

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1440/Del/2018
Assessment Year: 2014-15

Income Tax Officer, Ward-3(2), Bulandshahr.	vs.	Sahkari Ganna Vikas Samiti, Dal Mandi, Distt. Bulandshahr, Uttar Pradesh. PAN AAHTS8347R
(Appellant)		(Respondent)

For Revenue :	ShriKumar Pranvav, Sr.DR
For Assessee :	None

Date of Hearing :	23.11.2022
Date of Pronouncement :	27.01.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the Revenue is directed against the order dated 22.11.2017 of the Ld. CIT(A), Aligarh, relating to Assessment Year 2014-15.

2. The grounds of appeal raised by the revenue read as under:-

“1. The Ld. CIT(A) has erred in law as well as on facts in allowing the disallowance of exemption claimed u/s. 80P of the IT Act, 1961.

2. The Ld. CIT(A) has erred in law as well as on facts in not considering all the grounds of disallowance of deduction made by the A.O.

3. The order of Ld. CIT(A) be set aside and the order of the A.O. be restored.

4. Appellant craves leave to modify/amend or add any one or more grounds of appeal.”

3. When the case was called for hearing neither the assessee nor authorise representative appeared nor any adjournment application has been filed. The Ld. Senior D.R. placed on record report regarding *Dasti Services* of notice and submitted that the service has been made on the assessee, through its permanent clerk named Shri Dinesh Kumar, copy of acknowledgment has also been placed on record. Therefore it is safely presumed that the notice of hearing for 10.08.2022 was duly served on the assessee through the Department. Further another opportunity was also granted to the assessee by issuing notice for the date of

hearing 23.11.2022 and was also issued but instead of appearing before the bench. The Ld. Counsel for the respondent submitted an adjournment application stating that his younger brother Shri Gurcharan Singh, was severely suffering from arthritis and his both knees were replaced. Therefore because of engagement in looking after him the case could not be prepared. However from the copy of the discharge summary it reveal that Shri Gurcharan Singh, was discharged from the hospital after surgery on 19.11.2022. Therefore in our considered view the cause stated by the assessee in the adjournment application is not acceptable therefore keeping in view objection of the Department adjournment application is dismissed. We proceed to adjudicate the appeal ex-party qua assessee respondent after hearing the arguments of Ld. Senior D.R. on behalf of the appellant Department.

4. The Ld. Senior D.R. drawing our attention towards assessment order submitted that deduction claimed by the assessee society under section 80P(2)(a) (iii) and (iv) was wrongly claimed as the assessee society has failed to provide

the complete details of its members and its activities between the members and outsiders separately and also failed to prove eligibility of specific deduction against the specific activity claim in the return of income u/s. 80P (2) of the Income Tax Act, 1961. The Ld. Senior D.R. submitted that the Ld. CIT(A) has granted relief to the assessee without any reasonable basis. Therefore impugned first appellate order may kindly be set aside by restoring that of the A.O. From the careful reading of first appellate order, we observe that the authorise representative of the assessee submitted detail written submissions before the Ld. CIT(A), which has been reproduced in the first appellate order para 4 which are being reproduced for the sake of completeness.

5. From the relevant operative part of the first appellate order, we observe that the Ld. CIT(A) granted the relief to the assessee with following observations and findings:

The AO has brought to tax the whole of the surplus of Rs. 1,78,48,848/- rejecting the appellant's claim for deduction u/s 80P. This surplus has arisen from the following receipts:-

(i) Gross profit - 174337.58

- (ii) Anudan Keetnashak - 400000.00
- (iii) Anudan krishi yantra - 440000.00
- (iv) Commission Income - 20133750.00
- (V) Cheq. Book Fee - 5310.00
- (vi) Entry Fee - 621902.00
- (vii) Interest Income - 1272087.93
- (viii) Other Income - 80725.00
- (ix) Patte (Satte) se Income - 15000.00
- (x) Upaj Badhotri - 73526.00
- (xi) Vasooli Kharcha - 10084.03

Taxability of various items listed above is being considered as under:

(i) Gross profit - 174337.58: It has been explained that the appellant purchased cane seeds, agricultural equipment etc. and supplied them to its members which is as per objects of the society. Profit from such buying and selling is claimed to be exempt W/s 80P(2) (a) (iv). In my opinion, there is no evidence to suggest that trading in agricultural equipment was done with persons and other than members. That being so the profit earned from such activities deserves to be exempt u/s 80P(2) (a) (iv). Therefore, surplus relating to the gross profit of Rs. 1,74,337/- as mentioned above cannot be taxed and the AO is being directed to allow deduction u/s 80P(2) (a) (iv) accordingly.

(ii) Anudan Keetnashak - 400000.00 & (iii) Anudan krishi yantra - 440000.00 The appellant has claimed that these are grants received from the state government and the same has been passed to the members of the appellant society. This is a fact that it has not been examined by the AO during the assessment proceedings. Therefore, the AO is being

directed to ascertain if these grants have indeed been passed to the members of the society. If so no profit would arise from such grants. To the extent these grants have been distributed to the members they should be allowed to be deducted. The AO is being directed accordingly.

(iv) Commission Income - 20133750.00, (vi) Entry Fee - 621902.00, (viii) Other Income - 80725.00, (ix) Patte (Satte) se Income - 15000.00,

(x) Upaj Badhotri - 73526.00 and (xi) Vasooli Kharcha - 10084.03

All these receipts apparently pertain to the appellant's main business of marketing agricultural produce grown by the members. It has been explained that the society takes care of production of sugarcane by the members, makes arrangements for supplying it to the sugar mills and manages delivery of the sugarcane to the sugar mills besides ensuring that payments are released by the sugar mills for the sugar cane sold to them by the members. In consideration of these activities, the appellant receives commission from the sugarcane factory. For such commission, the appellant is claiming exemption u/s 80P (2) (a) (iii). The AO has not given any cogent reason why this exemption should not be allowed to the appellant. In my opinion, the claim of the appellant is very much in accordance with the provisions as contained w/s 80P (2) (a) (iii) and hence it deserves to be allowed.

For the same reason, deduction u/s 80P (2) (a) (iii) should be allowed in respect of other incidental receipts relating to the business of marketing of agricultural produce of the members. Thus, the receipts from all the above mentioned items would be allowable for deduction. The A is being directed accordingly.

(v) Cheq. Book Fee - 5310.00: The appellant is providing credit facilities to its members and for that purpose cheques book are issued. The cheque book fees is

essentially incidental to the business of providing credit facilities to the members. The same would be eligible for deduction w/s80P (2) (a) (ill). The AO is being directed to allow deduction accordingly.

6. From the careful reading of assessment as well as first appellate order and submissions of the assessee before the authorities below including submissions noted by the Ld. CIT(A) (supra). First of all we observe that the Ld. CIT(A) has partly dismissed the appeal of assessee on the issue of interest income of Rs. 12,72,087.93/- and there is no cross appeal or cross objection by the assessee in this regard.

7. The learned first appellate authority on the issue of gross profit noted that the appellate purchase sugarcane seeds, agricultural equipments etc. and supplied them to its members as per objects of the society and profit from such activity was claimed to be exempt u/s. 80P(2)(a)(iv) of the Income Tact Act 1961. The Ld. CIT(A) was right in observing that there is no evidence suggest that trading in agricultural equipment was done with persons other than the members. It is also not a case of the AO, therefore the Ld. CIT(A)

rightly held that the profit earned from said activities deserve to be exempt u/s. 80P(2)(a)(iv) of the Act. Regarding grants received from State Government it was contended that the same was passed to members of the society and the Ld. CIT(A) directed to the AO ascertain if these grants have indeed been passed to the members of the society. To that extent these grants have been distributed to the members then they should be allowed to be deducted. The Ld. CIT(A) has directed the AO to verify the claim of the assessee and we are unable to see any ambiguity in this regard.

8. Regarding commission income, entry fee, other income, patte (sattu) se income, Upaj Badhotri and Vasooli Kharcha. The Ld. CIT(A) noted that the appellants main business is of marketing of agricultural produce grown by members and society takes care of production of sugarcane of the members, makes arrangements for supplying it to the sugar mills and manages delivery of the sugarcane to the sugar mills besides ensuring that payments are released by sugar mills for the sugar cane sold to them by the members. On a careful perusal of the first appellate order we observe that

the Assessing Officer merely alleged that if the assessee takes sale/purchase of agricultural produce by its members then it must be shown in trading account, while no such transactions has been shown in the trading account maintained by the assessee. The AO alleged that the account maintain by the assessee are defective and not audited u/s. 44AB of the Act. The Ld. CIT(A) after considering the explanation and submissions of the assessee that wherein it was submitted that from the details mentioned it is clear that the activity of supply of sugarcane to the sugar mill constitute a marketing activity of sugarcane which is agricultural produce grown by the appellants members and as the appellant is cooperative society duly registered under Cooperative Society Act 1912 all the essential require for claiming deduction u/s. 80P(2)(iii) are fulfilled and thus the assessee is eligible for deduction. The assessee also drawn attention first appellate authority towards order of his predecessor for a immediately preceding year A.Y. 2013-14 which was deleted by the Ld. CIT(A), Aligarh order dated 15.09.2017 in appeal no

96/2016-17/GZB/Aligarh after considering the total facts and circumstances of the case and orders of his predecessor for A.Y. 2013-14 the Ld. CIT(A) concluded that the AO has not given any cogent reason why the claim exemption should not be allowed to the appellant. In view of above we note that principle of *res judicata* does not apply of tax proceedings, however rule of consistency is always respected therefore the Ld. CIT(A) was right in allowing claim of assessee u/s. 80P(2)(a) (iii) of the Act. We are unable to see any ambiguity perversity for any valid reason to interfere with the same.

9. Regarding allowance of cheque book fee Rs. 5,340/- is concerned the Ld. CIT(A) right noted that the appellant is providing credit facilities to its members for that purpose cheque books are issued to the members therefore cheque book fee received by the assessee is incidental to the business of providing credit facilities to the members therefore this amount was also rightly allowed u/s. 80P(2) (a)(iii) of the Act. Finally we conclude that the Ld. CIT(A) was right in directing the AO to verify the amounts of grants

Anudhan Keetnashak and Anudan Krishi Yantra received from State Government to ascertain if these grants have been indeed to passed to the members of the society and the amount so passed was allowed to be deducted. We are also in the agreement with the conclusion drawn by the Ld. CIT(A) that the claim of assessee regarding commission income, entry fee, other income, patte (satte) se income, Upaj Badhotri and Vasooli Kharcha are incidental receipts relating to the business of marketing of agricultural produce of the members therefore the receipt from said heads is eligible for deduction u/s. 80P(2)(a)(iii) of the Act. It is pertinent to note that the assessee has claimed u/s. 80P(2) of the Act, only on the net profit amount and not gross commission and other incomes therefore the AO was not right in denying the claim of assessee on the basis of quantum of sale of sugar cane and commission. Such kind of allegation could be made in the case of showing or declaring lesser commission in comparison to the quantum of sale but when the assessee is disclosing entire commission income and simultaneously disclosing sale of

sugarcane then as per submissions of the assessee is not only undertaking purchase of sugarcane but also taking care of the entire process right from showing sugarcane seeds to procuring crops grown by its members and for entire activities supervise by Cane Commissioner of State Government who grants required approval and the supply of sugarcane is made to the sugar mills nominated by the Sugar Board. In this situation the showing of higher commission income cannot be basis of denying exemption u/s. 80P(2) of the Act. At the cost of repetition we may point that identical claim of the assessee has been allowed by the Ld. CIT(A) in the immediately preceding A.Y. 2013-14 therefore the conclusion drawn by the Ld. CIT(A) also gets support from order of his predecessor for immediately preceding A.Y. 2013-14 (supra).

10. In view of above we are inclined to hold that we are unable to see any ambiguity and perversity or any other valid reason interfere with the findings arrived by the Ld. CIT(A) and thus we uphold the same. Accordingly, **grounds of revenue are dismissed.**

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

Order pronounced in the open court on 27.01.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 27th Jan, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi