

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं / ITA No.2326/PUN/2017

निर्धारण वर्ष / Assessment year : 2009-10

Fattesinghrao Naik (Appa) Sahakari
Dudh Utpadak Sangh Limited,
At Post Shirala Taluka
Shirala District, Sangli.

..... अपीलार्थी /
Appellant

PAN : AAAAS1962J.

बनाम v/s

The Income Tax Officer,
Ward 2(1), Sangli.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri C.V. Deshpande &
Shri Pramod Shingte.

Revenue by : Shri Rajesh Gawli.

सुनवाई की तारीख / Date of Hearing : 19.07.2019	घोषणा की तारीख / Date of Pronouncement: 05.09.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (Appeal) – 1, Kolhapur dated 25.07.2017 for A.Y. 2009-10.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Society engaged in purchase and sale of milk and milk products. Assessee electronically filed its return of income for A.Y. 2009-10 on 03.09.2009 declaring total income at Rs. Nil after claiming deduction of Rs.35,12,878/- U/S 80P(2) of the Act. The case was

selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.31.10.2011 and the total income was determined at Rs. 23,33,840/-. The AO partially disallowed assessee's claim of deduction u/s 80P(2)(b) of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.25.07.2017 (in appeal No.SLI/241/11-12) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

"1. On the facts and in circumstances of the case and in law, the lower authorities have erred in incorrectly invoking provisions of section 80P(2)(b) of the Income Tax Act, 1961 and thereby incorrectly denying the deduction claimed by the assessee amounting Rs.23,33,840/- for the reason that society has supplied the Milk collected from its members to federal society as well as to private parties.

2. On the facts and in circumstances of the case and in law, alternatively it is submitted that the appellant shall be granted deduction under section 80P(2)(a)(iii) as the appellant has complied with provisions of the said section."

3. During the course of assessment proceedings, AO on perusing the details furnished by the assessee noticed that assessee had sold milk worth Rs.19,24,82,650/- which included sales of Rs.10,86,33,592/- made to persons other than Federal Society, the Government or local authority or a Government company as specified u/s 80P(2)(b) of the Act. The details of such sales are listed and tabulated by the AO on Page 3 and 4 of the assessment order. He also noticed that assessee had also sold Packing milk amounting to Rs.1,56,48,867/- to various persons other than Federal Society or the Government or local authority. Apart from the aforesaid sales, he also noticed that assessee had made sales to the tune of Rs.93,68,709/- which includes sale of allied Dudh products of Rs.8,93,599/-, store material of Rs.35,50,791/-, animal breeding of Rs.47,03,000/- to persons other than Federal Society, Government or local authority. AO was of the view that profits earned by the assessee from

the sale of milk aggregating to Rs.13,36,51,168/- made to persons not covered under Sec.80P(2)(b) of the Act, are not eligible for deduction. He accordingly re-worked the deduction u/s 80P(2)(b) at Rs.11,29,038/- and disallowed the balance amount claimed as deduction. Aggrieved by the order of AO, the assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

*“6. I have considered the submissions of the appellant with reference to the facts of the case. From the above submission it can be seen that the appellant has now claimed deduction under section 80P(2)(a)(iii). From a plain reading of section 80P it can be seen that the section classifies co-operative societies into different types. Where, on the one hand, clause (a) of section 80P(2) is applicable to co-operative societies providing various facilities to its members, on the other, clause (b) applies to co-operative societies, being a primary society engaged in supply of milk etc. Thus, there is a clear distinction. What has to be taken note of is that the expression "members" under section 80P(2)(a) cannot be extended to include the members of a primary co-operative society which is a member of the federated cooperative society. Therefore, the issue involved is not regarding the agricultural produce but of the class of cooperative society to which the appellant belongs, which also defines its members. From records, it is clear that the appellant in the instant case is a primary co-operative society engaged in supply of milk received from its members. The appellant's correspondence during assessment also testifies the above fact. In the circumstances, I find that the claim was rightly made under section 80P(2)(b) and the assessing officer has also rightly applied provisions of section 80P(2)(b). The assessing officer has observed that the appellant had sold only 32.14% of the total sales to federal societies and a major portion i.e. 67.86% of the sales were made to private parties whereas it has claimed 100% deduction under section 80P(2)(b). The appellant has not denied this finding of the assessing officer. The assessing officer is bound by the Income-tax Act and under the above circumstances he could not have allowed 100% of the claim of deduction. I find that the appellant has not complied with any of the sub-clauses (i), (ii) and (iii) of section 80P(2)(b) in order to make itself eligible for the claim deduction. In the circumstances, I hold that the assessing officer was justified in restricting the claim of deduction to only that portion of profits derived from sale of milk made to federal societies. Accordingly, this **ground** of appeal is **dismissed**.*

Aggrieved by the order of Ld.CIT(A), assessee is now before us.

4. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A). The Ld.A.R. further submitted that though the assessee wanted to supply the entire milk collected by it to Mahanand Dairy, Mumbai which is a federal Society but Mahanand Dairy expressed its inability to accept

100% of the milk collected by the assessee society from the farmers due to paucity of processing capacity and demand of Mahanand Dairy products and therefore advised the assessee not to send the entire milk to it. He submitted that in view of the aforesaid fact, assessee was forced to sell the milk to outside purchasers as the milk collected by the assessee has a very short shelf life and if the milk is not processed immediately, the entire milk would get spoiled. He therefore submitted that in such a situation for the reasons beyond the control of assessee, the assessee was forced to sell the milk to the outsiders. He submitted that in such situation, the assessee could not be denied the benefit of deduction u/s 80P(2) of the Act. In support of his contention about the inability of Mahanand Dairy to accept milk from the assessee, he placed on record copy of the letter bearing No.MND/02/DAIRY/Shirala tal-milk supply/18-19/D73 dated 15.12.2018, issued by the Dairy Manager, Mahanand Dairy. He further submitted that the sale made by the assessee to outside parties is not at a rate higher than the price at which the milk was sold to the Federal Society and therefore, it cannot be said that assessee, with the intention to claim higher price sold the milk to outside purchasers instead of selling the milk to the Federal Society. In support of his aforesaid contention, the Ld.A.R. placed on record a tabulated statement indicating rate and quantity of milk sold to outside parties and the Federal Society. The Id.A.R. further relied on the decision of Hon'ble Apex Court in the case of *Bajaj Tempo Limited Vs. CIT* reported in (1992) 196 ITR 188 for the proposition that a provision in a taxing statute granting incentives for promoting growth and development should be construed liberally.

5. The Id. D.R. on the other hand submitted that Sec.80P(2)(b) of the Act contemplates that deduction can only be allowed to the extent of sale

of milk made to the Federal Co-operative Society or Government or local authority or Government company and not to outsiders. He therefore submitted that in view of the clear provision of the Act, AO and Ld.CIT(A) have rightly denied the claim of deduction. He thus supported the orders of lower authorities.

6. We have heard the rival submissions and perused the material on record. The issue in the present appeal is with respect to claim of deduction u/s 80P(2)(b) of the Act. It is an undisputed fact that assessee is a Co-operative Society engaged in the business of collecting milk from farmers / primary societies and supplying the same to Federal Societies as well as non-federal parties. It is an undisputed fact that for the year under consideration assessee society has made sale of milk and other milk products to the tune of Rs.13,56,51,168/- to the parties which are not covered under the provisions of Sec.80P(2)(b) of the Act. Provisions of Sec.80P(2)(b) contemplates that deduction can be claimed on the amount of gains of business of a co-operative society on sale to Federal Society, the Government or local authority or Government company. In the present case, it is an admitted fact that the sale to the tune of Rs.13.56 crores is not to the parties covered u/s 80P(2)(b) of the Act.

7. Before us, assessee has submitted that the assessee was forced to sell milk to outside parties as Mahanand Dairy which is a Federal Co-operative Society to whom assessee society use to supply the milk, had expressed its inability to accept and process the milk collected from the assessee society. Mahanand Dairy had advised the assessee not to send the milk to them as they would not be in a position to accept the milk due to paucity of processing capacity at its end. The aforesaid contention of the

assessee has not been controverted by Revenue. In such a situation, we are of the view that milk being a highly perishable item, its shelf life being very short, the assessee was left with no other alternative but to sell the milk to outside parties. The assessee has placed before us a chart showing the price at which it had sold milk in various months to outside parties and the Co-operative Society during the period relevant to A.Y. under appeal. A perusal of the same reveals that the price charged by the assessee from outside parties is lower than the price at which milk was sold to Federal Society in all the months, except in the month of August, 2009. As per the aforesaid table, it is seen that in the month of August, 2009 there is no sale of milk to Federal society, whereas the sale of milk to outside parties is to the tune of Rs.1,25,54,116/-. We find force in the argument of the Ld.A.R. that it is not a case where assessee has sold the milk at a higher rate to outside parties, in fact assessee was getting higher price on sale of milk to Federal Society in addition to undisputed benefit of deduction u/s 80P(2)(b). It is not a case where assessee has suo-moto volunteered to sell milk in the open market. It was after the denial of Federal Society to accept the milk that the assessee was constrained to sell the milk in open market at a price lower than the price offered by Federal Society.

8. The Hon'ble Apex Court in the case of Bajaj Tempo Limited Vs. CIT (supra) has held that a provision in a taxing statute which grants incentives to promote growth and development should be construed liberally so as to advance the objective of the section and not to frustrate it. It is an undisputed position that provisions of deduction u/s 80P is a provision to promote development of Co-operative Sector. Considering the totality of the aforesaid facts and relying on the aforesaid decision of Hon'ble Apex Court cited herein we are of the view that assessee is eligible

for deduction u/s 80P2(b) of the Act on the milk sold to outside parties. However, the assessee would be eligible for the benefit of deduction u/s 80P(2)(b) on sale of milk at a price at which it has actually sold in the open market or price at which milk is sold to Federal Society, whichever is less. For the month of August, 2008, there is no sale of milk by the assessee to the Federal Society and the sale of Rs.1,24,34,116/- is only to outsiders, hence, we are of the view that benefit of deduction should not be extended on sale of milk for the month of August, 2008. We therefore direct the AO to re-compute the deduction u/s 80P(2)(b) of the Act by excluding the sale made to outsiders in the month of August, 2009. Thus, the ground No.1 of the assessee is partly allowed.

9. Since the ground No.1 has been decided in assessee's favour, alternate ground raised by the assessee has become academic and hence, the same is dismissed as such.

10. **In the result, the appeal of the assessee is partly allowed.**

Order pronounced on 5th day of September, 2019.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 5th September, 2019.

Yamini

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Kolhapur.
4. Pr. CIT- 1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.