

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
DELHI**

**BEFORE: SHRI C.M GARG, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.4356/Del/2019
(Assessment Year: 2014-15)**

M/s Cane Development Council Titawi Opp. Railway Station, Muzaffarnagar UP 251001	Vs.	ITO, Meerut Road, Muzaffarnagar, UP 251001
PAN/GIR No. AAALC 0173 E		
(Appellant)	..	(Respondent)

Assessee by	Shri. Ankit Gupta, Adv.
Revenue by	Ms. Maimun Alam, Sr. DR
Date of Hearing	24/04/2023
Date of Pronouncement	03/05/2023

ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.4356/Del/2019 for A.Y. 2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals), Muzaffarnagar in appeal No.5986-5230-1210-117 dated 27.07.2017, (hereinafter referred to as Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 19.12.2016 by the Id. Income Tax Officer, Ward-1(2), Muzaffarnagar (hereinafter referred to as Id. AO).

2. The assessee has raised the following grounds of appeal:-

1. *That, the assessment order passed U/s 143(3) and the addition made are illegal, bad in law and without jurisdiction. The CIT(A) erred in upholding the same.*
2. *The addition/ disallowances made by the assessing officer are illegal, unjust, and highly excessive and are not based on any material on record by the assessing officer. The total income of the appellant has been wrongly and illegally computed by the assessing officer at Rs.82,87,845.00 as against NIL INCOME. The CIT (A) has erred in upholding the same.*
3. *That, in view of the facts and circumstances, the assessing officer has erred in law and on facts in making the addition of Rs.80,61,068.00 on account of Commission Received, which is highly arbitrary, unjust and against the facts and circumstances of the case. The Ld. CIT (A) has also confirmed the same.*
4. *That, in view of the facts and circumstances, the assessing officer has erred in law and on facts in making the addition of Rs.2,26,759.00 on account of Interest received from Bank, which is highly arbitrary, unjust and against the facts and circumstances of the case. The Ld.CIT (A) has also confirmed the same.*
5. *That, the assessing officer and CIT (A) has failed to appreciate before confirming the addition of Rs.82,87,845.00, that, the said amount is not come under the preview of definition of INCOME U/s 2(24) of the Income Tax Act, 1961 as the assessee appellant is the statutory body of the State Government, for performing the specific work for the development of Cane Agriculture, in the specified area.*
6. *Without prejudice to the above, in case if it is held, that, the commission and interest received is to be treated as income than the assessee is eligible for the indirect expenses against the development work done by the assessee council.*
7. *The additions confirmed and the observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.*
8. *That the explanation given evidence produced, material placed and available on record has not been properly considered*

and judicially interpreted and the same do not justify the additions/allowances made.

9. That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

10. That the interest U/s 234A & 234B has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.

3. We have heard rival submissions and perused the materials available on record. The assessee is a local authority and had filed its return of income on 29.07.2014 declaring total income of Rs. NIL. The Id. AO vide notice u/s. 142(1) of the Act dated 05.09.2016 show caused the assessee as to why assessment be not completed in the status of "Artificial Juridical Person" in view of the amendment in provisions of section 10(20) of the Act, wherein assessee cannot be treated as a "Local Authority". The assessee submitted its reply vide letter dated 06.09.2016 stating that it was formed before the amendment was effected in section 10(20) of the Act with effect from 01.04.2003. The assessee objected to the action of the Id. AO in treating it as "Artificial Juridical Person". The Id. AO observed that as per the explanation inserted by the Finance Act 2002 which came into force with effect from 01.04.2003 in section 10(20) of the Act, the local authority will be any of the following four:-

- i) Panchayat*
- ii) Municipality*
- iii) Municipal committee and District Board*
- iv) Cantonment Board*

The Id. AO observed that other than these four, no other institution or body can claim to be local authority. The Id. AO observed that this

explanation was introduced to explain the words "local authority". In the opinion of the Id. AO, since the assessee does not fall under any of the above four categories, the Id. AO proceeded to treat the status of the assessee as "Artificial Juridical Person". The Id. AO observed that assessee had failed to furnish the audit report, balance sheet, P & L account and details of the expanses claimed in the return. Accordingly, he held that the expenses claimed in return cannot be allowed. The Id. AO thereafter proceeded to treat the commission income of Rs. 80,61,086/- received from sugar mills and interest income of Rs. 2,26,759/- received from bank to be added back as income of the assessee in the status of "Artificial Juridical Person". The main contention of the assessee before Id. AO was that it had received funds under head 'road construction' from sugar mills as commission at the behest of State Government. Effectively, in other words, the State Government had directed the sugar mills to pay this commission to the assessee for the purpose of utilization of construction of road and other connected activity. The assessee also submitted that it came into existence by virtue of section 5 of UP sugar cane (Regulation of supply/purchase/rules) 1954. The main crux of the Id. AO's case is that the money was not received by the assessee from the State Government and instead it was received only from the sugar mills and that the said monies received were completely at the disposal of the assessee. Hence according to Id. AO, the commission income so received becomes income of the assessee. The interest income earned by the assessee were out of deployment of the aforesaid commission income in banks. Hence both would partake the character of revenue receipt in the hands of the assessee and accordingly chargeable to tax. This action of the Id. AO was upheld by the Id. CIT(A).

4. The Id. AR before us submitted that the very same issue was subject matter of consideration by the Hon'ble Allahabad High Court (Jurisdictional High Court) in the case of CIT vs. M/s. N.S Committee in ITA No. 759 of 2012 dated 16.01.2018. For the sake of convenience, the entire order is reproduced below:-

Heard learned counsel for the department and Sri Diptiman Singh, learned counsel for the assessee. This is an appeal filed by the department under section 260A of the Income Tax Act, 1961 for the assessment year 2006-07 against the order of the Tribunal dated 4.4.2012. The questions of law sought to be answered are hereunder;

"1. Whether on the facts and circumstances of the case the Hon'ble ITAT is justified in confirming order of the CIT (A) that the Anshdan & Nirman Yojna Fund received for the sanctioned project and spent by the assessee is not forming part of total receipts by ignoring the fact that the assessee has not utilised these funds.

2. Whether on the facts and circumstances of the case the Hon'ble ITAT is justified in confirming order of the CIT (A) that Anshdan and funds for Nirman Yojna were given to the assessee for specific project of road construction and these funds have been spent for those specific project ignoring that the funds have not been spent for specific project of road construction which resulted in surplus of income.

3. Whether on the facts and circumstances of the case the Hon'ble ITAT is justified in confirming order of the CIT (A) that mere generation of surplus will not amount to generation of profit so long as surplus is not distributed, ignoring that the assessee is having specific project of road constructions and also ignoring that income of the assessee is not exempt under section 11 of the I.T. Act, 1961."

Both the CIT as well as the Tribunal after examining the matter have come to the conclusion that money advanced by the State Government to the assessee Cane Cooperative Society were in the nature of grant in aid for construction of roads and the sum which was given by the State Government and the funding given by State

Government for grant in aid was used for that very purpose. No surpluses were created. The Tribunal after examining the matter has come to the conclusion that the provisions of Section 2(24) of the Act would not cover such grant in aid to be included as an income for reasons that it cannot be naturally imputed that the activity of the construction of roads was any part of the business of Cane Cooperative Society and it did not relate to the normal business activities of the assessee cane committee. The grant in aid that was extended to them for a specific purpose and expenditure, therefore, could not be termed as a revenue receipt so as to form part of the total income.

Learned counsel for the respondents-assessee had relied on a decision of this Court in the case of Commissioner of Income Tax Vs. U.P. Upbhokta Sahkari Sangh Ltd. (2007) 288 ITR 106 (Allahabad) wherein a similar question had arisen with regard to the income of cane society and this Court has held hereunder;

"8. From a perusal of the aforesaid findings, we are of the considered opinion that the amount in question was given by the State Government for specific purpose. It did not partake of the nature of income of the respondent-assessee. Even if it is to be treated as an income, it would not be liable to be taxed as it is stated that there was diversion of the income by way of overriding title on the said amount by way of a condition to distribute it as the salary to the employees of the bhandars."

The assessee in that case was also Cane Cooperative Society.

In view of above, the questions of law are answered in favour of the assessee and against the department.

The appeal is accordingly, dismissed.

6. Further the Id. AR stated that the Id. AO himself had accepted the assessee's stand in Assessment year 2017-18 in the scrutiny assessment proceedings framed u/s. 143(3) of the Act 14.11.2019, treating the assessee as a 'local authority'. Further Id. CIT(A) in Assessment year 2015-16 had granted relief to the assessee treating the assessee as a 'local authority', against which no appeal has been preferred by the

revenue before this Tribunal. Similarly the Id. CIT(A) had granted relief to the assessee in A.Y. 2016-17 by following decision of Hon'ble Jurisdictional High Court referred to supra.

7. Per contra, the Ld. DR vehemently relied on the orders of the lower authorities.

8. From the perusal of the order of the Hon'ble Jurisdictional High Court reproduced supra, we hold that the issue in dispute stands squarely covered by the said decision. Moreover the impugned disputes have been accepted by the Id. AO in A.Y. 2017-18 in assessee's own case accepting the stand of the assessee. Similarly the Ld. CIT(A) also had accepted the stand of the assessee for the A.Y. 2015-16 and 2016-17 on identical facts and circumstances, which had attained finality as no appeals were preferred by the revenue before us for those years. In view of the above, we hold the assessee to be a 'local authority' and its receipts are not chargeable to tax in the facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 03/05/2023.

Sd/-
(C.M GARG)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Delhi; Dated 03/05/2023

NV, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Delhi.
4. CIT
5. DR, ITAT, Delhi
6. Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Delhi