 9.10.2013 for the alleged certification that all the claims and liabilities of the society were already paid and at the time of dissolution there was no dues of the appellant society. Riding on this observation, Ld. CIT(A) took a view that the sundry creditors liability which stood on 31.03.2009 may have been paid to the parties concerned in the subsequent years and there was no liability left on the date of the dissolution. To examine the genuineness of the sundry creditors Ld. CIT(A) also perused the

copies of vouchers and ledgers of the creditors and some sample purchase bills.

13. Now as far as the society's dissolution certificate dated 9.10.2013 (placed at page 86 of the paper book) is concerned which is prepared in Hindi and passed by the Office of Co-operative society, District Dewas, we find that assessee society was asked to appear on 8.10.2013 with necessary documents to prove that the society is regularly working. Public notice was also given on 1.10.2013. On the date of hearing i.e on 8.10.2013 none appeared on behalf of the society nor any records were placed through any authorized person. Due to such non presence and non filing of details, Officer of the Co-operative Society passed the order that the society is not working for the purposes for which it has been registered and therefore the registration of the society is cancelled. It nowhere transpires from the registration certificate that the assessee society furnished necessary details to prove that there exists no assets and liabilities of the society as on the date of dissolution and therefore the plea taken by the Ld. Counsel for the assessee that the certificate dated 9.10.2013 allegedly certifying

that all the claims and liabilities of the society were already paid cannot stand for.

14. Further from perusal of the list of sundry creditors placed at page 33 & 34 of the paper book which is the part of the Schedule-I of the audited balance sheet, we find that the outstanding amount of each of the creditors are mostly of huge amounts ranging from Rs. 1 lakh to 90 lakhs. It has been accepted by the Ld. Counsel for the assessee that the payments to all these parties have been made in cash but no confirmation has been filed from any of the parties. We can take few instances of the following sundry creditors of which huge amount was outstanding as on 31.3.2009.

S.No.	Particulars	Amount
1	Chattisgad Rajya Beej Krishi Vibhag	Rs.51,48,262
2	Gangaram Shobaram Napakhedi	Rs.11,02,000
3	Kalu Nagirkha Lohari	Rs.11,07,700
4	Maiyaram Munnalal	Rs.14,62,800
5	Radheyshyam Chandra singh	Rs.16,24,450
6	UP Sanchalak Dewas	Rs.77,69,592
7	Sundry creditors for goods	Rs.90,79,377

The above list which are few of the total list of total sundry creditors. It is apparently not easy for us to accept the genuineness of the sundry creditors as the cash payments were made to them because there is no evidence placed on record in the shape of

confirmation letter, Permanent Account Number and identity proof.

15. The basis taken by Ld. CIT(A) to delete the addition for the unexplained cash credits, in our view requires one more round of examination with the direction to the assessee to place evidence on record to prove the genuineness of the sundry creditors for the purchases made by them and also to prove that payments have been made to them. If necessary Ld. CIT(A) may call for a Remand Report from Assessing Officer. To carry out this exercise we set aside the issue raised in Ground No.3 of the revenue's appeal to the file of Ld. CIT(A) for afresh adjudication and also direct the assessee to remain present on the date of hearing with necessary details to explain the genuineness of sundry creditors. Ground No.3 is allowed for statistical purposes.

16. In the result appeal of the Revenue is partly allowed for statistical purposes.

The order pronounced in the open Court on 22.03.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 22 March, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore