

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA Nos. 1026 to 1029/Bang/2019
Assessment years : 2011-12 to 2014-15

M/s. Hasana Valaya Adike Belagarara Sahakara Sangha Niyamitha, C-Block, C-1, APMC Yard, Sagar Road, Shivamogga – 577 204. PAN: AAAJT 1256F	Vs.	The Income Tax Officer, Ward-2, Shivamogga.
APPELLANT		RESPONDENT

Appellant by	:	Shri K. Mallaha Rao, Advocate
Respondent by	:	Shri K. Sankar Ganesh, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	16.09.2021
Date of Pronouncement	:	28.09.2021

ORDER

Per Chandra Poojari, Accountant Member

These appeals by the assessee are directed against different orders of the CIT(Appeals), all dated 26.3.2019 for the above assessment years. They were heard together and are disposed of by this consolidated order for the sake of convenience.

2. The assessee has raised the following common grounds in all the appeals:-

“1. On the facts and circumstances of the case, order of the learned Commissioner of Income Tax (Appeals) dated 24/03/2019, for the AY-2011-12 is not maintainable in law.

2. On the facts and circumstances of the case, order of the learned Commissioner of Income Tax (Appeals), ought to have been allowed the appeal in full, instead of partly allowing the appeal, in the interest of justice and equity.

3. On the facts and the circumstances of the case the learned Commissioner of Income Tax (Appeals) ought to have appreciated that, the appellant society is established with the objective for marketing of agriculture produce grown by its members, providing credit facilities to its members and other incidental activities more fully described in bye-law. The claim of appellant exemption under section 80(P) for providing the credit facility to its members, are correct, thus the rejected claim of the appellant and confirmed the additions is against the law. Hence the order of the assessing authority is not correct, and the same was upheld by the CIT(A), is not maintainable in law and liable to be set aside.

4. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) ought to have appreciated that, the claim under section 80P(2)(a) of the Act by the appellant is correct, but the CIT(A) disallowed the claim of the appellant is not correct, thus the order of the CIT(A) is against the principle of natural justice.

5. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) failed to appreciate that the claim of the appellant under section 80P(2)(a)(iii) of the Income Tax Act is correct, but without considering the same, upheld the additions made by the Assessing Authority are not correct, thus order of the CIT(A) are liable to be set aside.

6. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) failed to appreciate that, the judgment relied by the appellant in support of the appellant claim, which is squarely applicable in the assessee case and the judgment which is relied by the CIT(A) is distinguishable from

the fact of the appellant case, thus without appreciating the judgment which is relied by the Appellant and passed order is not correct, hence the order of the CIT(A) is liable to be set aside.

7. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in treating a part of the commission earned from marketing of agricultural produce grown by members as non exempt income and learned CIT(A) ought to have treated entire income from commission earned from marketing of agricultural produce as exempt income.

8. Without considering the fact and merit of the case the learned CIT(A) confirming partly and disallowances made by the assessing authority and confirming interest is excessive, arbitrary and liable to be deleted.

9. For such other grounds that may be urged at the time of hearing and it is prays that kindly may allow the appeal in the interest of justice and equity.”

3. Out of the above grounds of appeal, the Id. AR at the time of hearing has pressed the only the common ground No.7 for all the years.

4. The contention of the Id. AR is that the assessee earned commission from marketing agricultural produce which is eligible business and entitled for deduction u/s. 80P(2)(a)(iii) of the Income-tax Act, 1961 [“the Act”]. However, the AO as well as the CIT(Appeals) considered the same as income not eligible for deduction u/s. 80P(2)(a)(iii) of the Act. According to him, the issue may remitted back to the AO to consider the income from commission on marketing and agricultural produce for deduction u/s. 80P(2)(a)(iii) of the Act.

5. On the other hand, the Id. DR submitted that the assessee is engaged in 3 kinds of activities viz., :-

- purchase of arecanut from growers members;
- purchase of arecanut from other co-operative societies;
and
- purchase of arecanut from traders.

6. According to the Id. DR, any income earned out of purchase of arecanut from traders and income from trading activity engaged from persons other than growers members is not entitled for deduction u/s. 80P(2)(a)(iii) of the Act. According to him, the CIT(Appeals) is justified in restricting the deduction to the extent of income from eligible business only.

7. We have heard both the parties and perused the material on record. Admittedly, in this case, the assessee has not maintained separate books for each activity carried out by it. The assessee purchased and sold arecanut from members and non-members and also earned income from members and derived commission income from trading activity also. The contention of the Id. AR is that the CIT(Appeals) arbitrarily adopted the figures for determining deduction u/s. 80P(2)(a)(iii) of the Act. According to him, an opportunity may be given to present the correct figures so as to determine proper deduction u/s. 80P(2)(a)(iii) of the Act. In our opinion, in the interest of justice it is appropriate to remit this issue to the AO only for the purpose of quantification of deduction u/s. 80P(2)(a)(iii) of the Act, after going through the books of account of the assessee. The AO has to verify the correctness of books of account produced by the assessee so as to determine the eligible income for deduction u/s. 80P(2)(a)(iii) of the Act. With these observations, the order of the CIT(Appeals) is set aside on this issue and the issue is remitted to the AO for fresh decision in accordance with law, after proper opportunity of being heard to the assessee.

8. In the result, all the appeals by the assessee are partly allowed for statistical purposes.

Pronounced in the open court on this 28th day of September, 2021.

Sd/-

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 28th September, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.