

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI AAKASH DEEPJAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 360/CHD/2023

निर्धारण वर्ष / Assessment Year : 2018-19

The Ropar District Coop Milk Producers Union Ltd., Milk Plant, Mohali (Punjab).	बनाम VS	The Pr.CIT, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAAAT5977G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri M.R.Sharma, Advocate

राजस्व की ओर से/ Revenue by : Smt. Kusum, CIT, DR

तारीख/Date of Hearing : 28.11.2024

उद्घोषणा की तारीख/Date of Pronouncement : 23.02.2024

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

This is assessee's appeal against the order dated 27.03.2023 of the ld. Principle Commissioner of Income Tax, Chandigarh (in short 'the ld. PCIT') pertaining to 2018-19 assessment year contending that the order of the ld. PCIT, Chandigarh, passed u/s 263 of the Income Tax Act, 1961 (in short 'the Act') is nothing other than a change of opinion,

particularly so when the AO has followed the orders of the Income Tax Appellate Tribunal in the earlier orders.

2. The return filed by the assessee was processed by the CPC, determining its income at Rs.11,24,08,940/-. Subsequently, the case was selected for complete scrutiny regarding the issue of ICDS Compliance and Adjustment. Vide order dated 19.02.2021, passed u/s 143(3) read with Section 143(3A) and 143(3B) of the Act, the total income of the assessee was determined at Rs.11,24,08,940/-, i.e., the income determined u/s 143(1) of the Act.

3. Vide notice dated 15.03.2023, the assessee was put to show cause under the provisions of Section 263 of the Act by the ld. PCIT, as follows ;

3.1 The assessee is engaged in the purchase of raw milk, manufacturing of milk products and sale of goods manufactured out of it. During the year under-consideration, the assessee had declared an income under the head income from House Property, Business Income and Income from Other-Sources. The assessee had also shown an agricultural income.

3.2 Further, it is noticed that the assessee had taken three booths on lease from the Municipal Corporation, Chandigarh since 01.07.1987. These three booths had further been sub-let out to three different milk vendors from whom rent was received. Moreover, the assessee had also claimed deduction u/s 24(a) @ 30% from the annual rental values u/s 23 from these properties. In this regard, it is pertinent to mention here that the definition of "Owner of house property", annual charge", etc defined under Income Tax Act, 1961 is as follows: -

27. For the purposes of sections 22 to 26 —

(i) *an individual who transfers otherwise than for adequate consideration any -house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred;*

(ii) *the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate;*

(iii) *a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof;*

(a) *a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), shall be deemed to be the owner of that building or part thereof;*

(b) *a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred*

To in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof;

(iv) [***]

(vi)-*taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.*

As per this definition, "a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under, a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof,". However, the property leased by the assessee is for business purposes only: and as such the assessee cannot be deemed to be the owner of that property. Also, as per the evidence placed on record, the assessee has agreed that no depreciation has been claimed by the assessee on these properties as these do not form part and parcel of the fixed assets. Hence, no constructed part on these booths belongs to the assessee. It is a case of sub-lease of property which is assessable u/s 56.

4. Not satisfied with the reply furnished by the assessee, the ld. PCIT has, by virtue of the impugned order, held the assessment order dated 19.02.2021 to be erroneous and prejudicial to the interests of the Revenue. The ld. PCIT set aside the assessment order and directed the AO to make requisite enquiries and proper verification with regard to the issues concerned and to make assessment denovo in accordance with law.

5. We have heard the parties and have perused the material on record. The assessee is engaged in the purchase of raw milk and manufacturing of milk products and sale of goods manufactured out of it. During the year, it had declared income from house property, business income and income from other sources. It had also shown agriculture income. The assessee had taken three booths on lease from the Municipal Corporation, Chandigarh, since 01.07.1987. These booths had been sub-let to three different milk vendors from whom rent was received. The assessee had claimed deduction u/s 24(a) of the Income Tax Act @ 30% from the annual rental value u/s 23 of the Act from these booths. The claim of the assessee was allowed by the AO. The AO had issued questionnaires dated 27.01.2021 and

05.02.2021 to the assessee, seeking details of the income under the head of "income from house property" shown by the assessee in its return of income. The assessee had furnished copy of notice issued u/s 142(1), dated 25.11.2020 and notice dated 10.12.2020, notice dated 27.01.2021 and notice dated 05.02.2021 and reply dated 10.02.2021 pages 6 to 19 respectively. It was stated that the assessee had returned rental income from the three properties, amounting to Rs.33,75,454/-, from the milk booths, Chandigarh, which had been leased out to the assessee by the Municipal Corporation since 01.07.1987 and which were let out by the assessee to the milk vendors, and of Rs.23,59,709/-, again from milk booths at Mohali, which were leased out to the assessee in the year 2016-17 and which were also let out by the assessee to the milk vendors on rent. It was stated that both these properties were leased rent properties and did not form part of the fixed assets to the assessee; that since the assessee had not paid the leased/rent for the year in respect of these properties, it had not claimed it as a deduction; that rent of Rs.9,44,165/- had been received by the assessee from the State Bank of India for operating ATM on the land outside the building premises of the assessee, by raising

documentary structure as per the scheme of the Government of Punjab; that this was also not a fixed asset of the assessee and no depreciation thereon had been claimed; that all these incomes had been offered to tax in the earlier year also and the proposed disallowance for assessment year 2012-13 had been appealed against; that the ld. CIT(A), following the Chandigarh Tribunal decision in the case off for the earlier years had deleted the addition made by the AO; that no further appeal had been preferred by the Department against the ITAT's order, which had, thus, attained finality; that the assessee was, therefore, not falling within the requirement of Section 263 of the Act; that a similar addition in respect of assessment year 2009-10 had been decided in favour of the assessee by the Tribunal, which had become final, since the Department had not gone in appeal.

6. The ld. PCIT, however, observed that in the assessee's own case, the Department had filed appeal against the Tribunal order, for assessment years 2009-10 and 2010-11, which had been dismissed by the Hon'ble High Court vide order dated 26.08.2019; that such dismissal had been ordered on account of low tax effect and not on merits; that also, the AO for the preceding assessment year 2017-18, had

added back and assessed the amount in the hands of the assessee; and that, therefore, it could not be said that a final decision in the matter had been arrived at and the matter had been settled; that therefore, it could not be said that the earlier order was correct and complete from every stand point; that there was, thus, a clear failure on the part of the AO in framing the assessment order without making requisite enquiries.

7. We, however, do not find ourselves to be in agreement with the view taken by the ld. PCIT. All possible enquiries were made by the AO during the assessment proceedings, as discussed. The Tribunal, in the assessee's own case, for assessment years 2009-10 and 2010-11, vide order dated 23.05.2016, passed in ITA Nos. 902/CHD/2013 and 1127/CHD/2014, decided the issue in favour of the assessee, holding that the deduction had been regularly claimed and allowed by the AO in the earlier years; that however, the same had been denied during those years, i.e., assessment years 2009-10 and 2010-11, for the only reason that it was a licence fee and not rent; that the assessment order and computation chart pertaining to the Financial Years 2002-03 to 2006-07 showed that the assessee had

declared similar income as income from house property and the deduction u/s 24(a) of the Act had been claimed, which had been allowed in all the years while completing scrutiny assessment; that for assessment year 2007-08 also, vide order dated 22.02.2011, the CIT(A) had allowed a similar claim of the assessee; that the assessee had shown the receipt as income from house property in order to claim deduction u/s 24(a) of the Act; that this income was received on account of booths given to different parties to sell its products only, for which the assessee had charged licence fee and the CIT(A) had allowed the claim of the assessee; that the CIT(A)'s said order for assessment year 2007-08 had attained finality, since it had not been challenged by the Department; that there was no difference in the facts across the years and as such, the authorities could not take a different view in the other years; that it was, thus, clear that the question of deduction u/s 24(a) of the Act had been examined in the earlier years and since there was no change in the activities of the assessee, in order to maintain consistency, the Revenue could not be permitted to take a difference view in the matter; that the intention of the assessee was to gain rent and not to derive business income,

since the main business of the assessee was manufacture of milk products; that the assessee was not in the business of letting out of the booths to various parties; that so, the income earned by the assessee from letting out of the booths could not be considered as income from business. The Tribunal placed reliance on 'CIT Vs Neo Poly Pack (P) Ltd.', 246 ITR 497 (Del) and "Sheetal Khurana Foods (P) Ltd. Vs ITAT & others (2011) 335 ITR 1 (P&H), wherein it was held by the jurisdictional High Court that if the business of the assessee has nothing to do with the running of the properties and the renting is an isolated transaction to earn property income, the mere fact that such income will result in reduction of business loss, is not enough to hold that appeal filed under the head of 'business income' and that one of the determining factors may be whether the transaction is a normal part of the business of the assessee; the Tribunal held that in fact the main business of the assessee was manufacture of milk products and to sell them out and the turnover of the assessee was in crores of rupees.

8. Before us, it has not been disputed that the activity of the assessee remains much the same as that in the earlier years. This being so, the AO, in our considered opinion, was

correct in following the Tribunal decision (supra) in the assessee's own case. The AO is found to have carried out adequate enquiry during the assessment proceedings and he acted well within law in following the Tribunal decision in assessee's case for the earlier years.

9. For the above discussion, finding force in the grievance sought to be raised by the assessee, the same is hereby accepted. The order under appeal is found to be a result of a mere change of opinion entertained by the ld. PCIT, as correctly contained on behalf of the assessee. The said order passed by the ld. PCIT is, accordingly, reversed and it is held that the assessment order dated 19.02.2021 is neither erroneous nor prejudicial to the interests of the Revenue. Ordered accordingly.

10. In the result, the appeal is allowed.

Order pronounced in the Open Court on 23.02.2024.

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER

Sd/-

(AAKASH DEEPJAIN)
VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar