

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2325/Ahd/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

<b>The Ahmedabad Co-op. Dept. Stores Ltd. [Apna Bazar] Multi Storeyed Government Building, Sardar Park, Lal Darwaja, Ahmedabad- 380001</b>	<b>बनाम/ Vs.</b>	<b>DCIT Circle-1(3), 3<sup>rd</sup> Floor, Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad- 380015</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAB AT0 757 D</b>		
<b>(अपीलार्थी/Appellant)</b>	<b>..</b>	<b>(प्रत्यर्थी / Respondent)</b>

<b>अपीलार्थी ओर से/Appellant by :</b>	<b>Shri G. C. Pipara, AR</b>
<b>प्रत्यर्थीकीओरसे / Respondent by:</b>	<b>Shri L. P. Jain, SR. DR</b>

<b>सुनवाईकीतारीख/Date of Hearing</b>	<b>26/07/2019</b>
<b>घोषणाकीतारीख /Date of Pronouncement</b>	<b>06/08/2019</b>

**आदेश/ORDER**

**PER AMARJIT SINGH - AM:**

The appeal filed by the Assessee for A.Y. 2013-14, arise from order of the CIT(A)-10, Ahmedabad dated 19.09.2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The solitary ground of appeal of the assessee is filed against the decision of Ld. CIT(A) in confirming the addition of Rs. 29,95,031/- u/s. 43B of the Act on the ground that unpaid bonus was paid after the due date of filing of return of income. The second alternative ground of appeal of the assessee is that if the disallowance u/s. 43B is sustained then the same to be considered for deduction u/s. 80P of the Act.

3. The assessment u/s. 143(3) of the Act was finalized on 22.02.2016 and total income was determined at Rs. 54,03,150/-. The AO has also allowed deduction u/s. 80P under Chapter VIA to the amount of Rs. 54,65,407/-. The issue in appeal is pertained to the addition of Rs. 29,95,031/- made u/s. 43B of the Act in respect of unpaid bonus which was paid after due date of filing return of income. In the appeal the Ld. CIT(A) has dismissed the appeal of the assessee retreating the same fact reported by the AO.

4. During the course of appellate proceeding before us the Ld. Counsel has submitted detail of submission and copies of document furnished before AO and Ld. CIT(A) during the course of assessment and appellate proceedings. It was contended that cheques of unpaid bonus were issued to the respective employees before the due date of filing return of income and clearance of the cheque is not in the control of the assessee. Therefore, assessee has discharged its liability by issuing cheques of bonus to the employees before the due date of filing of return of income u/s. 139(1) of the Act. It is also submitted that assessee is a cooperative society and its incomes is exempt u/s. 80P of the Act and by disallowing the aforesaid payment u/s. 43B of the Act, the assessee is entitled for more exemption u/s. 80P of the Act. The Ld. Counsel has also placed reliance on the decision of Haryana and Punjab High Court in the case of Commissioner of Income Tax vs. Hindustan Wire Products Ltd. vide IT Appeal No. 109 of 2001 dated 04.12.2001, in the case of Pr. Commissioner of Income Tax vs. M/s. Sun Pharmaceutical Industries in the High Court of Gujarat vide Tax Appeal No. 854 of 2016 dated 30.03.2017 and the CBDT Circular No. 37/2016 F. No. 279/Misc./140/2015/ITJ dated 02.11.2016.

5. On the other hand, the Ld. DR has supported the order of lower authorities.

We have heard both the sides and perused the materials on record. The AO has made addition of Rs. 29,95,031/- u/s. 43B in respect of unpaid liability of bonus. The AO was of the view that the bonus to the amount of Rs. 29,95,031/- was paid after the due date of filing the return of income. Therefore, the same was disallowed u/s. 43B

of the Act which clearly stipulate that certain deduction to be made only on actual payment. However, as per the proviso to the said section provide that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in the case for furnishing the return of income under (1) of sec. 139 in respect of the previous year in which the liability to pay such sum was incurred. The assessee has claimed that it has duly issued the cheques in respect of unpaid bonus before the due date of filing return of income for A.Y. 2013-14 and in its support the assessee has furnished the copy of ledger of unpaid bonus expenses and copy of bonus register showing the details of name of the employees, designation, total salary, amount of bonus and signature of the respective employees on the Revenue stamp. It is noticed that AO has not controvert the claim that payment of the unpaid bonus was made before the filing of return of income. Considering the aforesaid facts and the Circular of the CBDT No. 37/2016 and decision of Hon'ble Jurisdictional High Court as cited above the claim of the assessee for deduction of bonus to the amount of Rs. 29,95,031/- u/s. 43B is allowed. Therefore, alternate ground of appeal of the assessee for considering deduction u/s. 80P is dismissed. In the result, ground of appeal of the assessee is partly allowed.

6. In the result, the appeal of the assessee is partly allowed.

This Order pronounced in Open Court on	06/08/2019
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Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER

Ahmedabad: Dated 06/08/2019

TANMAY

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।