

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4107/Del/2015 : Asstt. Year : 2009-10

ACIT, Circle-54(1), New Delhi	Vs	National Agricultural Cooperative marketing Federation of India, NAFED House, Ashram Chowk, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAAN4629F		

Assessee by : Sh. Hiren Mehta, CA

Revenue by : Sh. Satpal Gulati, CIT DR

Date of Hearing: 20.01.2022

Date of Pronouncement: 03.03.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-18, New Delhi dated 30.03.2015.

2. The assessee is a cooperative society registered under Cooperative Societies Act, 1912 and is a nodal organization for purchase of agriculture produce under price system scheme and market intervention scheme of Government of India.

Interest liability relating to M/s Alimenta, Geneva:

3. The assessee has claimed the deduction on account of interest payment based on the judgment of decree passed against the appellant by the Hon'ble Delhi High Court. This deduction of payment of interest was claimed in the computation of income. The grievance of the department is that though the same has been claimed in the computation of

income, but the same has not been charged as an expense in the audited accounts/books. Apart from this since the appellant follows Mercantile accounting system, therefore, the impugned amount only is a provision of liability which is-not ascertained and is therefore in the nature of contingent liabilities only.

4. We find that the issue stands examined in the case of the assessee itself for earlier assessment years as under:

“The disallowance on the identical issue was made for A.Y. 2003-04 which was confirmed by Id. CIT(A). However, the addition was deleted by ITAT, New Delhi on second appeal filed by the appellant against the order of the Id. CIT(A). The ITAT has held that liability to pay interest @18% in the case of NAFED crystalized on 28.1.2000 and the yearly interest claimed by NAFED was therefore allowed for A.Y. 2003-04. Addition for A.Y. 2004-05 was also deleted by the ITAT following their order for A.Y. 2003-04. For A.Y. 2001-02 and 2002-03, the succeeding bench of ITAT, New Delhi could not agree with the order of the co-ordinate bench for A.Y. 2003-04 and referred the matter for Special Bench for A.Y. 2001-02 & 2002-03. The Special Bench vide its order dated 16.10.2015 disagreed with the view of the Bench disposing of the appeal of the assessee for A.Y. 2003-04 that liability to pay interest @18% to Alimenta was crystalized on 28.1.2000. According to the Special Bench the assessee incurred a legally and enforceable liability to pay interest to Alimenta on 6.9.2000 i.e. for A.Y. 2011-12, the year under appeal. The Hon'ble Delhi High Court vide its order dated 19.04.2017 81 taxmann.com 117 quashed the order of the Special Bench. In the instant year, the said disallowance has been deleted by the Id. CIT(A) vide order dated 30.03.2015.”

5. Since, the issue has travelled a series of judgments of the Tribunal, Special bench and the Hon'ble High Court and the matter has been settled with regard to the payment of interest, we decline to interfere with the order of the Id. CIT(A).

Disallowance of Expenses u/s 40(a)(ia):

6. The assessee NAFED is a nodal organization for purchase of agricultural produce under the Price Support Scheme (PSS) and the Marketing Intervention Scheme (MIS) of Govt. of India (GOI) for protecting the interest of the farmers and the customers. The Govt. of India has through the CAB (Cost & Accounts Branch), Ministry of Finance has prescribed a system of keeping of data for it under which data of various components of costs are to be maintained. In order to cover the administrative cost and margin of profit, a fixed mark up or margin is added to the cost. The operations are, therefore, on a "cost plus basis". The appellant in turn purchases / procures the agricultural produce from various primary societies and/or the State Level Co-operative Agricultural Marketing Federation on a parallel method.

7. The State level Cooperative Societies purchases goods from the farmers and discharges the price payable to the farmers themselves. The purchases are packed at its own cost and after payment of Market/Mandi fee and purchase tax, supplies the same to the assessee. The assessee purchases the goods from such District/State level Cooperatives against their sales bill/invoice.

8. In order to enable the Govt. of India (GOI) to verify the costs etc., the appellant requires the Societies to raise their sales bills / invoices on the appellant indicating various

components of cost and their mark up properly. The State level Society prepares the invoices by mentioning the basic price determined by the Government and after collecting Market/Mandi fee and their handling charges loosely called as "commission" and after charging sales tax/VAT on the entire costs raises the invoice on the assessee. The appellant also maintains its purchase books / registers in a manner to depict all the components of cost for enabling the GOI to audit / verify the efficacy of the PSS/MIS operations. The assessee in turn supplies the goods through PDS or as directed by the Government. For all these operations, the assessee also receives over and above the price charged by the State/District level Cooperation Federation its own service charges. In the invoices raised, the assessee also charges applicable sales tax/VAT.

9. The A.O. based on the above submission / documents selectively produced certain clauses from the said agreement and held that part of the purchase price paid described by the State / District level Cooperative Federation are in the nature of commission within the meaning of section 194-H of the Act.

10. Addition for A.Y. 2009-10 has been deleted by the CIT(A)-18, New Delhi vide orders dated 30.03.2015. Thus, the same have been treated by the Id. CIT(A) as purchases and not commission.

11. The issue of applicability of deduction of tax in respect of service charges/commission is covered in the appellant's own case for A.Y. 2006-07 to A.Y. 2009-10 by the order of the ITAT, Jaipur Branch 'A', Jaipur in ITA Nos. 23, 24, 50 & 51/JP/2010. The ITAT vide their order dated 31.8.2010 while disposing of the above appeal of the appellant has given a categorical

finding that the Society commission charged in the sale bills by the Societies is a payment of commission by assessee in terms of section 194H is not correct as per law and accordingly the issue is decided against the revenue.

12. The amount paid by the assessee is the cost of purchase and not in the nature of commission. The procuring organization i.e. the Village, District & State Level Co-operative Societies had to incur expenses on maintaining offices and administrative staff to carry out the work of procurement. They also had to earn some net profit from all their effort/work. Accordingly, the appellant allowed the Village, District & State Level Co-operative Societies to raise their sales invoices on the appellant on a similar basis which the Govt. of India (GOI) has prescribed for the appellant i.e. cost plus a fixed gross margin. In fact even the market/mandi charges and other taxes etc. are also charged as a percentage. The State Level Cooperatives raise their sale bills on NAFED giving various components of the direct costs like "basic price, purchase tax, marketing fees, packing charges etc." as well as their margin of profit for meeting their own administrative costs etc.

13. In view of the above stated facts and the pricing mechanism fixed by the Government of India, it is clear that the assessee has merely paid the purchase price as agreed. However, only to monitor the pricing, the cost components are separately shown so as to reimburse the assessee for any loss incurred by it in execution of PSS/MIS.

14. Therefore, since the amount paid by the assessee to the Dist/State Level Cooperatives is only the purchase price and not in the nature of commission, no disallowance under section 40(a)(ia) is called for.

Disallowance u/s 40(a)(ia):

15. Disallowance u/s 40(a)(ia) was made by the AO for late deposit of TDS deducted u/s 194C during December 2008 and February 2009 for payments made. TDS was deposited in the government treasury on 25.05.2009 which was before the due date of filing of return u/s 139(1) of the Income Tax Act, 1961. No disallowance is called for u/s 40(a)(ia) owing to the decision of the Income Tax Appellate Tribunal, Delhi 'H' Bench, in the case of Taru Leading Edge (P) Ltd,, New vs ITO dated 22 May, 2012 in ITA no. 3592 /Del / 2011 for Assessment year 2008-09.

Depreciation u/s 32:

16. The AO disallowed 50% of depreciation on the warehouse holding that it has been put to use for less than 180 days.

17. Warehouse bills on sample basis were furnished vide letter dated 08.11.2011 to prove that the warehouse is in operation. The bills were issued by NAFED to FCI for giving warehouse storage facility by NAFED to FCI. These bills are therefore evidence to establish that the warehouse was in operation in the year under assessment. The invoices submitted on sample basis before the AO were not the purchase invoices for acquisition of the asset rather these invoices were in evidence to use of such assets. The document pertaining to handing over note of warehouse dated 31.03.2008 before the Id. CIT(A) which was remanded back to the office of AO. AO vide remand report dated 19.11.2013 rejected the claim of assessee without pointing out any reason as to why the aforesaid document does not prove the date of put to use. This contention of AO was not accepted by the Id. CIT(A) and relief was provided to assessee. Hence, we decline to interfere with the order of the Id. CIT(A).

Disallowance u/s 14A:

18. During the year, the assessee received dividend income of Rs.1,01,33,000/- from IFFCO and Cooperative Bank of India. The similar issue has been adjudicated by the Co-ordinate Bench of ITAT in the case of the assessee in ITA No. 301/Del/2011 for the A.Y. 2007-08 vide order dated 18.04.2012 wherein the disallowance made by the AO has been deleted. Since, the matter stands adjudicated, in the absence of any material change and the legal proposition, we decline to interfere with the order of the Id. CIT(A).

Disallowance on account of Claims Rejected:

19. The assessee claimed from railways and Government of India and an amount of Rs.20,75,889/- for loss suffered in stock transfer from one branch to another and on account of purchase & sale of agriculture products on behalf of the Government of India. This is the rejection of expenses incurred by the assessee and not reimbursed by the GOI/Railways on account of Price Support Scheme and Market Intervention Scheme. These expenses are not penal in nature and hence claimed u/s 37 of the Income Tax Act, 1961. Since, the expenses are incurred in connection with the business of the assessee, no disallowance is called for.

Disallowance u/s 37:

20. The assessee has claimed in the P&L Account an amount of Rs. 9,49,89,055/- towards "Reimbursement of Deficit/Surplus from/to business associates" on account of reimbursement to M/s. R. Piyarelall Global Impex Ltd. (RGPIIL) as per the terms of

Memorandum of Understanding dated 11th April 2008 between the said entity and the assessee.

21. Under this model the purchase and sales are booked in the books of the assessee as normal sales and purchase of the commodity and the difference between the purchase and sales after reducing the amount of service charges is booked to the party account being the amount due / receivable from the party who is called the business associate of the assessee.

22. Total export sales made by the business associates which was recorded in the books of NAFED is Rs. 43,19,58,813/-. Against the said sales the purchase cost and other expenses incurred which is also recorded in the books of NAFED is Rs. 33,16,35,813/- , as a result an amount of Rs. 10,03,22,868/- is sitting as the difference between the sale and the purchase. The said amount after reducing the actual service charges of Rs. 53,33,813/- which is the income of the assessee, the balance of Rs. 9,49,89,055/- is transferred to the tie-up associates is reflected on the debit side as "deficit of Reimbursement".

23. The AO made the aforesaid disallowance by holding as under:

(a) Even though the prudence of assessee is not questionable by the assessing authority, the result of export transaction for 12500 MT of Non-Basmati Parboiled Rice is that on a turnover of Rs. 43.19 crore, profit of Rs. 10.03 crore has been earned. The entire profit has been earned by assessee by putting all its own efforts including deployment of the interest-bearing capital/fund, paid manpower and also other administrative expenses but out of that, the assessee has been passed on to

the associate M/s R. Piyarelal Global Impex Ltd. (RPGIL) who had virtually not done anything or at least not required to perform / invest in the transaction.

(b) It has been pointed out that the assessee has incurred major expenses related to his business other than the direct cost of purchases, aggregating to Rs.721,67,15,927/- and the same are tabulated in the impugned order.

(c) The purported cost of above expense to per rupee turnover has been computed at Rs.0.1688 (i.e. Rs.721,67,15,927/Rs.4273,59,52,035). On the said computed ratio the expenses purported attributable to turnover in respect of RPGIL has been computed at Rs.7,25,69,080/- (i.e. Rs.43,19,58,813 x Rs.0.1688). In view of these purported attributable expenses it has been alleged that only a sum of Rs. 53,33,813/- as profit on the shipment has been declared by the assessee.

(d) In view of above purported estimations a inference erroneously drawn that the assessee has (Rs./,25,69,080/- minus Rs.53,33,813/-) on account of agreement entered with associate exporter shipment of 12500 MT Parboiled Rice to Bangladesh.

(e) The A.O. did not stop here further made irrelevant observations that on export of 12500 MT Non-Basmati Parboiled India Rice, the NAFED has earned net profit of Rs. 10.03 crores and on purported calculation the purported profits of Rs.80.24 crores has been computed on export of 100000 MT Non-Basmati Parboiled India Rice to Bangladesh involving turnover of Rs. 345.56 crores (at the average rate of 34,556 Per MT)

(f) In view of the above purported calculations, it has been observed by the A.O. that as to what is the prudence of the assessee who during the year under assessment has suffered operating loss of Rs. 46,98,33,553 crores which also include the loss of Rs. 9,49,89,056/- crore on account of purported passing of profits to M/s RIPGL and the inference drawn erroneously that the transaction with RPGIL appears to be in the nature of collusive payment made by the assessee to its "associate exporter" alleging that in the name of back to back arrangement.

(g) The A.O. laid emphasis mainly on that

- The NAFED already had opening stock of 66414.80 MT rice in the hand in addition to stock in transit of 7801.40 MT Parboiled rice required for export;
- The entire fund for execution of shipment of 12500 MT has been invested by NAFED to RPGIL (as per terms of MOU);
- Expenses on packing and forwarding amounting to Rs. 43,66,620- has been incurred and paid by NAFED;
- Apparently not a single panny investment has been made by the "associate exporter" R. Piyarelel Global Impex Ltd.;
- All the risks and liabilities since opening of LC and payment of P&L charges has been undertaking by NAFED and no liability towards that has been assigned to RPGIL;
- All and entire efforts and exercise has been carried on by NAFED through its branches profit of Rs. 9,49,89,055/- has been passed on to RPGIL;
- If in the NAFED could make an export of 87500 MT (100000-12500) quantity of rice, what stop it to make export the remaining quantity of 12500 MT.

24. The A.O. held that the transaction with RPGIL as a collusive payment which means that any arrangement by the assessee with the intent to avoid tax through a collusive device, and the real purpose was something else then what appeared on the face.

25. The AO relied upon the case of B.K. Khanna & Co. (P.) Ltd. vs. Commissioner of Income-tax [2001] 247 ITR 705 (DELHI). In that case, the Tribunal held that the transaction is not only malafide but a collusive also.

26. It was argued before us that under this model the purchases and sales are booked in the books of the assessee as normal purchase and sales of the commodity and the difference between the purchase and sales after reducing the amount of service charges is booked to the parties account being the amount due/receivable from the party who is called the business associate of the assessee.

27. Pursuant to MOU with M/S R. Piyarelal Global Impex Ltd. (Business associate), the export sales have been made by the said business associate amounting to Rs. 43,19,58,813/-. Similarly, the purchase cost and other expenses incurred against the said sales by the business associate aggregating to Rs. 33,16,35,944/-.

28. In view of the above recorded sales and purchases/costs (though made/incurred by the business associate) in the books of the assessee, as the result an amount of Rs. 10,03,22,868/- is shown as the difference between the sale and the purchase in the books of the assessee which was payable to the business associate after deducting the service charges of Rs.53,33,813/- being income of the assessee. Thus, the balance amount of

Rs.9,49,89,055/- payable to the business associate namely M/s R. Piyarelal Global Impex Ltd. was recorded as an expense in the books and the account of the business associates was credited.

29. In view of the above submitted facts for export sales made by the business associates, the sales have been credited by the assessee in its books of accounts as normal sales, being pursuant to the tie-up business model adopted for recording of sales and purchase transactions, to that extent the revenue is recognized in the books of the assessee. Correspondingly the purchase cost / expenses incurred by the business associates were also debited by the assessee in its books of accounts and to that extent the cost is recorded.

30. Thus, the difference is sitting in the books of the assessee after reducing the service charges being the true income of the assessee, was nullified by debiting the profit & Loss account under the head "Reimbursement of Deficit/Surplus from/to business associates".

31. Hence, we decline to interfere with the order of the Id. CIT(A).

Disallowance of prior period adjustments:

32. During the course of assessment proceedings, based upon the amount classified as "Prior Period Adjustments" in the audited accounts, the Ld. AO made the aforesaid disallowance by holding that the liability of these expenses were crystalized in previous years.

33. The same has been deleted by the Id. CIT(A).

34. As per the details furnished the audited accounts contain the prior period expenses aggregating to Rs. 52,81,079/-. The submissions of the assessee briefly are as under:

“From the details of the respective branches it will be noted that the bills for the expenses were received during the year and therefore the liability has crystallized during the year, the depiction in the tax audit report does not necessarily lead to disallowance.

Reliance in this regard is placed upon following case laws:

- Saurashtra Cement and Chemical Industries Ltd. 213 ITR 523 (Guj)
- Egmore Benefit Society 148 CTR 158 (Mad.)
- Toyo Engg. Ltd. 5 SOT 616 (Mum)

Issue regarding allowability of prior period expenses came up for consideration for the ITAT in the case of appellant itself for A.Y. 1984-85 in ITA No. 2296/D/88. The tribunal vide its order dated 12-08-91 upheld the action of the CIT(A) in deleting the addition made by the Assessing Officer on this count and for A.Y. 2004-05 came up for consideration before the ITAT and ITAT Delhi bench "F" following the decision of coordinate bench for A.Y. 1984-85 allowed relief to assessee.”

35. Since, the expenses were found to have been crytalized during the year, no disallowance is called for.

Disallowance of interest u/s 36/37:

36. The proportionate disallowance of interest has been made by applying interest rate of 10.5% per annum on advances made for tie-up business in the earlier years alleging that these advances were not for the purpose of the business.

37. The main allegation by the A.O. forming the basis for disallowance is that the huge advances have been made by the assessee in the name of tie-up business from which not a single penny has been earned during the year under assessment and the immediately preceding assessment year.

38. The A.O. is of the view that there exists no tie-up business during the year under assessment. The amount advanced towards the tie-up business has therefore been held by the A.O. not for the business purposes. The claim of interest expenditure to the extent attributable to the tie-up advances is held by the A.O. not allowable under the provisions of section 36(1)(iii) of the Income Tax Act as the amount is not used for the purpose of business. The claim of interest expenditure by the assessee is also held by the AO not allowable under the provisions of Section 37(1) of the Act as the basic ingredients for allowability of expenses were not satisfied.

39. It was explained that the tie-up advances are driven out of commercial expediency and the same for business purposes only. NAFED on account of its diversification of business had undertaken trading activities under Tie-up arrangement as per Clause 3(A) of bye-laws of NAFED duly approved by Central Registrar of Cooperative, GOI.

40. Copies of MOU/Agreements entered into by NAFED with parties for tie-up business reveal that in order to tap international market, NAFED has diversified into import/export business for various Agricultural/Non-agricultural Commodities.

41. It was argued that the business activity with the parties, known as tie-up parties was undertaken with an objective to earn income.

42. The business activity with the parties, known as tie-up parties was undertaken since A.Y. 2003-04. And for A.Y. 2004-05 to A.Y. 2006-07 when the transactions of sales with tie-up parties were at large scale. Out of outstanding recoverable from tie-up parties aggregating to Rs. 1123.98 crores as on 31.03.2011 and Rs. 1191.56 as on 31.03.2012 the advance of Rs.428.55 crores are secured against stocks. The security in the form of stocks against these advances proves itself that the same were towards business purposes. It is uncontroverted that these tie-up advances were given by the assessee company during the previous assessment year A.Y. 2003-04 to A.Y. 2005-06 and the same were held as for business purposes in the assessment framed u/s 143(3) of the Income Tax Act, for those assessment years and the interest claimed was fully allowed and no proportionate disallowance was made during those assessment years.

43. It was argued that the business activity with the parties, known as tie-up parties was undertaken with an objective to earn income. In fact, in the earlier years the transaction has generated income which has been already taxed. Mere non-accrual of any income does not ipso facto make the tie-up advances as not for business purposes and very importantly when the same were given as held driven out of commercial

expediency and the income has been earned in the past and duly included in the taxable income and assessed under section 143(3) of the Income Tax Act for those years and for subsequent assessment years. NAFED is persistently pursuing the recoveries against these tie-up advances. A Year Wise breakup of recoveries made against Tie-Up Advances and total recoveries aggregated to Rs. 158.24 crores. To expedite the remaining recovery, all the efforts are being made by the NAFED including legal proceedings which have been initiated against the defaulting parties at various levels i.e., CBI, Enforcement of Economics Offences Wing, High Court, etc.

44. Since, the tie-ups could be said to be a part of the business operation, no disallowance of interest on this account is called for and hence we decline to interfere with the order of the Id. CIT(A).

45. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 03/03/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 03/03/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR