

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 7133/Del/2018, A.Y. 2015-16

ITO, Ward-1(4), Distt. Shamli, Palika Bazar, Uttar Pradesh (APPELLANT)	Vs.	M/s. Cane Development Council Shiv Ganj Mandi, Shamli PAN : AAALC0276E (RESPONDENT)
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C.O. No. 33/Del/2019

(Arising out of ITA No. 7133/Del/2018, A.Y. 2015-16)

ITO, Ward-1(4), Distt. Shamli, Palika Bazar, Uttar Pradesh (APPELLANT)	Vs.	M/s. Cane Development Council Shiv Ganj Mandi, Shamli PAN : AAALC0276E (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing:	21.09.2023
Date of Pronouncement:	27.09.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Revenue against the order dated 31.08.2018 of CIT(A)-Muzaffarnagar (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 3626-8900-1120-118

arising out of an appeal before it against the order dated 28.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-1(4), Shamli (hereinafter referred as the Ld. AO).

2. None has appeared for the assessee at the time of hearing, however, there are written submission as received in support of the cross objections.

3. Ld. DR has supported the findings of Ld. AO.

4. It comes up that Ld. AO had made addition on the basis that he was of the view that assessee is not a local authority for the purpose of Section 10(20) of the Act. AO enquired about the status of the assessee if registered u/s 12AA of the Act and thereafter being dissatisfied considered the status of assessee as of juridical person. All receipts, for purposes of developmental work were considered as income u/s 2(24) of the Act. Therefore, in the absence of evidence, the expenses claimed were disallowed. Ld. CIT(A) has however, benefited the assessee on the basis of judicial pronouncements. It will be appropriated to reproduce para 7 of the order of Ld. CIT(A) reproduced as below :

“7. On consideration of the facts of the case as above, it is noted that the appellant has been established under the U.P. Sugar Cane Act, 1953 by the U.P. State Govt., under the supervision of the Cane Commissioner to carry out specific development activities in the areas assigned to it. It is being governed by its provisions and rules made under it. For this purpose funds are placed at its disposal by the State Govt. In addition to the funds from the State Govt., the appellant receives contributions/commission from sugar mills./cane co-operative societies operating in the assigned area as per the policy of the State Govt, to carryout various developmental activities as approved by the Cane Commissioner under the said Act. After carrying out part specified development activities like construction of roads etc. certain amounts left at the end of the year, which remained unutilized, is to be carried to the following year to be utilized for the balance specified work in the following year. Its budget is passed by the Cane Commissioner of the State under Rule 12(1) of U.P. Sugar

Cane (Regulation of Supply and purchase) Rules, 1954. No expenditure can be made for which no provision have been made in the budget passed under Rule 12(2) of the U.P. Sugar Cane (Regulation of Supply and purchase) Rules, 1954. There is no finding in the order of the A.O. that amount at the disposal of the appellant has been spent for the purpose other than the specified work. The appellant has produced copies of income & expenditure statements for various financial years to show that amount remaining unspent at the end of the year has been carried to the income & expenditure statement of the following year. Accounts of the appellant which have been prepared on receipt basis, have been audited by the Auditors who are independent Government authorities appointed by the Cane Commissioner of the State. The AO has also examined the income & expenditure statement of the appellant. There is no finding in the assessment order or from the material available on record that the appellant has distributed the amounts at its disposal to anybody or utilized the same as its own profits /income. The surplus from the execution of specified development work at the end of the year does not amount to generation of profit as long as surplus is not distributed and is ploughed back for the purpose of same activity. The functioning of the appellant is governed by various provisions of the U.P. Sugar Cane (Regulation of Supply and purchase) Act, 1953 and the Rules made there under. It has not been siphoned off or distributed/utilized the surplus or funds at its disposal for some other purpose. Further the appellant has produced a copy of Circular dated 24.5.2006" of the Cane Commissioner where it is clarified that these councils are to be run on no profit no loss basis i.e. funds remaining unspent during the year is to be carried to the following year to be used for the specified development activities.

Further, it is relevant to go through Rule 49A of the U.P. Sugarcane (Regulation of supply and purchase) Rules, 1954 made under the said Act (supra). The said Rule provides that every sugar manufacturing unit shall pay to the council a commission at the prescribed rates and the entire commission will be utilized for construction of roads and other developmental work. The relevant Rule 49A is reproduced as under:-

"49-A. Every occupier of a Gur, Rah or Khandsari Sugar Manufacturing Unit, liable to pay Purchase tax under Section 3 of the Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 (U.P. Act No. IX of 1961), shall pay to the Council for

every quintal of cane purchased by the Unit, commission at the rate of seventeen paise per quintal for the crushing season 1990-91 (w.e.f. 1-6-1991) till 1994-95 and for the crushing season 1995-96 and onward at the rate of half percent of the minimum statutory cane price. The entire amount of commission will be utilized for the construction of road and other developmental work. ”

5. The bench is of considered view that the conclusion of Id. AO was erroneous as with regard to the nature of receipts. The same were commissions received from various sugar mills in the hands of assessee for specific purpose of being used in the developmental activity so Ld CIT(A) has rightly held them to be not falling in the category of income for purpose of Section 2(24) of the Act and that being the case the status of assessee being local authority or otherwise was not of consequence. The grounds raised by the Revenue have no substance and **the appeal of the Revenue is dismissed, consequently, the cross objections become superfluous.**

Order pronounced in the open court on 27th September, 2023.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Date:-27.09.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI