

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

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 558/Chd/2023
निर्धारण वर्ष / Assessment Year : 2016-17

The Punjab State Cooperative Milk Producers Federation Ltd. SCO 153-155, Sector-34A, Chandigarh – 160022	बनाम	The ACIT, Circle-4(1), Chandigarh
स्थायी लेखा सं. / PAN NO: AAAAP1208Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 559/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

The Punjab State Cooperative Milk Producers Federation Ltd. SCO 153-155, Sector-34A, Chandigarh – 160022	बनाम	The DCIT, Circle-4(1), Chandigarh
स्थायी लेखा सं. / PAN NO: AAAAP1208Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 562/Chd/2023
निर्धारण वर्ष / Assessment Year : 2018-19

The Punjab State Cooperative Milk Producers Federation Ltd. SCO 153-155, Sector-34A, Chandigarh – 160022	बनाम	The DCIT, Circle-1(1), Chandigarh
स्थायी लेखा सं. / PAN NO: AAAAP1208Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Parveen Jindal, C.A
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 08/08/2024
उदघोषणा की तारीख/ Date of Pronouncement : 12/08/2024

आदेश/Order

PER BENCH :

These are three appeals filed by the Assessee against the respective orders of Ld. CIT(A)/NFAC Delhi each dt. 20/07/2023 pertaining to Assessment Years 2016-17, 2017-18 and 2018-19 respectively.

2. All the above appeals were heard together and are being disposed off by this consolidated order.

3. In ITA No. 558/Chd/2023 for the A.Y. 2016-17, the assessee has raised following grounds:

1. *That under the facts, circumstances of the case and in law the Ld. CIT(Appeals), National Faceless Appeal Centre has erred in confirming the order dated 18/12/2018 u/s 143(3) passed by the assessing officer for the A.Y. 2016-17.*

2. *That under the facts, circumstances of the case and in law the Ld. CIT(Appeal) erred in confirming the action of assessing officer for disallowance of expenditure for Rs. 6,77,65,177/- by invoking the provisions of section 14A r.w.r.8D in respect of interest income received by the assessee from other co-operative societies which is wholly deductible u/s 80P(2)(d) of the Act particularly considering the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Kribhco (2012) 349 ITR 618 (Delhi) wherein it was held that no disallowance could be made against income which was not specifically exempt under the Act and the provision of Sec. 14A are not applicable for deduction u/s 80P and the SLP filed by the Department against the order of Delhi High Court was dismissed by the Hon'ble Supreme Court.*

3. *That under the facts and circumstances of the case the Ld. CIT(Appeal) erred in not adjudicating the Ground No. 3 taken by the assessee in Form-35 challenging the action of the AO for disallowance of depreciation for Rs. 16,50,106/- for the reason that it relates to earlier assessment year i.e. A.Y. 2014-15.*

4. *That the appellate may be allowed to add, amend, alter or raise additional grounds of appeal till the disposal of the Appeal.*

4. In ITA No. 559/Chd/2023 for the A.Y. 2017-18, the assessee has raised following grounds:

1. *That under the facts, circumstances of the case and in law the Ld. CIT(Appeals), National Faceless Appeal Centre has erred in confirming the order dated 15/12/2019 u/s 143(3) passed by the assessing officer for the A.Y. 2017-18.*

2. *That under the facts, circumstances of the case and in law the Ld. CIT(Appeal) erred in confirming the action of assessing officer for disallowance of expenditure for Rs. 1,78,41,450/- by invoking the provisions of section 14A r.w.r.8D in respect of interest income received by the assessee from other co-operative societies which is wholly deductible u/s 80P(2)(d) of the Act particularly considering the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Kribhco (2012) 349 ITR 618 (Delhi) wherein it was held that no disallowance could be made against income which was not specifically exempt under the Act and the provision of Sec. 14A are not applicable for deduction u/s 80P and the SLP*

filed by the Department against the order of Delhi High Court was dismissed by the Hon'ble Supreme Court.

3. That under the facts, circumstances of the case and in law the Ld. CIT(Appeal) erred in confirming the action of the assessing officer for the method adopted for computing disallowance under Rule-8D for Rs. 1,78,41,450/- for expenses attributable to income entitled for deduction u/s 80P(2)(d) as the method adopted and calculations made under the Rule-8D were not in line with the prescribed procedure.

4. That under the facts, circumstances of the case and in law the Ld. CIT (Appeal) erred in not adjudicating the Ground No. 4 for disallowance of deduction u/s 80P(2)(d) to the extent of Rs. 51,22,647/- being interest received from The Punjab State Co-op. Bank Ltd. which was also a 'Co-operative Society' within the meaning of Sec. 2(19) of the Income-tax Act, 1961 and dismissing the appeal of the assessee on this issue also.

5. That the appellate may be allowed to add, amend, alter or raise additional grounds of appeal till the disposal of the appeal.

5. In ITA No. 562/Chd/2023 for the A.Y. 2018-19, the assessee has raised following grounds:

1. That under the facts, circumstances of the case and in law the Ld. CIT(Appeals), National Faceless Appeal Centre has erred in confirming the order dated 24/04/2021 u/s 143(3) passed by the assessing officer for the A.Y. 2018-19.

2. That under the facts, circumstances of the case and in law the Ld. CIT(Appeal) erred in confirming the action of assessing officer for disallowance of expenditure for Rs. 1,38,38,694/- by invoking the provisions of section 14A r.w.r.8D in respect of interest income received by the assessee from other co-operative societies which is wholly deductible u/s 80P(2)(d) of the Act particularly considering the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Kribhco (2012) 349 ITR 618 (Delhi) wherein it was held that no disallowance could be made against income which was not specifically exempt under the Act and the provision of Sec. 14A are not applicable for deduction u/s 80P and the SLP filed by the Department against the order of Delhi High Court was dismissed by the Hon'ble Supreme Court.

3. That under the facts, circumstances of the case and in law the Ld. CIT (Appeal) erred in not adjudicating the Ground taken by the assessee for disallowance of deduction u/s 80P(2)(d) to the extent of Rs. 45,98,730/- being interest received from The Punjab State Co-op. Bank Ltd! which was also a 'Co-operative Society' within the meaning of Sec. 2(19) of the Income-tax Act, 1961 and dismissing the appeal of the assessee on this issue also.

4. That the appellate may be allowed to add, amend, alter or raise additional grounds of appeal till the disposal of the Appeal.

6. During the course of hearing, the Ld. AR drawn our reference to the declaration in Form No. 8 filed under Section 158A of the Act dt. 05/08/2024 separately for each of the assessment years and it was submitted that the issue raised in Ground No. 2 of the assessee's appeal for all three assessment years is pending before the Hon'ble Supreme Court for earlier assessment year in Civil Appeal No. 3920/2016. It was submitted that the Hon'ble Supreme Court vide order dt. 13/04/2016 admitted the SLP filed by the assessee and the same was converted into Civil Appeal and copy of the order passed by the Hon'ble Supreme Court dt. 13/04/2016 and 06/01/2017 were placed on record. It was further submitted that the assessee hereby declare that it will abide by the decision of Hon'ble Supreme Court and apply the same in its appeal for all the three assessment years.

7. Per contra, the Ld. DR submitted that as per Section 158A where the assessee moved a declaration in Form No. 8 under section 158A of the Act before the appellate authority, it is statutory required that the report of the AO be called. In this regard it was submitted that the matter may be adjourned to seek a report from the AO.

8. In his rejoinder, the Ld. AR submitted that the similar issue was there in the earlier years in assessee's own case for A.Y. 2013-14, 2014-15 and 2015-16 where the Coordinate Bench has decided the matter and copies of the orders were placed on record. It was submitted that in the A.Y 2013-14, the AO has given his consent to be bound by the decision of the Hon'ble Supreme Court on identical fact and grounds of appeal and following the same, in the subsequent years, the matter was decided by the Coordinate Bench. It was accordingly submitted that there is no need to seek a fresh report from the AO for the impugned assessment years.

9. It was his submission that where on facts, the assessee's appeal is pending before the Hon'ble Supreme Court and assessee in terms of application under

section 158A had made the fact known to the Tribunal and from the reading of the report of the AO in the preceding assessment year 2013-14, the appeal of the assessee on similar fact was dismissed with caveat that the said decision is subject to the outcome of the decision of the Hon'ble Supreme Court, the matter may be decided for the impugned assessment years. It was submitted that the sole prayer for making declaration is to abide by the decision of the Hon'ble Supreme Court and to avoid the multiplicity of the appellate proceeding.

10. In his submission, the Ld. DR fairly admitted that where the report of the AO is already on record for A.Y. 2013-14 and where the matter already decided by the Tribunal for earlier years and given the similarity of facts, the Revenue has no objection where the declaration so filed by the assessee is accepted.

11. We have heard the rival contention and perused the material available on the record. We find that on similar set of facts and circumstances of the case, the Coordinate Benches have considered an identical prayer moved by the assessee for A.Y. 2013-14, 2014-15 and 2015-16, copy of those orders have been placed on record. Thus in absence of any change in facts and circumstances or position of law, we dismiss the ground so taken by the assessee in all the three appeals taking note of the fact that the parties in terms of application under section 158A and the consent given thereunder whereby the parties agreed to be bound by the decision of the Hon'ble Supreme Court on the question of law raised by the assessee.

12. In the result, ground no. 2 of assessee's appeal in ITA No. 558/CHD2023, ground no. 2 & 3 of assessee's appeal in ITA No. 559/CHD2023, and ground no. 2 of assessee's appeal in ITA No. 562/CHD2023 are hereby dismissed.

13. Regarding Ground no. 3 of assessee's appeal in ITA No. 558/CHD2023, ground no. 4 of assessee's appeal in ITA No. 559/CHD2023, and ground no. 3 of

assessee's appeal in ITA No. 562/CHD2023, it was submitted by the Id AR, the same were not decided by the Id CIT(A) and the matter may accordingly be set-aside to the file of the Id CIT(A) to decide the same after providing reasonable opportunity to the assessee.

14. The Id DR didn't raise any objections where these grounds of appeal are set-aside to the file of the Id CIT(A).

15. After hearing both the parties and considering the material on record, since these grounds of appeal have admittedly not been decided by the Id CIT(A), the same are set-aside to the file of the Id CIT(A) to decide the same as per law after providing reasonable opportunity to the assessee. In the result, these grounds of appeal are allowed for statistical purposes.

16. In the result, all the above appeals filed by the Assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on 12/08/2024

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar