

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA No.520/Lkw/2015
Assessment Year:2011-12

U.P. State Food & Essential Commodities Ltd., 17, Gokhle Marg, Lucknow. PAN:AAACU3257G	Vs.	Income Tax Officer-VI(2), Lucknow.
(Appellant)		(Respondent)

ITA No.175/Lkw/2019
Assessment Year:2009-10

Dy. Commissioner of Income Tax, Range-6, Lucknow.	Vs.	U.P. State Food & Essential Commodities Ltd., 17, Gokhle Marg, Lucknow. PAN:AAACU3257G
(Appellant)		(Respondent)

C.O.No.06/LKW/2021
(in ITA No.175/Lkw/2019)
Assessment Year:2009-10

U.P. State Food & Essential Commodities Ltd., 17, Gokhle Marg, Lucknow. PAN:AAACU3257G	Vs.	Dy. Commissioner of Income Tax, Range-6, Lucknow.
(Appellant)		(Respondent)

ITA No.193 & 194/Lkw/2019
Assessment Year:2010-11 & 12-13

Dy. Commissioner of Income Tax, Range-6, Lucknow.	Vs.	U.P. State Food & Essential Commodities Ltd., 17, Gokhle Marg, Lucknow. PAN:AAACU3257G
(Appellant)		(Respondent)

C.O.No.07/LKW/2021
(in ITA No.194/Lkw/2019)
Assessment Year:2012-13

U.P. State Food & Essential Commodities Ltd., 17, Gokhle Marg, Lucknow. PAN:AAACU3257G	Vs.	Dy. Commissioner of Income Tax, Range-6, Lucknow.
(Appellant)		(Respondent)

Assessee by	Shri S. C. Dixit, Advocate
Respondent by	Shri S. H. Usmani, CIT, D.R.
Date of hearing	28/11/2022
Date of pronouncement	30/11/2022

ORDER

PER BENCH:

This is a bunch of six appeals including two Cross Objections against the respective orders of learned CIT(A), Lucknow. There are common issues involved in this bunch of appeals including Cross Objections which are dealt herein together by passing a consolidated order.

2. At the outset, it was noted that there is delay of 804 days in filing of the Cross Objections. As far as the delay in filing of the cross-objections is concerned, it is pertinent to note that sub-Section (4) of Section 253 of the Act, authorizes the respondent to file cross-objection against any part of the impugned order by which it is aggrieved. The procedure contemplated in the Income Tax Rules, 1962 and followed by the Registry is that on receipt of an appeal from the appellant it issues notice to the respondent. Though it is not a notice fixing the actual hearing of the appeal. It is for the purpose of completion of formalities so that, it can be posted before the Bench when it's turn comes. Therefore, the initial date in a way is a *farzi* (tentative) date.

In the present case, the assessee has filed the cross-objection well in advance of the actual listing of the appeal on the board. The second reason for condoning the delay is that, the impugned orders on which the cross-objections have been filed by the respondent/assessee is open for debate in the appeal of the appellant/revenue. Therefore, for the just decision of the controversy, it is incumbent upon us to condone the delay. The respondent/assessee has explained the reason for such delay in the affidavit placed on the record. We have gone through the same.

2.1 In view of the above, we condone the delay in filing of the cross-objections and proceed to adjudicate them on merits.

3. We first take up the issue raised by the assessee in I.T.A. No.520/Lkw/2015 for assessment year 2011-12. This appeal has been reinstated under the direction of Hon'ble Jurisdiction High Court of Lucknow Bench in Income Tax Appeal No.101/2016 dated 06/02/2017 by which the matter has been remanded vide direction given in para 7 of the said order. The relevant extract from the order of Hon'ble High Court while remanding the matter back to I.T.A.T. is reproduced as under:

"7. Be that as it may, it is evident from judgment of Tribunal that effect of CCIT letter dated 22/07/2011 and transfer of case by DCIT to concerned Income Tax Officer vide order dated 22/11/2013 was not at all considered by Tribunal and, therefore, judgment of Tribunal, in our view cannot sustain.

8. In view of above, aforesaid question of law is answered in favour of Revenue. Appeal is allowed and judgment of Tribunal dated 06/11/2015 is hereby set aside. Matter is remanded to Tribunal to reconsider appeal in the light of observations made above and in accordance with law."

4. Before we deal with the direction given by Hon'ble High Court (supra), the brief facts relevant to this order are as under:

(a) Assessee filed its return of income with the office of DCIT-6, Lucknow on 24/10/2011. During this time PAN of the assessee was lying with DCIT-6, Lucknow. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) by the DCIT-6, Lucknow. The case of the assessee was selected for scrutiny and notice u/s 143(2) of the Act was issued by DCIT-6, Lucknow dated 03/08/2012. After the initiation of assessment proceedings, ACIT-6, Lucknow issued notice u/s 142(1) of the Act dated 19/04/2011. Another notice u/s 142(1) of the Act was issued by the DCIT-6, Lucknow dated 05/08/2013.

(b) Thus all the statutory notices were issued from the office of DCIT/ACIT, Range-6, Lucknow as referred above. Finally, the assessment order was passed u/s 143(3) of the Act by the Income Tax Officer-VI(2), Lucknow, dated 28/03/2014. The income so assessed by Income Tax Officer-VI(2), Lucknow was depicted as under:

Income as per return	NIL
Add:	
Addition as per para 5	9,77,13,707/-
Addition as per para 4	14,54,708/-

Total Income	<u>9,91,68,415/-</u>

(c) The assessment so completed by Income Tax Officer-VI(2), Lucknow was challenged before the learned CIT(A) in appeal which was dismissed. The matter went before the coordinate Bench of I.T.A.T., Lucknow wherein additional legal grounds, challenging jurisdiction, were raised and the appeal of the assessee was allowed whereby assessment order was declared annulled vide order dated 06/11/2015. The Revenue went in

appeal before Hon'ble High Court, Lucknow Bench challenging the order of coordinate Bench of I.T.A.T. (supra) by which the matter was remanded to I.T.A.T. Hence this appeal.

- (d) In view of the directions given by the Hon'ble High Court, the moot point before the Tribunal is where the assessment order dated 28/03/2014 passed by Income Tax Officer-VI(2), Lucknow is without jurisdiction when the statutory notices u/s 143(2) and 142(1) of the Act were issued by DCIT/ACIT-6, Lucknow and PAN lying with DCIT-6, Lucknow when there was no order passed u/s 127 of the Act for the transfer of the case from the office of DCIT-6, Lucknow to Income Tax Officer-VI(2), Lucknow.

5. From the perusal of letter dated 22/07/2011 issued vide F.No.CC/Lko/D/39/Vol.V/2010-11 issued from the office of PCIT, Lucknow on the subject of "income limit for assigning cases to DCIT/ACIT/Income Tax Officer instruction – regarding," it is noted that monetary limits of cases to be assessed by the DCIT/ACIT/Income Tax Officer in respect of CIT-I/II, Lucknow and CIT, Faizabad, charges were scaled down which are laid as under:

	Income Declared	
	ITOs	ACs/DCs
Corporate returns	Upto Rs. 15 lacs	Above Rs. 15 lacs
Non-corporate returns	Upto Rs. 10 lacs	Above Rs. 10 lacs

5.1 This letter was issued in reference to CBDT instruction No. 1/2011 dated 31/01/2011 which was subsequently revised vide instruction No. 6/2011 dated 08/04/2011. Para 5 of this letter suggests that it will be effective from the date of its issue (in the present case from 22/07/2011)

and it will be applicable on all the returns pending as on date for processing and/or other related work as well as returns selected for scrutiny and where scrutiny assessments are pending as on date. It is further noted in the para that the CIT concerned are directed to ensure the compliance of this order on priority basis. From the perusal of this letter, following observations are worth noting:

- (a) Para 4, reference to the cases which have to be assessed.
- (b) The table giving monetary limits – reference to income declared.
- (c) Para 5 deals with effective date of this letter which is 22/07/2011.

5.2 The second letter which is dated 22/11/2013, reference by Hon'ble High Court while giving direction is titled as "Transfer Memorandum for assessment record (to be filled in by Assessing Officer/Income Tax Officer/AC/DC transferring the compliance)". Part-A of this forwarding memo refers to "details of assessment records sent". In S.No. 5 of this forwarding memo, details sought are in respect of "Volume of assessment records transferred". In S.No.6, Reasons for transfer mentions "change of jurisdiction and returned income is nil."

6. In the light of the above narration, Learned counsel for the assessee Shri S. C. Dixit, Advocate, representing the assessee, strongly submitted that both the above letters do not confer jurisdiction on the Income Tax Officer to hold the assessment as a valid assessment. Learned counsel for the assessee referred to the letter dated 03/08/2017 addressed by DCIT-6, Lucknow wherein in para 3 it is stated that *"the case records were transferred by the DCIT-6, Lucknow to Income Tax Officer-VI(2), Lucknow on the basis of return of income of the assessee which was nil. There is no order u/s 127 of the Act placed on record. Copy of transfer memo is*

enclosed." By referring to this, Learned counsel for the assessee argued that it is a case of transfer and there is no order u/s 127 of the Act as affirmed by the Revenue records itself. He also pointed out to the written submissions made by learned CIT, D.R. dated 29/03/2019 made before the Tribunal. In the said written submissions in para 4, facts relating to issue of statutory notice by DCIT-6, Lucknow are not disputed. In the same paragraph, ignorance on the part of DCIT-6, Lucknow in respect of the letter dated 22/07/2011 issued by learned CCIT, Lucknow has been acknowledged.

6.1 Initially the jurisdiction for initiation of assessment proceedings for the impugned year was assumed by DCIT-6, Lucknow which was out of ignorance as acknowledged by the Revenue and when it was brought to its notice regarding change of jurisdiction over the case of the assessee on income criteria in reference to the letter of CCIT, Lucknow dated 22/07/2011, he immediately transferred the case to Income Tax Officer-VI(2), Lucknow i.e. the Assessing Officer who finally passed the impugned assessment order.

6.2 In the written submissions, learned CIT, D.R. has contended that JCIT/DCIT and Income Tax Officers are having concurrent jurisdiction on all such cases under the range hence, it makes no difference if the process of assessment is initiated by one officer and is completed by another officer and therefore, there is no separate order u/s 127 of the Act necessary for transferring the case from DCIT-6, Lucknow to Income Tax Officer-VI(2), Lucknow. Learned counsel for the assessee also pointed out to the noting made in the first para of the said written submissions wherein it is stated that "*after assuming jurisdiction over the case, the Income Tax Officer-VI(2), Lucknow passed the assessment order u/s 143(3) on 28/03/2014.*"

6.3 Learned counsel for the assessee strongly relied on the decision of Hon'ble Delhi High Court in the case of Volvoline Cummins Limited in which it was observed as under:

"It appears to us quite clearly that there is a distinction between concurrent exercise of power and joint exercise of power. When power has been conferred upon two authorities concurrently, either one of them can exercise that power and once a decision is taken to exercise must be terminated by that authority only. It is not that one authority can start exercising a power and the other authority having concurrent jurisdiction can conclude the exercise of that power. This perhaps may be permissible in a situation where both the authorities jointly exercise power but it certainly is not permissible where both the authorities concurrently exercise power."

6.4 Learned counsel for the assessee thus submitted that in this case the process of assessment was initiated by the authority higher in rank but the subsequent action of completing the assessment and passing the order was taken up by the authority junior in rank.

7. Per contra learned CIT, D.R. Shri S. H. Usmani placed reliance on the written submissions on record dated 29/03/2019 and 16/08/2022. He argued and contended that jurisdiction has to be understood in the administrative sense of assigning/allotting or distributing the work to various authorities. It is administrative act in nature. According to him, he treats the matter of jurisdiction as one of procedure and cannot invalidate the assessment order.

8. We have heard the rival contentions and perused the material on record and have gone through the submissions made before us. In the instant proceedings, the issue before us is restrictive in nature which has to be dealt in reference to the directions given by Hon'ble High Court as reproduced above. According to the said direction, the Tribunal is required

to consider the effect of CCIT letter dated 22/07/2011 and transfer of cases by DCIT to concerned Income Tax Officer vide order dated 22/11/2013 on its judgment passed on 06/11/2015.

9. Before addressing the issue in hand, it is appropriate to refer to the provisions of section 120 of the Act:

“Jurisdiction of income-tax authorities.

120. (1) *Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.*

Explanation.—For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).

(2) *The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.*

(3) *In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :—*

- (a) territorial area;*
- (b) persons or classes of persons;*
- (c) incomes or classes of income; and*
- (d) cases or classes of cases.*

(4) *Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—*

- (a) authorise any Principal Director General or Director General or Principal Director or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;*
- (b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the*

Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in [section 124](#), the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification."

9.1 From the perusal of above section, sub section (5) deals with the concurrent charges/exercise of powers and functions by the Assessing Officer where two or more Assessing Officers whether or not of the same class, are required for the proper management of the work. It is also worth noting in the same sub-section that any authority lower in rank amongst them (concurrently exercising and performing the powers and functions) shall exercise the powers and perform the functions as any higher authority

amongst them may direct. Also the reference to Assessing Officer shall be deemed to be references to such higher authority.

10. Keeping the provisions of section 120 of the Act in juxta position with the CBDT Instruction No. 1/2011, 6/2011 and letter by Learned CCIT, Lucknow dated 22/07/2011, it is revealed that the jurisdiction of income tax authorities may be fixed not only in respect of territorial area but also having regard to a persons or classes of persons and incomes or classes of income also.

11. Perusal of section 127 of the Act also reveals that jurisdiction to transfer cases from one Assessing Officer to other officer lies with the officer as mentioned in section 127(1) who are in the rank of CIT or above. As acknowledged in the written submissions by the Revenue, there is no order on record passed u/s 127 of the Act in the present case.

12. Before we proceed to advert on the issue in hand, the chronology on certain important events are worth noting, which are as under:

- (i) Date of filing of return dated 24/10/2011
- (ii) Notice u/s 143(2) dated 03/08/2012
- (iii) Notice u/s 142(1) dated 19/04/2013
- (iv) Notice u/s 142(1) dated 05/08/2013
- (v) Assessment order u/s 143(3) dated 28/03/2014

13. Admittedly, it is a fact on record that the letter by Learned CCIT, Lucknow is dated 22/07/2011 which is prior to the date of filing of return by the assessee. The said letter very categorically states in para 5 that "*CITs concerned are directed to ensure the compliance of this order on priority basis.*" The monetary parameters set out in this letter by learned CCIT, Lucknow conferred the jurisdiction for the assessee to Income Tax Officer

and not the AC/DC as the case of the assessee fell into the income declared criteria of income upto Rs.15 lacs which in the assessee's case is reported as nil. Thus, at the very inception of the assessment proceedings, jurisdiction was always with the Income Tax Officer-VI(2), Lucknow and not DCIT-6, Lucknow. However, learned DCIT-6, Lucknow assumed the jurisdiction of issuing notice u/s 143(2) of the Act on 03/08/2012 which is not in compliance with the said letter issued by learned CCIT, Lucknow.

13.1 Learned CIT, D.R. in his written submissions has referred to understand 'jurisdiction' in administrative sense, which we fail to appreciate. If such an understanding is accepted, it will lead to nothing but chaos. We also take note of the fact that from the letter dated 22/11/2013 what is noted therein as reason for transfer is "*change of jurisdiction and returned income is nil.*" This also evidently demonstrates that there is a change of transfer of jurisdiction from one authority to another authority.

13.2 We also take note of the fact from the paper book placed on record dated 30/01/2019 wherein an order u/s 127(1) of the Act dated 17/03/2016, has been placed. This order u/s 127(1) is passed by Pr. CIT-2, Lucknow whereby the case of the assessee has been transferred from Income Tax Officer-VI(2), Lucknow to DCIT-6, Lucknow. This act by DCIT-6, Lucknow of passing an order u/s 127(1) of the Act though subsequent to the impugned assessment, evidently demonstrates that such an order was necessary when the jurisdiction was transferred from DCIT-6, Lucknow to Income Tax Officer-VI(2), Lucknow in the impugned assessment proceedings.

13.3 Considering the provisions of the Act referred above, chronology of the events and the discussions made above vis-à-vis the written submissions

of the Revenue placed on record, the statutory notices issued by learned Dy. Commissioner are *coram non judice*. Thus, in the light of direction given by Hon'ble High Court to deal with the two letter dated 22/07/2011 and 22/11/2013, we are of the considered view that assessment framed by the Assessing Officer i.e. Income Tax Officer-VI(2), Lucknow is not sustainable in the eye of law and therefore, we annul the same.

14. Since the assessment order is annulled, we find no justification to deal with the issues on merits. Accordingly, the order of learned CIT(A) and the Assessing Officer are set aside and the appeal of the assessee is allowed.

15. Taking appeal in I.T.A. No.175/Lkw/2019 along with Cross Objections No.6/Lkw/2021 for assessment year 2009-10. The Revenue is in appeal on the relief granted by learned CIT(A) of holding the reassessment proceedings u/s 147 as invalid and the Cross Objections by the assessee is on supporting the relief granted by learned CIT(A) as well as on the claim of exemption u/s 10(26AAB) of the Act. In this respect, the brief facts are that for assessment year 2009-10, the assessment was originally completed u/s 143(3) of the Act vide order dated 28/12/2011 wherein claim of exemption u/s 10(26AAB) of the Act amounting to Rs.9,29,60,114/- was disallowed. In appeal by the assessee before learned CIT(A), the claim of exemption u/s 10(26AAB) of the Act was allowed to the extent of Rs.8,87,18,232/-. In the course of appeal before the I.T.A.T., Lucknow Bench, the assessment framed by the Assessing Officer was held to be invalid and was annulled by making the following observations:

"8. In the light of totality of the facts and circumstances of the case, we are of the considered view that since the Tribunal has taken a view in similar set of facts, we find no justification to take a contrary view in this appeal. Since the assessment is passed by an Officer lower in rank despite the fact that the Officer higher in rank has seized with the matter, the assessment framed by the Income Tax

Officer is invalid and is not sustainable in the eyes of law. We accordingly annul the same.

9. Since the assessment is annulled, we find no justification to deal with the issues on merit raised in the Revenue's appeal. Accordingly the appeal of the Revenue is dismissed and the cross objection of the assessee is allowed.

10. In the result appeal of the Revenue is dismissed and the cross objection of the assessee is allowed."

15.1 In the said order by the coordinate Bench of the I.T.A.T., there was no finding on the issue of claim of exemption u/s 10(26AAB) of the Act. Subsequently, the matter was reopened by issuing notice u/s 148 and the assessment was completed u/s 147 read with section 143(3) wherein the claim of exemption u/s 10(26AAB) of the Act was disallowed for Rs.9,29,60,114/-. Learned CIT(A) in the present case has given his findings by holding the order of reassessment u/s 147 as invalid and thus allowed the appeal. Learned CIT(A) while holding so has observed that reopening is based on change of opinion and reexamination/reappraisal of existing material and thus the reassessment proceedings initiated by the Assessing Officer is held to be invalid.

16. We have already given our observations and findings on the validity of assessment in the appeal 520/Lkw/2015 for assessment year 2011-12 in above paragraphs and have held the assessment so done by the Assessing Officer as invalid owing to lack of jurisdiction in the light of analyzing the effect of the two letters stated in the direction given by Hon'ble High Court. The coordinate Bench of I.T.A.T., Lucknow in the case of assessment year 2009-10 had annulled the assessment made u/s 143(3) of the Act on the premise that the assessment so framed by Income Tax Officer (an officer lower in range) than an officer who had initiated the assessment proceedings i.e. DCIT/ACIT. The issue of allowability of deduction u/s

10(26AAB) of the Act was not decided by the I.T.A.T., Lucknow. In view of the above, we find that the reassessment proceedings initiated by the Assessing Officer are valid as assessment order passed u/s 143(3) has been annulled and there exists no expression of any opinion in respect of claim of exemption u/s 10(26AAB) of the Act. Accordingly, the appeal of the Revenue is allowed.

16.1 However, considering the Cross Objection of the assessee, particularly on the issue of claim of exemption u/s 10(26AAB) of the Act, we note that assessee is a Government company registered under section 617 of the Companies Act 1956 which is wholly owned Government corporation of which 100% share holding is of State Government of U.P. Assessee is carrying on business of supply of essential commodities of general public at large and marketing of the agricultural produce. In the course of assessment proceedings, Assessing Officer passed the assessment orders by disbelieving the exemption claimed by the assessee 10(26AAB) of the Act.

16.2 The basis of relief granted by learned CIT(A) in respect of exemption claimed 10(26AAB) of the Act is the order passed by coordinate Bench of the I.T.A.T., Lucknow on technical grounds for assessment year 2009-10. It is contended by learned CIT, D.R. that the assessments were completed u/s 143(3) of the Act which were partly allowed by learned CIT(A). On the Revenue's appeal against the order of learned CIT(A) before the Hon'ble Tribunal wherein the order of Assessing Officer passed u/s 143(3) was annulled, he submitted that the allowability of exemption 10(26AAB) of the Act was never decided by Hon'ble I.T.A.T., Lucknow. The case of the assessee was reopened and was assessed u/s 147 of the Act in respect of claim of exemption 10(26AAB) of the Act. In this respect, learned CIT(A) gave relief to the assessee by holding that there is change of opinion by the

Assessing Officer for reopening the completed assessment by taking the basis of annulling of the assessment order by the coordinate Bench of the I.T.A.T., Lucknow on technical grounds. It is contended by learned CIT, D.R. that assessee has failed to furnish any documentary evidence to justify its claim of exemption.

16.3 He has also referred to the Memorandum and Article of Association of the assessee and pointed out the main objects as well as the objects incidental or ancillary to the attainment of the main objects:

A. Main objects to be pursued by the company on its incorporation are:

- *To undertake procurement, purchase, storage, movement including inter State movement, distribution and sale of food grains, oil seeds and other agricultural products.*
- *To plan, promote, set up or assist in promoting or setting up Rice Mills, flour Mills, Oil Mills including Vanaspati Mills, Food based industries or such other undertakings which may help in the processing or production on food grains and food stuffs.*
- *To undertake procurement, import, production, storage, processing, supply and distribution of any other items of mass consumption which are essential to the needs of the community.*
- *To manage, control and run any mills, factories or undertakings in the State carrying on any trade or business analogous to the objects of the Company which may be taken over by the Government of India under the Industries (Development and Regulation) Act, 191 and the management of which may be entrusted to the Company.*
- *To investigate and examine the condition prospects, value, character and circumstances of any business undertaking, project or enterprise or such other units engaged in manufacturing or processing of any commodities like bread, biscuit, cakes, pastries and other food products, dairy products, etc. and generally of assets, property and rights connected with the objects of the company and to take over such units as the company may deem fit and to employ and remunerate experts or agencies for this purpose.*

B. Objects incidental or ancillary to the attainment of the main objects:

- *To take over from the Government of India or Government of Uttar Pradesh any or all its projects or services that have been established with objects analogous to those of the company.*
- *To carry on any other trade or business which in the opinion of the company may conveniently be carried on in connection with or calculated or directly or indirectly to enhance the value of or render profitable to any of the company's properties or rights.*
- *To undertake investigation, studies or preparation of feasibility and project reports for the establishment of any projects connected with the objects of the company for execution by the company or by any other agency.*
- *To prepare capital and financial assistance for any undertaking, project or enterprise connected with the objects of the company whether owned by Government, statutory body, private company, firm or individual or cooperative institution and to subscribe for or to underwrite or other wise deal in shares, debentures and securities of such institutions or individuals.*
- *To promote and establish companies and associations in furtherance of the objects of the company and to acquire and dispose of shares of such companies and associations.*

16.4 Learned CIT, D.R. also referred to the website of assessee to submit that assessee is neither an agricultural produce market committee nor a Board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce in the state of U.P. He thus strongly submitted that the claim of exemption made by the assessee has been rightly disallowed by the Assessing Officer.

17. Per contra, Learned counsel for the assessee submitted that assessee is a Government company registered u/s 617 of the Companies Act, 1956 and is wholly owned Government company of which 100% share holding is held by the State Government of U.P. and is set up within the definition under Article 12 of the Constitution of India.

18. In this respect, we have considered the rival submissions and perused the material on record. From the material available before us, it is discernable as to the exact status of the assessee for considering its claim made 10(26AAB) of the Act. In our considered view, we find it appropriate to remit the matter back to the file of the Assessing Officer for the purpose of examining the status of the assessee for considering its claim of exemption made 10(26AAB) of the Act. The assessee is also directed to produce all the details and documents to substantiate its claim for establishing its status as agricultural produce marketing committee or Board in terms of section 10(26AAB) of the Act. Needless to say, assessee be given reasonable opportunity of being heard to submit all the relevant details and documents for its claim. Accordingly, grounds taken in this respect are allowed for statistical purposes.

19. In the result, the appeal of the Revenue for assessment year 2009-10 is allowed and the Cross Objection of the assessee on the issue of claim of exemption u/s 10(26AAB) of the Act is allowed for statistical purposes. In terms of observations above.

20. Similar issues are involved in I.T.A. No.194/Lkw/2019 and Cross Objection No.7/Lkw/2021. The observations and findings given by us in I.T.A. No.175/Lkw/2019 and its Cross Objection No.6/Lkw/2021 for assessment year 2009-10 shall apply mutatis mutandis to I.T.A. No.194/Lkw/2019 and its Cross Objection No. 7/Lkw/2021 for assessment year 2012-13.

21. In the result, the appeal of the Revenue for assessment year 2012-13 is allowed and the Cross Objection of the assessee on the issue of claim of exemption u/s 10(26AAB) of the Act is allowed for statistical purposes. In terms of observations above.

22. In I.T.A. No.193/Lkw/2019 the Revenue has challenged the relief granted by learned CIT(A) for claim of exemption u/s 10(26AAB) of the Act. We note that the relief granted is based on the assessment made u/s 143(3) of the Act for assessment year 2009-10 which was annulled by coordinate Bench of the I.T.A.T., Lucknow, the details of which have already been narrated above. Since we have remitted the matter of claim of exemption u/s 10(26AAB) of the Act back to the file of the Assessing Officer, we find it proper to remit this issue for assessment year 2010-11 in I.T.A. No.193/Lkw/2019 also to the file of the Assessing Officer in terms of observations already made herein above. Accordingly, the appeal of the Revenue is allowed for assessment proceedings.

(Order pronounced in the open court on 30/11/2022)

Sd/.
(MAHAVIR SINGH)
Vice President

Sd/.
(GIRISH AGRAWAL)
Accountant Member

Dated:30/11/2022

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar