

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No. 3308/DEL/2011 (A.Y 2006-07)

Muzaffarnagar Distt. Co-operative Development Federation Ltd. C/o. M/s. Malik & Co. 305- Thapar Nagar, Meerut City Uttar Pradesh AAAJM0470E (APPELLANT)	Vs	Add. CIT Range-2, Aayakar Bhawan, Meerut Road, Muzaffarnagar (RESPONDENT)
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I.T.A .No. 3309/DEL/2011 (A.Y 2007-08)

Muzaffarnagar Distt. Co-operative Development Federation Ltd. C/o. M/s. Malik & Co. 305- Thapar Nagar, Meerut City Uttar Pradesh AAAJM0470E (APPELLANT)	Vs	Add. CIT Range-2, Aayakar Bhawan, Meerut Road, Muzaffarnagar (RESPONDENT)
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I.T.A .No. 6613/DEL/2013 (A.Y 2007-08)

Muzaffarnagar Distt. Co-operative Fed. Ltd. C/o. R. K. Malik, Advocate, 1 st Floor, Gurduawara Building, Roorkee Road, Muzaffarnagar AAAJM0470E (APPELLANT)	Vs	JCIT Range-2 Muzaffarnagar (RESPONDENT)
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I.T.A .No. 625//DEL/2015 (A.Y 2007-08)

Muzaffarnagar Distt. Co-operative Development Federation Ltd. R. K. Malik, Advocate, 1 st Floor, Gurduwara Building, Roorkee Road, Muzaffarnagar AAAJM0470E (APPELLANT)	Vs	ACIT Circle-1 Muzaffarnagar (RESPONDENT)
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Appellant/Respondent by	Sh. Sanjay Malik, Adv
Respondent/Appellant by	Sh. Rajesh Kumar, Sr. DR

Date of Hearing	23.03.2017
Date of Pronouncement	10. 04.2017

ORDER

PER SUCHITRA KAMBLE, JM

These appeals are filed by the assessee against the order dated 23/3/2011, 19/9/2013 & 17/11/2014 respectively passed by CIT(A)-Muzaffarnagar.

2. The grounds of appeal are as under: - **ITA No. 3308/Del/2011**

1. *That the learned CIT (A) on facts and in law and on the grounds taken and the basis adopted went wrong to uphold the disallowance of exemption u/s 80P(2)(a)(iv) of the I.T. Act. The exemption as claimed deserves to be allowed.*

2. *That the income arising from the letting of godowns was covered by the provisions of Sec. 80P(2)(e) of the I.T. Act and accordingly Appellant was entitled to deductions under the said provision. The deduction as claimed deserves to be allowed.*

3. *The learned CIT (A) on facts and in law and on the grounds taken and basis adopted went wrong to uphold the disallowance of the claimed exemptions. The adverse and erroneous findings deserve to be quashed being illegal and untenable on facts and in law and the claim of exemptions deserve to be allowed.*

4.(a). *That the loss of Rs.7,27,254/- arising in Consumer's Store Division having been substantiated by the method of accounting regularly employed as all the items on the debit and credit side of the account were fully verifiable. There being no error of omission^ or commission in the method of accounting as all the purchases, expenses and turnover having been fully substantiated, there was no legal warrant in rejecting the declared version thereby disallowing the declared loss which deserves to be allowed.*

(b). That the Authorities below on facts and in law and the grounds taken and basis adopted went wrong to disallow the declared loss of Rs. 7,27,254/- in the Consumer's Store Division which deserves to be allowed.

5.(a). That the loss of Rs.8,08,374/- arising in Printing Press Division having been substantiated by the method of accounting regularly employed as all the items on the debit and credit side of the account were fully verifiable. There being no error of omission or commission in the method of accounting as all the purchases, expenses and turnover having been fully substantiated, there was no legal warrant in rejecting the declared version thereby disallowing the declared loss which deserves to be allowed.

(b). That the Authorities below on facts and in law and the grounds taken and basis adopted went wrong to disallow the declared loss of Rs. 8,08,374/- in the Printing Press Division which deserves to be allowed.

6. That on facts and in law, there was no legal warrant to charge interest u/s 234B; 234C and 234D. The levy of interest deserves to be quashed, illegal and void.

3. The assessee filed its return of income on 30/10/2005 declaring loss of Rs.15,92,583/- and the same was processed u/s 143(1) of the Act. The assessee is doing business related to cold storage, printing press, gas agencies etc. Summary of profit & loss under various head is shown as under:

Particulars	Profits (Rs.)	Loss (Rs.)
Interest	7,56,965.00	
Head Office (Fertilizer sale, transportation & storage)	23,27,770.44	
Gas service		4,97,932.64
Consumer Store		7,27,254.81
Printing Press		8,08,374.67
Cold Storage		4,34,705.92
	30,84,735.44	24,68,467.74

The net profit of Rs.6,16,467,74/- so derived above was claimed to be exempted u/s 80P(2) (i)(a). It was noticed by the A.O that the profit is mainly due to interest and head office (Fertilizers sale transportation storage). The A.O also gathered on examining the two accounts that income from transportation at Rs.5,59,596/- and income from storage Rs.10,97,454/- credited in the head

office account are not exempt u/s 80P(2) of the Act. Similarly, the sale purchase of fertilizer is not exempt u/s 80P(2)(i)(a)(iv) as it was not a sale of fertilizer among members but a sale to IFFCO and KRIBHCO. The A.O also held that the interest income and dividend income is also not exempt u/s 80P(2)(a)(i). The assessee was required to explain why the assessment may not be completed at income of Rs.6,16,467/- vide notice dated 13/9/2007. It was noticed by the A.O that the assessee was showing loss in other trading accounts consisting of printing press division and cold storage division. From the perusal of trading account of the assessee, it was noticed that it consists of other income shown at Rs.32,563/-, income from transportation at Rs.21,51,666/- and income from storage at Rs.5,59,596/- and net profit was shown at Rs.23,27,770/-. Therefore, the A.O took the view that the question to consider exemption u/s 80P(2)(a)(i) did not arise as all the remaining income shown in the trading account are not covered u/s 80P and therefore, net income of Rs.6,16,467/- is not exempt u/s 80P.

4. The assessee further claimed the income from transportation and letting of godown as exempted u/s 80P. It was noticed by the A.O that the income of head office expenses under the head of sale purchase of fertilizer and transportation showing at Rs.23,27,770/- is divided proportionately between two of its main activities i.e. Purchase of fertilizer and supply to its members and letting of godown and transportation income. The A.O did not accept the explanation of the assessee in this regard in view of the reason discussed in the notice dated 18/7/2008 and also in view of the assessment order for the Assessment Year 2001-02, the facts of which are similar to the year under consideration. As per this order, the A.O did not allow the exemption u/s 80P(2)(a)(iv) on the ground that the assessee is merely a contractor to transport fertilizer and merely charging commission on contract to transport fertilizers. The A.O held that the consumer society purchase fertilizer directly from IFFCO and KRIBHCO and made payments directly through cheques in favour of these companies and not any individual. The assessee only carries fertilizer from the

godown rented by the fertilizer companies to the societies and charged only transportation. This issue was confirmed by the CIT(A) vide his order no. 258/-03-04 MZR dated 3/6/2004 for the Assessment Year 2001-02. Against the order of the CIT(A), the assessee filed an appeal before the Hon'ble ITAT which in their order ITA No. 429/Del/2004, 4221/Del/2004 & 554/Del/2006 for the Assessment Year 2001-02, 2001-02 & 2002-03 rejected the assessee's ground on the same issue. Thus, the Assessing Officer disallowed the same.

5. Aggrieved by the assessment order the assessee filed appeal before the CIT (A). The CIT (A) upheld the order of the Assessing Officer.

6. The Ld. AR submitted that there was a loss under different head of business and the only positive income was under income from interest and dividend which is exempt u/s 80P (2)(d) of the Act. The other income is also exempt as the assessee was engaged in activity of purchase of agricultural equipments etc. The Ld. AR submitted that the discrepancy pointed out by the Assessing Officer was already before the Assessing Officer as the entries made in the stock register was not at all disputed by the Assessing Officer. But the fact remains how the Assessing Officer arrived at the conclusion without taking into consideration that the sale was from the previous years. The Ld. AR further submitted that the entry for stock register relating to Assessment Year 2006-07 was reproduced by the Assessing Officer in his order along with the statement of one employee Shri Surender Kumar was also mentioned wherein he stated that the same entries issued in his name by Muzaffarnagar Distt. Co-operative Development Federation Ltd. i.e. the assessee to the extent of Rs.15,54,110/-. The amount credited in his account on receipt of payment by the assessee is Rs.11,40,446/-. During the Financial Year 2005-06, the balance of Rs.4,13,664/- is appearing as employees liability in his name. The other employees name was also given by Shri Surender Kumar i.e. Shri Om Veer in whose name sales was shown Rs.7,51,492/- the accounts maintained by the assessee as well as the sale vouchers issued in the name of these two

employees shows that they were purchasing goods for selling the same in the market on behalf of the assessee. In other words, they are doing trading of goods by making purchases from the assessee and selling the same in the market. But this does not amount to making sale to its employees by the assessee. In fact the employees are making sales on behalf of the assessee. This is a cooperative society which is very transparent and there is no manipulation of profit.

7. The Ld. DR submitted that the Assessing Officer as well as the CIT (A) has arrived at correct finding and there is no need to interfere with the same.

8. We have perused all the records. It is pertinent to note that there is a loss in respect of this particular assessment year. The stock register entry has also given the details wherein the figures are in the minus. There was no comment by the assessing officer as well as by the CIT (A) as to these figures are contrary to the stand of the assessee. In-fact the Assessing Officer though mentioned the statement of one of the employee it has not given any comment or any observation related to that statement that the sale was on the part of employees and not that of assessee. The statement was not dealt by the Assessing Officer while passing the assessment order. Therefore, in the interest of justice, it is necessary to remand back the matter before the Assessing Officer to verify the correctness of the statement as well as to verify the stock register as per the contentions of the Ld. AR before the authorities.

9. In result, ITA No. 3308/Del/2011 is partly allowed for statistical purpose.

10. The grounds of appeal are as under: - **ITA No. 3309/Del/2011.**

“1. *That the Learned CIT (A) went wrong on facts and in law to sustain the*

disallowance of exemption of Rs. 4,56,057/-. The adverse and erroneous findings recorded by the Ld. CIT (A) in confirming the disallowance of Rs. 4,56,057/- deserve to be quashed and the exemption as claimed deserves to be allowed.

2. *That the income arising from the letting of godowns was governed by provisions of section 80P(2)(e) of the I.T. Act. The Learned CIT (A) went wrong on facts and in law to sustain the disallowance. The adverse and erroneous findings recorded by the Ld. CIT (A) deserve to be quashed and the exemption, as claimed, deserves to be allowed.*
- 3(a). *That the declared version in the Printing Press Division was well supported and substantiated by a method of accounting regularly employed in as much as all the items on the debit and credit side were verifiable and no error of omission or commission was found or detected in the method of accounting and also all the items recorded on the debit and credit side of the account were not found and held to be non-genuine.*
- (b). *The learned CIT (A) on facts and in law and the grounds taken and the basis adopted went wrong to uphold the disallowance of loss of Rs.3,24,632/- in the Printing Press Division. The erroneous findings recorded by the Ld. CIT (A) deserve to be quashed and the loss, as claimed, deserves to be allowed.*
- 4(a). *That the declared version in the Consumer Store Division was well supported and substantiated by a method of accounting regularly employed in as much as all the items on the debit and credit side were verifiable and no error of omission or commission was found or detected in the method of accounting and also all the items recorded on the debit and credit side of the account were not found and held to be non-genuine.*
- (b). *The learned CIT (A) on facts and in law and the grounds taken and the basis adopted went wrong to uphold the disallowance of loss of*

Rs.2,90,7£9/- in the Consumer Store Division. The erroneous findings recorded by the Ld. CIT (A) deserve to be quashed and the loss, as claimed, deserves to be allowed.

2. *That on facts and in law, the interest u/s 234B, 234C and 234D was not chargeable. Levy of interest under the provisions deserves to be quashed, illegal, without jurisdiction and untenable on facts and in law.*

11. As relates to ITA No. 3309/Del/2011, the issues are identical with the Assessment Year 2006-07 which has been dealt hereinabove being ITA No. 3308/DEL/2011.

12. In result, Appeal No, being ITA No. 3309/Del/2011 is partly allowed for statistical purpose.

13. The grounds of appeal are as under: - **ITA No. 6613/Del/2013.**

- 1) *That the order passed by the A.O. and CIT (Appeal) M. Nagar is wrong and against the facts of the case.*
- 2) *That the appellant has neither concealed any income nor has filed inaccurate particulars of its income.*
- 3) *That the rejection of certain deduction does not amount to penalty u/s 271(1) (c) of the Income Tax Act.*
- 4) *That the rejection of claim of exemption does not constitute material for imposition of penalty u/s 271(1) (c)*
- 5) *That no reasonable opportunity is provided to the appellant to put up its case before passing the order.*
- 6) *That there is no malafide intention of the appellant*
- 7) *That the Ld. CIT (Appeals) M. Nagar has allowed the appeal u/s 271(1) (c) of the Income Tax Act, 1961 for the Assessment year 2002-03 and 2006-07(in the same facts of the case.*

14. In respect of ITA No. 6613/Del/2013, is related to penalty which is a consequential to the quantum appeal being ITA No.3309/DEL/2011. Therefore, the same becomes infructuous.

15. In result, the appeal being ITA No. 6613/DEL/2013 is dismissed.

16. The grounds of appeal are as under: - **ITA No. 6613/Del/2013.**

- 1) *That the Ld. CIT (Appeal) has erred in rejecting the appeal u/s 154 without considering the facts of the case.*
- 2) *That the appellant has shown all the transportation charges in its return and the A.O. is wrong to add the transportation charges of gas at Rs 5157121-00 whereas the same is disclosed and the commission received on these receipts are shown at Rs. The receipts are endorsed to different contactors and TDS is deducted and deposited by the appellant. Hence addition under this head is wrong and should have been rectified.*
- 3) *That the Ld. A.O. has erred to reject the application u/s 154 filed by the appellant without going through the records.*
- 4) *That the Ld. CIT(Appeals) has erred in not considering the details and evidences filed by the appellant at the time of appellate proceedings and rejecting the appeal on different ground.*

16. As relates to ITA No. 625/Del/2015 the issue in this matter is related to rejecting the application u/s 154 without considering the facts of the case. There was no notice given by the Assessing Officer as per the submission made by the Ld. AR. The order under challenge is that of a rectification rejected by the Assessing Officer and in the same original rectification order one more time rectification has been taken out. The Original rectification order was not challenged before the Tribunal, therefore, the assessee cannot file the appeal to the second rectification order. The assessee should have filed appeal prior

before the Tribunal against the first rectification order. Therefore, this appeal does not sustain.

17. In result, appeal being ITA No.625/DEL/2015 is dismissed.

The order is pronounced in the open court on 10th of April, 2017.

Sd/-

(R.S. SYAL)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 10/04/2017
R.Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	24/03/2017	Sr. PS
2.	Draft placed before author	24/03/2017	Sr. PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	10.04.2017	PS/PS

6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	10.04.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		