

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

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| ITA No.2857/Bang/2017 |
| Assessment Year: 2011-12 |

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| M/s. Thotada Utpannagala Marata Sahakara Sangha Niyamitha APMC Yard, Channagiri Shivamoga 577 213 PAN NO :AAAAT3475D | Vs. | ITO Ward-3 Shivamoga |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Ravishankar, A.R. |
| Respondent by | : | Shri Kannan Narayanan, D.R. |

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| Date of Hearing | : | 06.08.2021 |
| Date of Pronouncement | : | 23.08.2021 |

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order dated 20.6.2017 passed by Ld. CIT(A), Davanagere and it relates to the assessment year 2011-12.

2. The effective grounds urged by the assessee read as under:

2. *The learned CIT(A) is not allowing the deduction u/s 80p(2)(a)(ii) without appreciating the explanation of the Appellant that Appellant is a co-operative Society engaged in business of marketing of agricultural produce grown by its members and profit obtained from marketing of agricultural marketing of agriculture produce grown by members is eligible for deduction u/s 80P(2)(a)(iii).*

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3. *The learned CIT(A) further failed to appreciate that the agriculturist who are growing arcanut are admitted as member and agriculturist who are not growing arcanut are not at all admitted as members. Hence the profit obtained from marketing of agriculture produce grown by members are only claimed u/s 80P(2)(a)(iii) of the Income Tax Act.”*

3. The facts relating to the case are stated in brief. The assessee is a Co-operative Society engaged in the business of marketing of agricultural produce. In the original return of income, it claimed deduction u/s 80P of the Act to the extent of Rs.2,58,96,344/-. In the revised return of income, the assessee claimed deduction u/s 80P of the Act to the extent of Rs.3,07,28,992/- which included deduction of Rs.50,000/- claimed u/s 80P(2)(c) of the Act. The remaining amount was claimed as deduction u/s 80P(2)(a) of the Act. During the course of assessment proceedings, the A.O. asked the assessee to file the details relating to deduction u/s 80P of the Act. The assessee furnished a reply stating as under:

“Ours is a Co-operative society engaged in the business of marketing of agricultural produce grown by our members. Apart from this, we are also engaged in the business of providing credit facilities to our members. Another business conducted by us is purchase of seeds, fertilisers, agricultural implements and other articles intended for agricultural purpose of supplying them to our members. All these activities are covered u/s 80P of I.T. Act in sub-section namely 80P(2)(a)(i), 80P(2)(a)(iii) & 80P(2)(a)(iv) of the Act. So the exemption claimed by us is perfectly in order”

The assessee also placed reliance on the following decisions:-

- a) ITO Vs. Jana Kalyan Nagri Sahakari Pat Sanstha Ltd. (2012) 24 Taxmann.com 127
- b) ACIT Vs. Buldana Urban Co-operative Credit Society Ltd. (2011) 32 Taxmann.com 69.

4. The A.O. noticed that the assessee has enrolled certain traders as nominal members. Hence, the A.O. asked the assessee to clarify as to how the assessee is entitled for deduction u/s 80P(2)(a)(iii) of the Act since the said provision requires that the produce sold by the members have to be grown by them and not grown by others. In response to the same, the assessee produced list of nominal members. It also submitted that it is engaged in the business of marketing the agricultural produce grown by its members. It further submitted that the interest income is derived from traders on the credit facility given to them and the said interest income also forms part of the process of marketing of agricultural produce and hence exempt u/s 80P(2)(a)(iii) of the Act. In this regard, the assessee placed his reliance on the following case laws:

- a) CIT Vs. RIOTS Agricultural Produce Co-operative Marketing Society Ltd. (2010) 323 ITR 666.
- b) BROCH District Co-operative Cotton Sales Jinning & Pressing Society Ltd. Vs. CIT 177 ITR 418

5. The A.O. noticed that the assessee has failed to produce the details necessary to prove that it is eligible for deduction u/s 80P(2)(a)(iii) of the Act. The A.O. also held that the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act since it is neither a primary agricultural society nor a primary co-operative agricultural rural development bank, which are eligible for deduction u/s 80P(2)(a)(i) of the Act. Accordingly, he disallowed the deduction claimed u/s 80P(2)(a)(i) & 80P(2)(a)(iii) of the Act to the extent of Rs.2,76,37,690/-. The A.O. allowed deduction of Rs.50,000/- u/s 80P(2)(c) of the Act. The reconciliation of the deduction allowed by the A.O. is given below:-

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| Deduction claimed by assessee in the revised return - | Rs.3,07,28,992/- |
| Less: Interest income | <u>Rs. 30,41,302/-</u> |
| Balance | Rs.2,76,87,690/- |
| Less Deduction u/s 80P(2)(c) of the Act | <u>Rs. 50,000/-</u> |
| Balance | <u>Rs.2,76,37,690/-</u> |

6. In the appellate proceedings, the Ld. CIT(A) confirmed the disallowance made by the A.O. and hence the assessee has filed this appeal before us.

7. We heard the parties and perused the record. The assessee has filed its trading and profit & loss account at pages 225 to 227 of the paper book. A perusal of the same would show that the assessee has shown following gross receipts/gross profit:

- a) Gross Profit from trading of fertilizers, seeds
and others Rs. 17,27,701/-
- b) Gross Commission earned on marketing
of agricultural Produce of its members Rs.1,37,01,081/-
- c) Interest income received from traders Rs.3,03,61,399/-
- d) Interest income received from members Rs.3,66,57,074/-

In addition to the above, the assessee has also received other miscellaneous income.

8. It is the submission of Ld. A.R. that
- (a) Profit from trading of fertilizers, seeds and others is deductible u/s 80P(2)(a)(iv) of the Act.
- (b) Commission earned on marketing of agricultural produce and interest income received from traders is deductible u/s 80P(2)(a)(iii) of the Act.
- (c) Interest income earned from its members is exempt u/s 80P(2)(a)(i) of the Act.

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He submitted that the assessee has claimed deduction as stated above, but the tax authorities have not appreciated the same. Alternatively, the Ld AR submitted that the assessee is a marketing co-operative society and it deals only with its members. Hence entire income is “attributable” to the marketing activity of the assessee and hence entire income is deductible u/s 80P(2)(a)(iii) of the Act.

9. We notice that the assessee has raised ground with regard to the disallowance of claim relating to 80P(2)(a)(iii) of the Act. The A.O. has disallowed the claim for deduction u/s 80P(2)(a)(iii) of the Act, only for the reason that the assessee has failed to furnish the details called for. Otherwise, there appears to be no quarrel that the assessee is eligible for deduction u/s 80P(2)(a)(iii) of the Act in respect of income earned from marketing of agricultural produce grown by its members. The Ld. CIT(A) has also confirmed the disallowance only for the reason that the assessee did not furnish the relevant details before him also.

10. It is the contention of the Ld. A.R. that the assessee has been granted deduction u/s 80P(2)(a)(iii) of the Act in the earlier years. Accordingly, by placing reliance on the decision rendered by Hon'ble Supreme Court in the case of Radha Swami Satsang 153 ITR 321, the Ld. A.R. submitted that the deduction claimed by the assessee should have been allowed under the principle of consistency. The Ld. A.R. further submitted that the assessee is admitting persons as members only after satisfying itself that the said member owns agricultural lands. Only the traders, who purchases the agricultural produce are admitted as nominal members. Hence there is no reason to suspect that the agricultural produce was not grown by the members.

11. On the contrary, the Ld. D.R. submitted that the A.O. has rejected the claim for the reason that the assessee has failed to furnish the details called for by him. He submitted that the condition for allowing deduction u/s 80P(2)(a)(iii) of the Act is that the agricultural produce should have been grown by its members. The assessee has failed to prove that the agricultural produce marketed by the assessee was grown by its members.

12. We heard the rival contentions on this issue and perused the record. Admittedly, the assessee did not furnish the details called for by the A.O., more particularly that the produce marketed by it was grown by its members. Before us, the Ld. A.R. submitted that the assessee is admitting farmers as members, only after satisfying itself that he/she owns agricultural lands. However, we notice that the assessee has failed to furnish any details before the A.O. to support the claim for deduction u/s 80P(2)(a)(iii) of the Act, more particularly, the fact that the agricultural produce was grown by its members. Since the assessee had been allowed deduction u/s 80P(2)(iii) in the earlier years, we are of the view that, in the interest of natural justice, the assessee may be provided with an opportunity to furnish the relevant details before the A.O. to support the claim for deduction u/s 80P(2)(a)(iii) of the Act.

13. Accordingly, we set aside the order passed by Ld CIT(A) and restore this issue to the file of the AO for examining the claim of the assessee afresh in accordance with law. The assessee is also directed to furnish relevant details before the AO.

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14. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 23rd Aug, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 23rd Aug, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.