

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डॉ. एम. एल. मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR. M.L. MEENA, AM

आयकर अपील सं./ITA. No. 127/JP/2022
निर्धारण वर्ष/Assessment Years : 2017-18

The Churu Central Co-operative Bank Limited, Bissu Road, Gol Ghanta Ghar, Churu 331001, Rajasthan	बनाम Vs.	Pr. CIT-2, C. R. Building, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADAT6473G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri Avdhesh Kumar (CIT)

सुनवाई की तारीख/ Date of Hearing : 01/06/2022
उदघोषणा की तारीख/ Date of Pronouncement : 10/08/2022

आदेश / ORDER

Per Dr. M.L. Meena, A.M.

Caption appeal filed by the assessee against the order dated 30.03.2022 passed by Id. Principal Commissioner of Income Tax, Jaipur-2 (hereinafter referred to as the 'PCIT') U/s 263 of the Act in respect of assessment year 2017-18. The appellant-assessee has raised the following grounds of appeal:-

"1. Based on the facts and circumstances of the case and in law, the order passed under section 263 of the Income-tax Act, 1961 by the Ld. PCIT-2 is illegal and bad in law.

2. *The Id. PCIT-2 has erred on facts and in law in holding that the interest subsidy from Central Government of Rs. 1,32,18,600/- shown as other asset in the balance sheet and non-refundable grant-in-aid by the Government of Rs. 8,62,00,000/- shown under the head capital in the liabilities side of the balance sheet, is to be recognized as income by not appreciating the detailed explanation filed during the course of proceedings by the assessee and at the same time setting aside the order of the ao holding that the same is erroneous in so far as it is prejudicial to the interest of the revenue stating that the issues cannot be examined at this stage.*
3. *The appellant craves to alter, amend and modify any grounds of appeal.*
4. *Necessary cost be awarded to the assessee."*

2. Briefly the facts of the case are that the assessee's case was selected under compulsory scrutiny, the AO has passed the assessment order u/s 143(3) of the IT Act dated 26.12.2019. The Id. Pr.CIT noted that the expenses incurred by the assessee company for the purpose of development of rural farmers land taken on lease, has been debited to profit and loss account as Revenue expenditure claimed as directed expenses related to agricultural income. However no complete and separate details available on record were filed before the AO. He has further observed that the assessee company has subsidy receipt of Rs. 1,32,18,600/- which is not found recorded as income in the books of account and therefore the same remained untaxed as income of the assessee.

3. The Id. PCIT being not satisfied with the reply filed by the assessee has observed vide in para 5 to 9 which reads as under:-

"5. From the above facts and circumstances of the case and having regard to the material available on record, the Assessing

Officer failed to consider/apply his mind to the information available on record with regard to the interest subsidy and grant in aid received from the Government which was to be recognized as income as per section 2(24)(xviii) of the I.T. Act, 1961. This in turn has resulted in passing of an erroneous order by the Assessing Officer in the case due to non-application of mind to relevant material, reflecting non appreciation of facts and an incorrect application of mind to law which is prejudicial to the interest of the revenue. Thus, the order passed u/s 143(3) on 26.12.2019 is erroneous and prejudicial to the interest of the revenue.

6. Further, as mentioned above, the State Government cannot hold more than 25 percent of the share capital of a short-term co-operative credit structure society. After receiving share capital of Rs 268.37 lacs, the total subscribed share capital of the State Government amounted to Rs 603.06 lacs as on 31 March 2017, which represents 24.22 percent of the total subscribed share capital of the Assessee. Because of the embargo provided in the Rajasthan Co-operative Societies Act 1960, the Assessee was refrained from getting the entire capital fund of Rs 1130.37 lacs as share capital from the State Government.

7. Therefore, the capital grant of Rs 862 lacs provided by the State Government is not an income taxable under section 2(24)(xviii) of the Act as it is not a revenue grant or a grant to meet cost of any asset, rather it is a capital grant to maintain capital adequacy ratio and thus, is a capital receipt not chargeable to tax. In this connection, section 2(24)(xviii) of the Act is reproduced as under:

*"(24) "income" includes-
to (xviib)....*

(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central

Government or a State Government or any authority or body or agency in cash or kind to the assessee other than,-

(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or

(b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be"

8. *As per the above provision, any subsidy or grant given by Central Government for the purpose of the corpus of the institution established by Central or State Government will not be regarded as income. The memorandum explaining this exception as introduced by Finance Bill, 2016 is as under:*

"The Finance Act, 2015 had amended the definition of income under clause (24) of section 2 of the Act so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43 of the Income-tax Act.

As a result grant or cash assistance or subsidy etc. provided by the Central Government for budgetary support of a trust or any other entity formed specifically for operationalizing certain government schemes will be taxed

in the hands of trust or any other entity. Therefore, it is proposed to amend section 2(24) to provide that subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or State government shall not form part of income."

9. Accordingly, by virtue of powers conferred on the undersigned under the provisions of section 263 of the Income Tax Act, 1961. I hold that the order under section 143(3) of the IT Act dated 26.12.2019 for AY 2017-18 passed by the assessing Officer is erroneous in so far as it prejudicial to the interest of the revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without examining the issue in hand. The order of the Assessing Officer is therefore liable to revision under the clause (a) & (b) of Explanation (2) to section 263 of the Income Tax Act. Hence, the assessment order is set aside as discussed above."

4. Following the Judgment of the Hon'ble Apex Court in the case of Malabar Industrial Limited v/s CIT 243 ITR 1, Pr.CIT hold that the assessment order passed by the AO dated 26.12.2019 for the assessment year under consideration as erroneous and so far as prejudicial to the interest of the Revenue under clause (a) & (b) of Explanation (2) U/s 263 of the Income Tax Act as the assessment order passed by the AO on an incorrect assumption of facts and an incorrect application of law holds the assessment order erroneous.

5. The learned counsel for the assessee submitted before us that the Id. Pr.CIT has erred and facts in law in holding that the assessment order passed by the AO without making disallowance U/s

14A as erroneous so far as prejudicial to the interest of the Revenue and without making addition of subsidy seeds of Rs. 1,32,18,600/- in the income of the appellant-assessee as again erroneous in so far as prejudicial to the interest of the Revenue and thereby directed the AO to assess the same income. In support of the contention of the Id. AR filed written synopsis reads as under:-

"1. It is submitted that at paragraph 6 and 9 of its order, the Ld. PCIT at one hand is concluding that the amounts should have been passed through the profit and loss account and should have been included in the total income of the Appellant, and on the other hand, the Ld. PCIT is stating that the issues cannot be examined at this stage and set aside the assessment order to the AO.

2. Thus once the Ld. PCIT concludes that the non-refundable capital grant in aid of Rs 8,62,00,000 and interest subsidy of Rs 1,32,18,600 was to be included in the profit and loss account and to the total income of the Appellant to tax the same, her finding at the same time holding that issues cannot be examined at this stage is contradictory in itself. The Ld. PCIT cannot blow hot and cold in the same breathe. In this connection, reliance is placed on paragraph 22 of the order of the Mumbai Bench of the Tribunal in the case of **Sir Dorabji Tata Trust Vs. DCIT(E) 188 ITD 38 dt. 28.12.2020 (Mum.) (Trib.)** where it was observed as under:

"22. Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, CIT may indeed have the powers to invoke his powers under s. 263 but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage for such inquiries and verifications. There can be three mutually exclusive situations with regard to exercise of powers under s. 263, r/w Expin. 2(a) thereto, with respect to lack of proper inquiries and verifications. The first situation could be this. Even if necessary inquiries and verifications are not made, the CIT can, based on the material before him, in certain cases straight

away come to a conclusion that an addition to income, or disallowance from expenditure or some other adverse inference, is warranted. In such a situation, there will be no point in sending the matter back to the AO for fresh inquiries or verification because an adverse inference against the assessee can be legitimately drawn, based on material on record, by the CIT. In exercise of his powers under s. 263, the CIT may as well direct the AO that related addition to income or disallowance from expenditure be made, or remedial measures are taken. The second category of cases could be when the CIT finds that necessary inquiries are not made or verifications not done, but, based on material on record and in his considered view, even if the necessary inquiries were made or necessary verification were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted. Clearly, in such cases, no prejudice is caused to the legitimate interests of the Revenue. No interference will be, as such, justified in such a situation. That leaves us with **the third possibility, and that is when the CIT is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this exercise by the AO, a conclusive finding is not possible one way or the other, That is perhaps the situation in which, in our humble understanding, the CIT, in the exercise of his powers under s. 263, can set aside an order, for lack of proper inquiry or verification, and ask the AO to conduct such inquiries or verifications afresh.**

Thus, the finding/ direction of the Ld. PCIT are contradictory in itself and also bad in law.

3. In view of above, the findings of the Ld. PCIT should be expunged and the issue involve be decided by the Hon'ble ITAT on merit, otherwise in the guise of the directions given by the Ld. PCIT, the AO will be left with no alternative except to make the additions which will cause injustice to the Appellant.

In relation to non-taxability of capital grant in aid of Rs 8,62,00,000 received from the Government of Rajasthan, the following was submitted to the PCIT vide submission dated 2 March 2022

1. The Appellant submitted that it was established by the Government of Rajasthan in collaboration with the PACS. Government of Rajasthan owns 24.22 percent share capital of the Appellant. As per section 44 of the Rajasthan Co-operative Societies Act 1960 (**PB 10-11**), Government of Rajasthan can hold a maximum of 25 percent of the total share capital of a short-term co-operative credit structure society and therefore the maximum shareholding of Government of Rajasthan in the Appellant cannot exceed 25 percent.

2. The State Finance Minister in the State Budget for financial year 2016-17 dated 8 March 2016 in Para 103 (**PB 12**) announced that to fulfill the norms set by Reserve Bank of India, the State Government would provide Rs 6.91 crores as share capital and Rs 36.98 crores as capital grant to Churu, Kota and Tonk Co-operative Banks so that these banks can maintain the required capital risk asset ratio. This ratio represents the availability of capital against the risk weighted asset.

3. As per the guidelines of the Reserve Bank of India, the Central Cooperative Banks are required to maintain capital risk asset ratio of 9 percent as on 31 March 2017. The ratio of the Appellant's bank as on 31 March 2015 was only 5.83 percent (**PB 17-18**) as the risk weighted asset as on 31 March 2015 was of Rs 27,952.45 lacs against which the capital fund was Rs 1,631.02 lacs giving capital adequacy ratio of 5.83%. Thus, to increase this ratio at minimum of 9 percent, the Government of Rajasthan in its Budget made provision for providing capital fund to these banks by way of share capital and capital grant.

4. Pursuant to the announcement in the State Budget, Rajasthan State Cooperative Bank Ltd. (hereinafter referred to as the Apex Bank) vide letter dated 20 August 2016 (**PB 13**) and 1 September 2016 (**PB 14**) requested the Assistant Registrar Banking, Co-operative Society, Rajasthan for release of funds of Rs 43.89 crores (Rs 6.91 cr. + Rs 36.98 cr.) to the three central cooperative banks so that by 31 March 2017, the minimum capital adequacy ratio of 9% can be achieved. Accordingly, the Appellant's bank vide letter dated 3 October 2016 requested the Apex Bank (**PB 15-16**) to provide capital of Rs 268.48 lacs and capital grant of Rs 862 lacs which was released by the State Government vide letter dated 7 October 2016.

5. In the books of accounts, the Appellant credited Rs. 268.37 lacs as subscribed capital from State Government and Rs. 862 lacs towards grant-in-aid by the State Government under the main head 'Capital' (**PB 21-**

24) so that the required capital risk asset ratio of 9 percent as mandated by the Reserve Bank of India could be maintained.

6. Thus, out of total capital fund of Rs 1130.37 lacs provided by the State Government, an amount Rs 862 lacs given by way of capital grant is nothing but capital contribution by the State Government.

7. As mentioned above, the State Government cannot hold more than 25 percent of the share capital of a short-term co-operative credit structure society. After receiving share capital of Rs 268.37 lacs, the total subscribed share capital of the State Government amounted to Rs 603.06 lacs as on 31 March 2017, which represents 24.22 percent of the total subscribed share capital of the Appellant. Because of the embargo provided in the Rajasthan Co-operative Societies Act 1960, the Appellant was refrained from getting the entire capital fund of Rs 1130.37 lacs as share capital from the State Government.

8. Therefore, the capital grant of Rs 862 lacs provided by the State Government is not an income taxable under section 2(24)(xviii) of the Act as it is not a revenue grant or a grant to meet cost of any asset, rather it is a capital grant to maintain capital adequacy ratio and thus, is a capital receipt not chargeable to tax. In this connection, section 2(24)(xviii) of the Act is reproduced as under:

"(24) "income" includes-

(i) to (xviib)

*(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee **other than,—***

(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or

(b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be"

(emphasis supplied)

9. As per the above provision, any subsidy or grant given by Central Government for the purpose of the corpus of the institution established by Central or State Government will not be regarded as income. The memorandum explaining this exception as introduced by Finance Bill, 2016 is as under:

"The Finance Act, 2015 had amended the definition of income under clause (24) of section 2 of the Act so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43 of the Income-tax Act.

As a result grant or cash assistance or subsidy etc. provided by the Central Government for budgetary support of a trust or any other entity formed specifically for operationalizing certain government schemes will be taxed in the hands of trust or any other entity. Therefore, it is proposed to amend section 2(24) to provide that subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or State government shall not form part of income"

10. Thus, the intention of the Parliament to introduce this exception was not to tax those grants and subsidy which are given to entities formed specifically for operationalizing certain government schemes. In the instant case as well, the Appellant has been established by the State Government to operationalize the government scheme of providing financial assistance to the farmers, who are backbone of our economy. Thus, the capital grant given by the State Government to the Appellant is not taxable as income as explained above.

11. Further, the Income Computation and Disclosure Standards ("ICDS") - VII, relating to Government Grants, *inter-alia* provides at paragraph 2(b) that this standard is not applicable where the receipt is on account of Government participation in the ownership of the enterprise (**PB 19-20**). Government has been defined to mean Central Government, State

Governments, agencies and similar bodies, whether local, national or international. As elaborated above, the grant has been received by the Appellant towards ownership of the enterprise and therefore even as per the provisions of ICDS-VII, the receipt is not taxable as income of the Appellant.

12. Thus, in view of the above factual and legal position, the capital grant of Rs 8,62,00,000 is not taxable under the provisions of the Act and therefore order passed by the Ld. PCIT holding that the capital grant should have form part of profit and loss account of the Appellant and therefore liable to be taxed is incorrect and therefore on this the addition proposed by the Ld. PCIT is not sustainable in law.

In relation to interest subsidy of Rs 1,32,18,600, the following was submitted to the Ld. PCIT vide submission dated 2 March 2022 and 5 March 2022

13. The amount of Rs 1,32,18,600 was taken by the Ld. PCIT as difference between the opening and the closing balance of interest subsidy receivable from the Central Government as mentioned in the balance sheet **(PB 23)** of the Appellant as under:

Particulars	Amount as on 31 March 2017	Amount as on 31 March	Difference
Interest subsidy from Central Government	12,99,55,643	11,67,37,043	1,32,18,600

14. It is submitted that interest subsidy granted by the Central and the State Government are of following natures:

- Type 1% and 2% interest subsidy - to meet the cost of owned funds involved in respect of short term production credit (crop loan) provided to the farmers. The 2% subsidy is given by the Central Government through the NABARD **(PB 37-38)** and the 1% subsidy is given by **the State Government as per para 103 of the Budget 2016-17 (PB39-43)**.
- Type 3% and 4% interest subvention - this is given to those farmers who promptly repay their short term production credit within 1 year of disbursement/ drawl of such loan. The 3% interest subvention is given by the Central Government through the

NABARD **(PB 37-38)** and the 4% interest subvention is given by the State Government as per para 103 of the Budget 2016-17 **(PB 39-43)**. However, the same is routed through the Appellant.

15. It is submitted that the Appellant has already offered 1% and 2% interest subsidy as income which is credited in the profit and loss account and is verifiable from total interest income on loans and advances of Rs 19,59,01,115 **(PB 25-28)** reported in the profit and loss account for the subject year which includes interest subsidy of Rs 2,60,09,808 as evident from break-up of total interest income **(PB 27)**. Thus, the Appellant has already included the interest subsidy of Rs 2,60,09,808 in its income as against Rs 1,32,18,600 directed by the Ld. PCIT to be included in the profit and loss account of the Appellant.

16. For the sake of clarity, the details of interest subsidy Rs 2,60,09,808 **(PB 29)** offered to tax is as under:

S No	Particulars	Amount (Rs)	Remarks
1	Interest subsidy State Government	1,74,31,000	Apex bank statement showing receipt of this amount dated 23 December 2016 enclosed at PB 30
2	Amount repaid Central Govern	(1,14,04,192)	Advisory dated 8 September 2016 issued by Apex bank enclosed at PB 31-32
3	Interest subsidy State Government	1,24,89,000	Advisory dated 31 March 2017 issued by Apex bank enclosed at PB 33-34
4	2% interest su from Ce	64,74,000	Amount receivable. Calculation enclosed at PB 35
5	Interest subsidy State Government	10,20,000	Amount receivable. Calculation enclosed at PB 36
Total		2,60,09,808	

6. The Id. DR stands by the impugned order. He contended that when the CIT is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this

exercise by the AO, a conclusive finding is not possible one way or the other. Accordingly, he argued that in the given facts of the case, the PCIT, in the exercise of his powers under s. 263, was justified to set aside the assessment order, for lack of proper inquiry or verification, and directed the AO to conduct such inquiries/verifications afresh.

7. We have heard the rival submissions, perused the material on record and the impugned order. Admittedly, the AO has not examined the issues of 14A of the Act and the interest subsidy and grant in aid received from the Government which was to be recognized as income as per section 2(24)(xviii) of the I.T. Act. The Ld. AR argued that the amount of Rs 1,32,18,600 was treated by the Ld. PCIT as difference between the opening and the closing balance of interest subsidy receivable from the Central Government as mentioned in the balance sheet (PB 23). However, it was not produced before the AO for examination. It is contended that the Appellant has already offered 1% and 2% interest subsidy as income which is credited in the profit and loss account and is verifiable from total interest income on loans and advances of Rs 19,59,01,115 (PB 25-28) reported in the profit and loss account for the year under consideration which includes interest subsidy of Rs 2,60,09,808 as evident from break-up of total interest income (PB 27). We are not convinced and satisfied with the argument of the Ld AR that since the issue of interest subsidy has not been touched upon by the Ld. AO. The interest subsidy being credited in the profit and loss account and is verifiable from total interest income on loans and

advances certainly need examination and de novo verification in compliance the revisionary order passed u/s 263 by the Pr. CIT.

8. In view of the Mumbai Bench of the Tribunal order in the case of "Sir Dorabji Tata Trust Vs. DCIT(E)", (Supra) we , in the given fact of the present case, we understand that the PCIT was satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this exercise by the AO, a conclusive finding is not possible one way or the other. That is perhaps the situation in which, in our humble understanding, the CIT, in the exercise of his powers under s. 263, can set aside an order, for lack of proper inquiry or verification, and ask the AO to conduct such inquiries or verifications afresh.

9. Accordingly, we hold that the Id. Pr.CIT is justified facts in law in holding that the assessment order passed by the AO without making enquiries in respect of interest subsidy as erroneous so far as prejudicial to the interest of the Revenue. Thus, the impugned order is sustained.

Order pronounced in the open Court on 10/08/2022.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य/Judicial Member
Member

जयपुर/Jaipur

दिनांक/Dated:- 10/08/2022.

Sd/-

(डॉ. एम. एल. मीना)
(Dr. M.L. Meena)

लेखा सदस्य/Accountant

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The Churu Central Co-operative Bank Limited, Jaipur.
2. प्रत्यर्थी / The Respondent- Pr.CIT-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 127/JP/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar