

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 112/DEL/2017 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

ACIT Circle-30(1), Room No. 1302, 13 th Floor, E-2, Block, SPM Civic Centre, J. L. Nehru Marg, New Delhi (APPELLANT)	Vs	Indian Farm Forestry Development Cooperative Ltd. 401-402, Laxmi Bhawan, 70, Nehru Place, New Delhi AAAA10323F (RESPONDENT)
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Appellant by	Sh. Vivek Vardhan, Sr. DR
Respondent by	None

Date of Hearing	05.10.2021
Date of Pronouncement	11.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 28/10/2016 passed by CIT (A)-10, New Delhi for assessment year 2012-13.

2. *The grounds of appeal are as under:*

“1. “On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 51,41,899/- made by the AO on account of project expenses ignoring the fact that the same has not been Incurred wholly and exclusively for the purpose of business and was rather in the nature of donation, thus passing an order overlooking the finding of facts by the AO as contained in the assessment order.”

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred*

in deleting the addition of Rs. 5,41,99/- made by the AO on account of project expenses merely on the submission of the assessee without appreciating the fact that for any business expenditure to be allowable as per the Income Tax Act the same is required to be incurred wholly and exclusively for the purpose of business. In this case, expenses incurred for the charitable purpose can be termed at best noble but they cannot be allowed to be deducted while computing taxable income.”

3. *On the facts and in the circumstances of the case, the Ld CIT(A) has erred in overlooking the facts submitted by the assessee himself and certified by the Auditors in the Audit Report Form-3 CD that the assessee is engaged in trading of fertilizers through various societies/agencies.”*

4. *On the facts and in the circumstances of the case, the Ld CIT(A) has erred in overlooking the facts of the case that looking into the nature of projects undertaken by the assessee, it is apparent that these kinds of projects are meant for enabling the assessee as well as its promoter IFFCO in enhancing the sale of fertilizers in the area, which is the main business of the assessee and its promoter IFFCO.”*

5. *On the facts and in the circumstances of the case, the Ld CIT(A) has erred in ignoring the fact that the project expenses incurred by the assessee have resulted into enduring benefit by creating demand for fertilizers over several years, and therefore, these expenses cannot be treated as revenue expenditure and rather are capital in nature.”*

6. *On the facts and in the circumstances of the case, the Ld CIT(A) has erred in overlooking the admitted fact that the assessee is engaged in socio economic activity and thus the expense incurred on such project expenses cannot be treated as business expenses in view of Explanation-2 to Section 37(l), which reads as under: -*

“For removal of doubts it is hereby declared that for the purpose of sub-section (1) any expenditure incurred by an assessee in the activities relating to corporate social responsibility referred in section 135 of the companies Act, 2013(18 of 2013) of shall not be deemed to be an expenditure incurred by the

assessee for the purpose of the business and profession.”

7. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the fact that the assessee receives contribution from its promoter IFFCO whose main business is trading in fertilizers.”

8. On the facts and in the circumstances of the case, the Hon’ble ITAT at least should have set aside the order to file of AO.”

3. The assessee cooperative society is engaged in the trading marketing of the various types of fertilities, manufactured by Iffco at various places in India. Return showing income of Rs. 35,62,270/- was electronically filed by the assessee on 28/9/2012. On selection of case for scrutiny notice u/s 143(2) of the Income Tax Act, 1961 was issued on 8/8/2013. Subsequently, notice u/s 142 (1) of the Income Tax Act, 1961 was also issued. The assessee has revised its return of income declaring income on 4/10/2011. The Assessing Officer made addition of Rs. 6,51,41,899/- thereby making disallowance u/s 37(1) as well as Rs. 8,880/- in respect of disallowance of interest on delayed payment of TDS.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT (A) partly allowed the appeal of the assessee.

5. At the time of hearing none appeared on behalf of the assessee despite giving notices. Therefore, we are proceeding on the basis of the submissions made by the assessee before the Assessing Officer as well as before the CIT(A).

6. The Ld. DR relied upon the assessment order. The Ld. DR also submitted the order of the Tribunal dated 8/8/2019 and 6/9/2017 (ITA No. 573/Del/2016 Assessment Year 2011-12 and ITA No. 6831/Del/2014 Assessment Year 2010-11) and submitted that the issue has been decided against the Revenue by the Tribunal.

7. We have heard Ld. DR and perused the material available on record. The CIT(A) has followed the earlier year orders in assessee's case for Assessment Years 2008-09, 2010-11 & 2011-12 and dismissed the appeal of the revenue. The issue contested herein regarding the addition on account of project expenses was decided in favour of the assessee by the Tribunal in Assessment Year 2010-11 & 2011-12 (ITA No. 6831/Del/2014 order dated 06.09.2017 and ITA No. 573/Del/2016 order dated 08.08.2019). The Tribunal in Assessment Year 2011-12 held as under:-

“6. We further find that for AY 2008-09 and 2009-10, the Hon'ble Delhi High Court has dismissed the appeals filed by the Revenue vide order dated 31/10/2018. The relevant findings of the Hon'ble Court are reproduced below:-

13. In the facts of the present case, the object and purpose of the respondent-assessee is to engage and work' for social and economic upliftment of the rural poor, construct water reservoirs etc. It is established for this purpose and receives grants and donations from third parties with the said objective and purpose. M/s Indian Farmers Fertilizer Cooperative Ltd. had sold and supplied fertilizer that was marketed/sold by the respondent- assessee to earn profit/income, because the respondent-assessee was engaged in social and economic development activities. Association and business relationship with M/s Indian Farmers Fertilizer Cooperative Ltd. was predicated and connected on the respondent-assessee performing and undertaking the social-welfare economic activities. Grants received from government and foreign agencies were to be utilized for the specific purpose i.e. the object and purpose of social and economic upliftment etc. If the respondent assessee was not engaged in and had not undertaken the aforesaid activities, it would not have received the grants and would not have undertaken sale and marketing of fertilizers. The respondent-assessee was therefore required to incur the said expenditure, in order to run, operate and continue its business.

14. *We perceive that there is a degree of contradiction in the plea raised by the Revenue, when they claim that the respondent-assessee was not engaged in 'business' or the expenditure incurred was not on Account of business expediency. Income earned by the respondent-assessee has been treated and taxed under the head profits and gains of business and profession. In the given facts, it would be incongruous for the Revenue to urge that the purpose and goal behind the activities undertaken by the respondent- assessee was not commercial but charity as the intent and motive behind them was not to earn profit. The expenditure incurred to carry out social and economic development would in this background constitute a 'business' or 'commercial' activity undertaken by the respondent- assessee. It would be a contradiction in terms, if we hold that the expenditure would be non-deductible expenditure or expenditure without business expediency. Under section 37 of the Act it does not matter whether or not the expenditure was in the nature of donation or Section 80G of the Act was not attracted. The conditions stated in Section 37 of the Act matter and constitute the test. Expenditure incurred in furtherance of and connected with the business and commercial activities for which the respondent- assessee was established cannot be disallowed as expenditure not relatable and incurred for 'business' purposes.*

15. *On the question of capital expenditure, the assessing officer did not refer to or examine whether the capital assets created were for third party villagers. The respondent- assessee was not the owner of the assets created and developed. The assets created were not capital assets in the hands of the respondent-assessee. The respondent-assessee had contributed, developed, financed aid created assets which belonged to third persons. The expenditure incurred therefore would not be 'capital' in nature in the hands of the respondent assessee.*

16. *Accordingly, the appeal filed by the Revenue has no merit and is dismissed, without any order as to costs."*

7. In view of the above facts and circumstances and in view of the judicial precedents, the appeal filed by the Revenue is dismissed.”

There are no distinguishing facts pointed out by the Ld. DR at the time of hearing. Thus, the order of the CIT(A) in deleting the addition on account of the net project expenses does not require interference. The appeal of the Revenue is dismissed.

8. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 11th Day of October, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 11/10/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

