

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 4187/Del/2016  
Assessment year: 2009-10**

**ITA No. 4188/Del/2016  
Assessment year: 2010-11**

**ITA No. 4189/Del/2016  
Assessment year: 2012-13**

ITO, Ward 60(4), Room No. 315, 3 <sup>rd</sup> Floor, D Block, Vikas Bhavan, New Delhi.	<b>vs</b>	Fish Poultry and Egg Marketing Committee, Fish Market Complex, Gazipur, Delhi-110096 (PAN: AAATF0883G)
Appellant		Respondent

**Department by : Ms Ashima Neb, Sr. DR  
Assessee by: Mrs. Avnish Ahlawat, Advocate  
Shri Paras Chaudhry, Advocate  
Shri Amir Singh, Advocate**

**Date of hearing: 29.05.2019  
Date of pronouncement: 31.05.2019**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.**

All these three appeals have been preferred by the revenue against the order of Ld. Commissioner of Income Tax (Appeals)-19, New Delhi {CIT (A)} vide orders dated 02.05.2016 for assessment years 2009-10, 2010-11 and 2012-13 respectively

and involve identical issues; therefore these were heard together and are being disposed of by this common order for the sake of convenience.

2.0 Brief facts of the case are that the assessee claims to be an Agricultural Produce Market Committee regulating the marketing of agricultural produce. It is the assessee's claim that it was eligible for exemption u/s 10(26AAB) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). For assessment year 2009-10, the return of income was filed declaring a loss of Rs. 1,84,928/- after claiming deduction of Rs. 92,76,540/- u/s 10(26AAB) of the Act. In assessment year 2010-11, the return of income was filed declaring loss of Rs.1,69,427/- after claiming deduction of Rs. 1,06,26,739/- u/s 10(26AAB) of the Act. In assessment year 2012-13, the return was filed declaring a loss of Rs. 2,23,586/- after claiming deduction of Rs. 6,04,06,259/- u/s 10(26AAB) of the Income Tax Act.

2.1 The assessee was required to explain the veracity of its claim u/s 10(26AAB) of the Act by the Assessing Officer in all the three years and the assessee submitted that the assessee is a Marketing Committee established under the Delhi Agricultural Produce Market (Regulation) Act, 1976 and entrusted with the

duty of supervising, controlling and providing facilities to the traders operating in the Committee premises. It was further submitted that the assessee regulates the marketing of fish, poultry and eggs. It was explained that the raw material is brought in by the wholesalers and after refining the same i.e. after checking, cleaning, sorting/segregating, chopping, preserving, and packing, the same is supplied to various buyers by the traders who are operating in the Committee area. It was submitted by the assessee that the committee has been formed for better regulation of notified agricultural produce in the notified market for the benefit of the farmers, growers, commission agents and traders and to see that the farmers get the best price of their notified produce in the market. It was submitted that since these activities fall within the purview of exemption as specified in section 10(26AAB) of the Act, the assessee was eligible for the said exemption. Apart from this, the assessee also submitted various other documents in support of its claim.

2.2 However, the Assessing Officer was not convinced with the assessee's claim and held that marketing of fish, poultry and eggs should not be termed as marketing of agricultural products

and that it was rather a trading venture of certain non-agricultural goods. The Assessing Officer proceeded to disallow the assessee's claim u/s 10(26AAB) in all the three years under consideration.

2.3 Aggrieved, the assessee approached the Ld. CIT (A) in all the three years and the Ld. CIT (A) held in favour of the assessee by holding that the assessee was entitled to exemption u/s 10(26AAB) of the Act.

2.4 Aggrieved by the order/s of the Ld. CIT (A), the department is now in appeal before the ITAT and has challenged the findings of the Ld. CIT (A) in the three years under consideration.

3.0 The Ld. Sr. Departmental Representative (DR) submitted that a bare reading of section 10(26AAB) of the Act would suggest that the exemption is granted with respect to any income of an agricultural produce, marketing committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce whereas the assessee is a fish, poultry and egg marketing committee and, therefore, the exemption was not allowable to the assessee. It was further submitted that as per section 10(26AAB)

of the Act, any income derived from agriculture on land situated in India and used for agricultural purposes is agricultural income and, thus, only income from basic operation of cultivating land and requiring expenditure of human skill and labour on land can be termed as agricultural income. It was further submitted that agricultural produce would mean produce which was coming out of the earth after completing necessary activities on agricultural land i.e. ploughing, seeding, watering looking after/maintenance, harvesting etc. whereas the products being marketed and regulated by the assessee i.e. fish, poultry and eggs were not derived from any kind of agricultural operations. A reference was also made by the Ld. Sr. DR to the Union Finance Minister's speech on Finance Bill, 2008 wherein exemption u/s 10(26AAB) was given only to Agricultural Produce Market Committees or State Agricultural Marketing Boards but fish, poultry and egg marketing committees had not been specified. It was submitted that had it been the intention of the legislature to allow exemption to these kinds of committees, it would have been specifically mentioned. The Ld. Sr. DR submitted that the Ld. CIT (A) had misinterpreted the provisions and had allowed the assessee's claim in complete disregard to the fact and law.

4.0 In response, the Ld. Authorised Representative (AR) submitted that the assessee has been constituted under the Delhi Agricultural Produce Marketing (Regulation) Act, 1976 u/s 23 of the said Act on 31.08.2001. It was submitted that section 10(26AAB) of the Income Tax Act, 1961 provides for exemption to Agricultural Produce Marketing Committee or Board which has been constituted under any law for the purpose of regulating the marketing of agricultural produce and for the State of Delhi, the relevant law is Delhi Agricultural Produce Marketing Regulation Act, 1998 which empowered notification of any area in Delhi for the purpose of regulating marketing of agricultural produce u/s 3 and 4 of the said Act. It was further submitted that the assessee has been appointed u/s 35 of the said Act to facilitate trading in fish, poultry and eggs vide Notification in the Delhi Gazette NCTD No. 200 dated 31.08.2001. It was submitted that the only ground for disallowance by the Assessing Officer was that fish, poultry and eggs do not constitute agricultural commodity.

4.1 Thereafter, the Ld. AR made a reference to the definition of agricultural produce as contained in section 2 of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 wherein agricultural produce has been defined to mean all

produce and commodities, whether processed or unprocessed of agricultural, horticulture, apiculture, viticulture, pisciculture, sericulture, animal husbandry, fleeces and skins of animals and forest products as were specified in the schedule. The Ld. AR further submitted that as per the schedule, animal husbandry products included eggs, butter, cattle, ghee, goat meat, milk and milk products and pisciculture included fish. It was submitted that the Delhi Agricultural Produce Marketing Regulation Act, 1998 did not restrict the constitution of committee only for marketing of agricultural products and had given a very wide meaning to the word 'agricultural produce'.

4.2 It was also submitted that there were nine agricultural produce marketing committees which had been formed by Delhi Government under the Act and the department had accepted the claim of eight marketing committees but had denied exemption only to this Committee. Copies of assessment orders for the other eight marketing committees were also filed by the Ld. AR which have been taken on record. The Ld. AR vehemently defended the order of the Ld. CIT (A) and submitted that the Ld. CIT (A) had rightly allowed the benefit of exemption to the assessee.

5.0 We have heard the rival submissions and perused the material available on record. The short question for determination by us is whether marketing of fish, poultry and eggs would fall within the definition of marketing of agricultural produce. Section 10(26AAB) of the Act which provides for deduction to agricultural produce marketing committees reads as under -

*“[(26AAB) any income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce;]”*

5.1 Explanatory note of the provision Finance Act, 2008 issued vide Circular dated 1/2009 reads as under:

*“7. Exemption of income of Agricultural Produce Marketing Committee or Board*

*7.1 Clause (26AAB) has been inserted in section 10 to provide for tax exemption with respect to the income of an Agricultural Produce Marketing Committee or Board which has been constituted under any law for the purpose of regulating the marketing of agricultural produce.*

*7.2 Applicability - This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.”*

5.2 Section 10(26AAB) provides exemption to Agricultural Produce Marketing Committee (APMC) or Board constituted under the law in force for the purpose of regulating the marketing of

Agricultural Produce. For the State of Delhi the relevant law is the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (Hereinafter referred to as DAPM). This Act empowers notification of any area in Delhi for the purpose of regulating marketing of agricultural produce under sections 3 and 4 of DAPM.

5.3 At this juncture it would be relevant to go through some of the provisions of this Act:

- *Section 20(3) - Establishment of market. The DAPM, Act seeks the establishment of one principal market and one or more subsidiary markets, as considered necessary, for the marketing of notified agricultural produce by Board.*
- *Section 35 of the DAPM Act mandates constitution of the marketing committee for regulating the marketing of different kinds of notified agricultural produce marketed in the specified area or any part thereof.*
- *Section 36 of the DAPM Act specifies the composition of the marketing committee.*
- *The powers of the marketing committee are specified under DAPM, Act-1998 as under-*

*“55. Powers and duties of the Marketing Committees - (1) Subject to the provisions of this Act, it shall be the duty of a Marketing Committee:*

- (i) to implement the provisions of this Act, and Rules, regulations and bye-laws made there under the market area;*

(ii) to provide such facilities for marketing of notified agricultural produce therein as the Board may, from time to time, direct;

(iii) to perform other functions as may be required in relation to the superintendence, direction and control of markets, or for regulating and control of markets, or for regulating the market area and for purposes connected with the matters aforesaid, and this purpose, may be exercise such powers and perform such duties and discharge such functions as may be provided by or under this Act.

(2) Without prejudice to the generality of the foregoing provisions, a Marketing Committee may -

(a) regulate the entry of the persons and of vehicular traffic into the market;

(b) supervise the conduct of those who enter the market for transacting business;

(c) grant, renew, refuse suspend or cancel licenses ;

(d) provide for setting disputes arising out of any kind of transaction connected with the marketing of notified agricultural produce and all matters ancillary thereto;

(e) prosecute persons for violating the provisions of this Act and to the rules regulations and bye-laws made there under;

(f) maintain and merge the market, including the regulation of admissions to, and conditions for use of the market ;

(g) regulate the marketing of notified agricultural produce in the market area and the market, and the weighment, delivery of and payment for, such agricultural produce;

*Explanation - for the purposes of clause (g) the word 'regulate' shall include -*

- (i) making, carrying out, enforcing or cancelling of any contract of sale of a notified agricultural produce ;*
- (ii) conducting or supervising of a transaction of sale or purchase of a notified agricultural produce in accordance with the procedure laid down under this Act, or rules, regulations and bye-laws made there under;*
- (iii) specifying any place or spot where a notified agricultural produce shall stored or displayed for purpose of sale by open auction ;*
- (iv) fixing the time for holding auction; and*
- (v) cancelling an auction if it is not held in the presence of the employees of the marketing committee.*
- (h) arrange for the collection -*
  - (i) of such notified agricultural produce in the market in which all trade therein is to be carried on exclusively by the Government by or under any law for the time being in force for that purposes, or*
  - (ii) of such other notified agricultural produce in the market as the Government may, from time to time notify in the official Gazette.*
- Acquire, hold and dispose of any movable or immovable property (including any equipment) necessary for the purpose of efficiently carrying out its duties ;*
- (j) collect, maintain, disseminate and supply information in respect of production, sale, storage, processing, prices and movement of notified agricultural produce (including information relating to crop-statistics and market intelligence) as may be required by the Director or the Board;*

*(k) take all such steps to prevent adulteration and to promote grading and standardization of such agricultural produce, as may be prescribed;*

*(l) enforce the provisions of this Act and of the rules, regulations and bye-law made there under including the conditions of the licenses granted, under this Act*

*(m) perform such other duties as may be prescribed;*

*(n) arrange to obtain fitness certificate of health from a veterinary doctor in respect of animals, cattle or birds brought for sale of sold in the market/sub-market;*

*(o) disseminate information about the benefits of regulation, the system of transaction, facilities provided in the market year, etc. mean as posters, pamphlets, hoarding, cinema slides, film shows, group meetings, etc., or through any other means considered by it more effective or necessary;*

*(p) ensure payment in respect of transaction which takes place in a market to be made to be made on the same day to the seller, and in default thereof to seize the agricultural produce in question along with other property of the commission agent or purchaser if no commission agent is involved in the transaction ;*

*(q) make arrangement for weighmen palledars for weighing and transporting of goods in respect of transactions held in the market yard/sub-yard;*

*(r) recover the charges in respect of weighmen and palledars and distribute the same to weighmen and palledars if not paid by the purchaser or seller, as the case may be.”*

5.4 From the above, it is clear that the main function of the marketing committee is to facilitate free and fair trade of the agricultural produce and not to undertake trading on this own behalf. It has to provide a place where the producer and the consumers can meet and trade freely. The committee is entitled to a fee for the service rendered. It is recovered from the commission agents who undertake the trading on behalf of the purchaser and the seller. The assessee has been appointed u/s 35 of the DAPM Act to facilitate trading in fish poultry, eggs etc. The composition of committee is approved by the Lt. Governor of Delhi & has been notified in the Delhi Gazette, NCTD No. 200 dated 31.08.2001.

5.5 It is seen that the Assessing Officer, while rejecting the claim of the assessee, has been guided by the fact that the assessee is dealing in fish, poultry eggs and not agricultural produce. As per the Assessing Officer, the assessee should be engaged in the marketing of anything produced from the use of land which should fall in the definition of word agriculture as defined in section 2(1A) of the Act. He has dealt with various case laws relating to the definition of agricultural income. He has also drawn reference to the speech of the Union Finance Minister that the exemption u/s 10(26AAB) is to be given to only APMC or State

Agricultural Market Boards besides the exemption extended to the Coir Board with retrospective effect from 2012.

5.6 It is a fact that the word 'agricultural produce' has not been defined under the Income Tax Act. The Assessing Officer held that since fish, poultry and eggs did not constitute agricultural commodity it could not fall under the term of agricultural produce. However, at this juncture, it is important to note the context in which the term agricultural produce has been used. It has been used in the context of the activities of APMC (from which it derives income) constituted under the DAPM for the purpose of regulating and marketing. It is therefore, incumbent to see the relevant Act which empowers the committee to undertake the regulating and marketing of commodities. Delhi Agricultural Produce Marketing (Regulation) Act, 1998, defines the terms agricultural produce as under:

*"2. Definitions - (1) In this Act, unless the context otherwise requires,*

*(a) "agriculture produce" means all produce and commodities, whether processed or unprocessed, of agricultural, horticulture, apiculture, viticulture, pisciculture, sericulture, animal husbandry, fleeces and skins of animals and forest products as are specified in the Schedule and such other produce as may be declared by the*

*Government by notification to be an agricultural produce and also includes admixture of two or more of such produce.”*

5.7 The schedule referred to above is reproduced as under –

*I. Animal Husbandry Products -*

- 1. Eggs*
- 2. Butter*
- 3. Poultry*
- 4. Cattle meat*
- 5. Ghee*
- 6. Goat meat*
- 7. Milk & Milk*

*II. Apiculture –*

*1. Honey*

*III. Cattle Feeds -*

*IV. Cereals —*

*V. Condiments, Spices and others -*

*VI. Fibers -*

*VII. Fruits -*

*VIII. Grass and fodder*

*IX. Gur, Sugar, Sugarcane, Khandsari, Shakhar and rashkat.*

*X. Narcotics - Tobacco*

*XI. Oilseeds - Castor seed, Cotton seed, Sarson, Toria etc.*

*XII. Pisciculture - Fish*

*XIII. Pulses - Arhar, Beans, Gram, Moth, Mung, Peas etc.*

*XIV. Vegetables - Arvi and Arvi Patta, Carrots- all types. Onion etc.*

*XV. Horticulture - Flowers, cut flowers and Potted Plants.*

*XVI. Forest Products - Bamboo, Baheda. Gum, Honey, Karela, Mahua flowers*

5.8 From a plain reading of the definition, it is apparent that DAPM Act does not restrict the constitution of committee

only for marketing of agricultural produce. It has within its scope various other commodities like decorative plants production of honey and silk etc. It also includes the marketing of forest products which would otherwise not fall within the definition of 'agriculture'. The DAPM Act, therefore, has given very wide meaning to the word agricultural product. Apparently, Income Tax Act has also imported the word agricultural produce from the DAPM Act, 1998 to cover APMCs notified under it to provide the benefit to all APMCs provided in the DAPM Act or similar Acts in other states. It could not have been the intention of the Act to leave out some of the committees, notified under the DAPM especially when all the committees were rendering similar services in respect of various products. Therefore, in view of the expanded meaning given to the term 'agricultural produce' by the DAPM Act, it is our considered opinion that the word 'agricultural produce', used in connection with APMC connotes a very wide meaning bringing within its preview a large gamut of commodities besides agricultural products. Since the income accrues to the APMCs from pursuing these activities, the Income Tax Act, also perceives a wider meaning by referring to the DAPM. Therefore, if the term 'agricultural produce' is given a

wider meaning in terms of the definition of ‘agriculture produce’ as defined in section 2 (a) of the DAPM Act and as specified in the Schedule of the said Act, fish, poultry and eggs would also be covered under the definition of ‘agriculture produce’ as they have been specified in the Schedule to the DAPM Act. On reaching such conclusion, the benefit of exemption u/s 10(26AAB) will automatically follow. The Ld. CIT (A) has also reached a similar conclusion by importing the definition of ‘agriculture produce’ from the DAPM Act and we find his reasoning and logic to be perfectly in order. Therefore, we find no reason to differ with the findings of the Ld. CIT (A) and while upholding the same, we dismiss the grounds raised by the Revenue in all the three years under appeal which are identical.

6. In the final result, all the three appeals filed by the revenue stand dismissed.

**Order pronounced in the open court on 31st May, 2019.**

**Sd/-**

**(N.K. BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 31st May ,2019  
‘GS’

Copy forwarded to: -

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

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By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	