

आयकर अपीलीय अधिकरण, 'सी' (एस एम सी) न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: **97/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2017-18

**Mathavankurichi Primary
Agricultural Co Operative
Society Ltd.,**

Mathavankurichi Village,
Thandavankadu Post,
Tuticorin – 628 206.

The Income Tax Officer,
Vs. Ward 3,
Tuticorin.

PAN: AACAM 0533H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri N. Arjunraj, CA for
Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 23.02.2023

घोषणा की तारीख/Date of Pronouncement

: 23.02.2023

आदेश /ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Appeal No.CIT(A), Madurai-1/10154/2019-20 dated 30.12.2022. The assessment was framed by the Income Tax Officer, Ward 3, Tuticorin for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 11.10.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of furniture depreciation, provision for NPA, provision for sundry debtors and loss on waiver and not allowing consequent deduction u/s.80P of the Act on the enhanced total income as the items of disallowance were directly related to receipt of the business of the assessee. For this assessee has raised various grounds which need not to be reproduced.

3. I have heard rival contentions and gone through facts and circumstances of the case. Brief facts are that the assessee is an Agricultural Cooperative Credit Society carrying on the business activities of fertilizer, distribution of controlled commodities as per the directions of the State Government and also lending to members of the society. The AO while framing assessment allowed the claim of deduction on the net profit declared by assessee as per profit & loss account. However, the AO made disallowance and added to the income of the assessee and brought to tax as income from business of the society on account of loss on waiver, furniture depreciation, provision for NPA and provision for sundry debtors. The Id.counsel for the assessee made preliminary submission that all these items i.e., loss on waiver, furniture depreciation, provision for NPA and

provision for sundry debtors are related to receipts of business of the assessee and in any case, these disallowances will increase the assessee's profit. He argued that the AO himself has computed and allowed deduction u/s.80P of the Act, which is undisputable. Now, only issue is that once there is addition of business income i.e., items related to business receipts, consequent deduction has to be allowed. The Id.counsel for the assessee relied on CBDT Circular No.37, dated 2-11-2016 wherein, the CBDT has issued as under:-

Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

2. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

(i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under laud, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:

- Income tax Officer Ward 5(1) vs. Keval Construction,*

Tax Appeal No. 443 of 2012, December 10, 2012, Gujarat High Court. (2013) 354 ITR 13.

- *Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, IT Appeal No. 2 of 2011, September 11, 2015, Bombay High Court. (2016) 388 ITR 630*

(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking or which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:

- *Principal CIT, Kanpur vs. Surya Merchants Ltd., I.T. Appeal No. 248 of 20 15, May 03, 2016, Allahabad High Court. (2016) 387 ITR 105.*

3. The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter W-A is admissible on the profits so enhanced by the disallowance.

4. Accordingly, henceforth, appeals may not be filed on this ground y officers of the Department and appeals already filed in Courts/Tribunals may be withdrawn/ not pressed upon. The above may be brought to the notice of all concerned.

The Id.counsel for the assessee stated that once CBDT admitted this position and disallowance is made out of specific expenditure claimed and which is related to business activity has to be allowed

deduction under the respective provisions of section falling under Chapter VIA of the Act.

4. When these was pointed out to Id. Senior DR, he only supported the assessment order and the order of CIT(A).

5. I find from the nature of additions which are directly related to business activity and as mentioned in CBDT Circular No.37, dated 2-11-2016 *supra*, I feel that this issue is squarely covered by various decisions of Hon'ble High Courts and the CBDT Circular, *supra*. Hence, I direct the AO to allow consequential deduction u/s.80P of the Act in regard to these additions.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 23rd February, 2023 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 23rd February, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.