

**आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.696/Viz/2019  
(निर्धारण वर्ष / Assessment Year : 2008-09)**

M/s Jai Bheem Scheduled Caste  
Drivers Labour Contract Cooperative  
Society Ltd.  
D.No.72-3-1, Spinning Mills Road  
Lalacheruvu, Rajahmundry  
**[PAN : AAAA]7815K]**

Vs. Income Tax Officer  
Ward-3  
Rajahmundry

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR  
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 12.09.2023

घोषणा की तारीख/Date of Pronouncement

: 05.12.2023

**आदेश /O R D E R**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], Rajamahendravaram in I.T.A.No.10138/2014-15/CIT(A)/RJY dated 31.10.2019, arising out of order passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'Act') dated 04.03.2014 for the Assessment Year (A.Y.) 2008-09.

2. Brief facts of the case are that the assessee, registered Cooperative Society under Andhra Pradesh Cooperative Society act, 1964 and engaged in the business of supplying vehicles on hire to ONGC, Rajahmundry, filed it's return of income for the A.Y.2008-09, admitting total income of Rs.2,05,423/- and claimed the entire income exempt u/s 80P(2)(a)(vi) of the Act. The return was processed u/s 143(1), later on, the case was selected for scrutiny under CASS and notices were issued accordingly. The Assessing Officer(AO) completed the assessment and passed order dated 04.03.2014, by disallowing the exemption claimed u/s 80P(2)(a)(vi) of the Act holding that the activity of the assessee do not involve the collective disposal of labour as envisaged in section 80P.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) upheld the order passed by the AO and dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

*1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*

2. *The learned Commissioner of Income Tax (Appeals) ought to have held that the notice issued u/s 148 of the Act is barred by time and ought to have quashed the notice u/s 148 of the Act as illegal and the consequent assessment proceedings concluded on the basis of such illegal notice as void ab initio.*
3. *Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.2,05,423 made by the assessing officer towards disallowance of exemption u/s 80P(2)(a)(vi) of the Act.*
4. *Any other grounds may be urged at the time of hearing.*
5. The assessee filed petition for admission of following additional grounds and pleaded to admit the additional grounds and pass appropriate orders in the interest of rendering substantial justice.
  - a. *“On the facts and circumstances of the case, whether the notice issued u/s 148 of the Act merely on account of change of opinion is bad in law and hence the said notice is liable to be quashed as illegal and the entire reassessment proceedings concluded on the basis of such illegal notice are also liable to be quashed as void ab initio?”*
  - b. *“On the facts and circumstances of the case, whether the assessment order passed without addressing the objections to the notice u/s 148 of the Act raised by the appellant is bad in law and hence liable to be set aside?”*
6. Ld.Counsel for the assessee has argued only Ground No.3. It was the submission of the assessee that the assessee society was formed by the scheduled caste drivers for collective disposal of their labour and entire income of the assessee for the A.Y.2008-09 was by way of car rents received from ONGC, in respect of supply of vehicles along with drivers

by the assessee society to ONGC. He, further submitted that the copy of the contract with ONGC is available at page No.71 to 74 of the paper book. It was the submission of the assessee that the AO placed reliance in the case of Drilwell Associates Cooperative Society Vs. Income Tax Officer, reported in 72 TTJ 516 (Ahd) and this case is not applicable to the assessee's case, since the assessee did some drilling jobs by engaging 40 to 60 labourers, who are not members of the Society. But, in the assessee's case, it is an admitted fact that the drivers of the society were only engaged for driving vehicles given on hire basis to ONGC. He, further submitted that the contract with ONGC was to supply cars along with drivers and these cars were driven exclusively by the drivers of the society, therefore, there is no involvement of outside members of the society. Therefore, the facts are totally different and the AO has wrongly relied on the decision of the Drilwell Associates Cooperative Society(supra). The AO also relied on the decision of Nilgiri Engineering Co.op.Society Ltd. Vs. CIT, reported in 208 ITR 326(Ori). In this case, the works carried out the society were supervised by paid employees, who were not members of the society, therefore, this case is also not applicable to the facts of the case. He, therefore, pleaded to set aside the

order passed by the revenue authorities and allow the appeal of the assessee.

7. On the other hand, the Ld.DR relied on the above two decisions relied by the Ld.CIT(A) and pleaded to uphold the order of the Ld.CIT(A).

8. I have heard both the parties and perused the material available on record. In this case, it is undisputed fact that the assessee society supply cars and drivers to ONGC and all the drivers are members of the society. It is an admitted fact that the society was formed by the Scheduled Caste drivers for collective disposal of their labour and the entire income of the assessee society was received from ONGC by way of car rents, in respect of supply of vehicles along with drivers by the assessee society. Therefore, I am of the firm view that the assessee society is eligible for deduction u/s 80P(2)(a)(vi) of the Act. The decisions which were relied by the revenue authorities are not applicable to the facts of the case, since in these two cases, the society has engaged outside members who are not members of the society and thereby received certain income. Therefore, we find force in the argument of the assessee. Accordingly Ground No.3 raised by the assessee is allowed and I direct the AO to allow deduction claimed u/s 80P(2)(a)(vi) of the Act.

9. Other grounds raised by the assessee were not argued before me, therefore, the other grounds raised by the assessee are dismissed as infructuous.

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

Order pronounced in the open court on 5<sup>th</sup> December, 2023.

Sd/-  
(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 05.12.2023  
L.Rama, SPS

की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Jai Bheem Scheduled Caste Drivers Labour Contract Cooperative Society Ltd., D.No.72-3-1, Spinning Mills Road, Lalacheruvu, Rajahmundry
2. राजस्व/The Revenue - The Income Tax Officer, Ward-3, Rajahmundry
3. The Principal Commissioner of Income Tax, Rajahmundry
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापट्टणम / DR,ITAT, Visakhapatnam
5. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam