

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.654/PUN/2021  
निर्धारण वर्ष / Assessment Year: 2017-18

Yashavantrao Chavan Sahkari Dudh Utpadak Sanatha Maryadit Malevadi, Malewadi AT/PO: Kargani, Tal: Atpadi, Dist: Malewadi- 415306 PAN : AAAAY3278R	Vs.	ITO, Ward- 1(1), Sangli.
Appellant		Respondent

Assessee by : None  
Revenue by : Shri Arvind Desai  
Date of hearing : 25.05.2022  
Date of pronouncement : 31.05.2022

**आदेश / ORDER**

**PER S. S. GODARA, JM:**

This assessee's appeal for assessment year 2017-18 arises against the CIT(A), National Faceless Appeal Centre (NFAC), Delhi's order dated 26.08.2021 passed in case no. ITBA/NFAC/S/250/2021-22/1035103206(1) involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short the Act.

Case called twice. None appears at assessee's behest. It is accordingly proceeded *ex-parte*.

2. It emerges at the outset that the assessee's instant appeal suffers from 36 days delay involving Covid-19 pandemic outbreak

period only. The same stands condoned for this precise reason alone.

3. Next comes the assessee's sole substantive grievance challenging correctness of both the lower authorities' action denying section 80P deduction of Rs.38,69,712/- in the course of assessment dated 13.11.2019 as upheld in the CIT(A) detailed discussions as follows :-

*“6. Examination of the issue and decision: -*

*6.1 I have carefully considered the AO's viewpoint contained in the Assessment Order and the submission made by the appellant in the matter.*

*6.2 The crux of the appellant's submission is that during the year under consideration the appellant company's claim for the exemption u/s 80 P(2) of the Act was disallowed by the Income Tax Officer, Ward 5, Sangli (AO).*

*6.3 On plain reading of para no. 4 of Bye laws, the main objects of the society is to accept the Milk produced by members of the society and to sell the same to District level Federal Co-operative Society called as ZillaDudhSangh and also assist the members in such activities and provide facilities which are beneficial to the members in sale of Milk and supply of good quality cattle feed, cattle medicines and supplements ateconomical costs etc providing credit facilities to the needed members of the society only for enhancing the economy of the members of the society.*

*6.4 The AO in the Assessment Order has stated that:-*

*“On perusal of computation of Income, it is seen that assessee society has claimed deduction u/s 80P(2)(a)(iv) of the Act, of Rs. 38,69,712/- on selling to its member of Shenkhat and Palapachola of Rs. 47,07,450/-. The Shenkhat and Palapachola is used by the farmer as organic fertilizer to grow good quality of agricultural products. There is no mention in the Bye laws to supply the organic fertilizer to member for use of growing good quality of agricultural products. The claim of deduction u/s 80(P)(2)(b)(i) of the Act, of Rs. 1,11,956/- only i.e. from supplying milk to S.B.D. Multistate Co-opeartive DudhSangh Ltd. which is as per bye-laws. Moreover, the source of purchases of shenkhat and palapachola has not been submitted which indicates that shenkhat and palapachola is purchased from outside. Thus, the profit of Rs. 38,69,712/- on selling of Shenkhat and Palapachola is not seen for the benefit of members and not according to objectives mentioned in Bye laws of society. The motive of supplying the shenkhat and palapachola is to earn*

*more profit which is outside from the preview of objectives mentioned in Bye-laws of the society. Accordingly, deduction of Rs. 38,69,712/- u/s 80P(2)(a)(iv) of the Act, is not allowed. Reliance of the Hon'bel Kerala High Court's decision in the case of M/s Nileswar Range Kallu Chetu Vyavasaya Thozhilali Sahararnama Sangham Vs. CIT, Calicut in ITA 141 of 2014 13/08/2015 wherein similar have been decided in favour of the Dept."*

*As such, I am of the opinion that only deduction u/s 80P(2)(b)(i) of the Act, of Rs. 1,11,956/- is only available as assessee society earned profit from supplying milk raised by its members to a federal co-operative society and your case is not fit for claiming deduction u/s 80P(2)(a)(iv) of the Act. The AO also issued a show-cause to appellant to state why deduction of Rs. 38,69,712/- u/s 80P(2)(a)(iv) of the Act, should not be disallowed.*

*All the information/documents is required to be furnished online electronically in "E- proceedings" facility through your account in "e-filing website" of I. T. Department. Further proceedings shall also be conducted electronically.*

*The assessee did not replied to this show cause notice till date. Thus, the AO disallowed the deduction under section 80(P)(2)(a)(iv) of Rs.38,69,712/- and added the same to the assessee's total income. Penalty proceedings u/s 270A of the Act were also initiated for under reporting of income.*

*6.5 The appellant failed to respond to the notice of AO whereby he was called upon to substantiate his claim to 80P (2) deduction claimed against the surplus from supply of "Shanket&Palpachola" to members. In the absence of such response he cannot fault the AO's denial of Sec.80 P(2) to such activities. The grounds taken before the CIT in appeal should have been submitted before the AO when asked to do so. To that extent, the submission made at the appellate stage constitute additional evidence as these were not filed before the AO.*

*6.6 Having failed to substantiate the claim before the AO, the appellant cannot call the AO's action, "illegal and untenable" or equate its claim to those cases here such replies were filed and claims substantiated. The AO's action in not allowing unsubstantiated claims of the appellant cannot be found fault with. This ground of appeal is thus held against the appellant and the appeal is dismissed."*

4. Mr. Desai vehemently argued that this assessee is a milk cooperative who has claimed the impugned deduction regarding income derived from sale of "Shenkhat" and "Palapachola" to its members involving Rs.47,07,450/-. I find no merit in the learned lower authorities' stand first of all since this is not a case involving

bogus purchase of the twin foregoing twin fodder products & sold to the members. I reiterate that the assessee's sole substantive grievance claim is u/s 80P deduction wherein it has sold organic manure to its milk producers so as to ensure better production of fodder meant for consumption of the milch animals thereby increasing dairy outputting. This crucial direct nexus amongst the assessee, the organic manure sold at its behest for better fodder production & milk producers milch animals appears to have escaped the learned lower authorities' valuable consideration. Hon'ble apex court recent decision in Mavilayi Service Co-operative Bank Ltd. vs. CIT (2021) 123 taxmann.com 161 (SC) has settled the law that we ought to adopt liberal construction in an instance involving section 80P deduction. I accordingly hold in light of the foregoing factual and legal backdrop that the assessee is very much entitled for section 80P deduction of Rs.38,69,712/- in issue. Ordered accordingly.

5. This assessee's appeal is allowed in above terms.

Order pronounced on this 31<sup>st</sup> day of May, 2022.

**Sd/-**  
**(S. S. GODARA)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> May, 2022.  
*Sujeet (DOC)*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), NFAC, Delhi.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.