

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[Virtual Court]

Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No(s): 520/PAT/2024
Assessment Year(s): 2021-22**

Mahua Cooperative Cold Storage Ltd.	Vs.	ADIT, CPC, Bengaluru
(Appellant)		(Respondent)
PAN: AAAAM5106E		

Appearances:

Assessee represented by : Sanjeev Kr. Anwar, Adv.

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 06-January-2026

Date of pronouncing the order : 19-February-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Assessee is against the order of the Addl/JCIT(A)- Gwalior [hereinafter referred to as Ld. 'Addl/JCIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2021-22 dated 20.06.2024.

2. The Assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1) For that the order of the Authorities below are bad in law and fact.

2) For that the learned Addl. CIT(A) is not justified in disallowing the interest payable to NCDC of Rs. 80,80,225 and 63,24,116 u/s 43B of the I.T. Act.

3) For that to decide that NCDC is a Public Financial Institution, the website of NCDC was analysed and on the basis of the activities listed, it has been presumed that it is a Public Financial Institution, whereas the provisions of explanation 40 to of section 43B of I.T. Act refers to section 4A of the Companies Act, 1956.



4) For that the learned Addl. CIT(A) further referred to CRISIL and Care Edge Ratings, which are not relevant to decide the liability u/s 43B of the I.T. Act.

5) For that the interest payable to NCDC is out of the purview of section 43B and the Department has failed to demonstrate as to how it falls under clause (d) of section 43B.

6) For that the addition on account of interest payable to NCDC is, therefore, liable to be deleted.

7) For that the appellant has carried forward loss of Rs. 50,33,596/- and carried forward unabsorbed depreciation of Rs. 44,65,970/- which should have been allowed against the income determined.

8) For that other grounds, if any, will be urged at the time of hearing.”

3. Brief facts of the case are that the assessee is an AOP and had filed its return of income on 20.02.2022 showing total loss of ₹8,24,053/-. An intimation u/s 143(1) of the Act was issued on 02.11.2022 at the total income of ₹1,38,03,494/- after making addition of ₹2,23,206/- on account of disallowance of ESI payable u/s 43B of the Act, disallowance u/s 43B of the Act of ₹1,44,04,341/- on account of interest payable to Public Financial Institution. Aggrieved with the intimation order, the assessee filed an appeal before the Ld. Addl/JCIT(A) who considered the submissions of the assessee. As regards the addition on account of ESI, he directed the Assessing Officer (hereinafter referred to as Ld. 'AO') to verify whether the same had been added back by the assessee in the return of income and if so, to delete the addition as well otherwise, the issue was covered by the decision of the Hon'ble Supreme Court in the case of **Checkmate Services (P.) Ltd. vs. Commissioner of Income-tax-1 [2022] 143 taxmann.com 178 (SC)/[2023] 290 Taxman 19 (SC)/[2022] 448 ITR 518 (SC)[12-10-2022]**. As regards the other issue of ₹1,44,04,341/- added u/s 43B of the Act which comprises interest of ₹80,80,225/- and ₹63,24,116/- to NCDC, the Ld. Addl/JCIT(A) examined the Rating Rationale dated 26.08.2022 of CRISIL rating agency which states that National



Cooperative Development Corporation (NCDC) is a Public Financial Institute. Further, the 'Care Edge Ratings', while describing the NCDC, has also stated in its press release dated 27.07.2022 that NCDC is a public financial Institute and he has reproduced the relevant para of the said press release in his order and confirmed the addition u/s 43B of the Act since the assessee had not paid the interest before the due date and the appeal was partly allowed.

4. Aggrieved with the order of the Ld. CIT(A), the Assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. AR submitted that the assessee is a cooperative which runs cold storage and had received loan from NCDC and the outstanding interest was shown in the Form No. 3CD which was not deposited before the due date as specified u/s 43B of the Act. It was argued that NCDC is not an Public Financial Institution. Our attention was drawn to the order of the Ld. Addl/JCIT(A) page 3 para 5.2 in which the submissions of the assessee have been mentioned and in which various schemes are mentioned for providing short-term loan, margin money etc. by NCDC. It was contended that NCDC is not a Public Financial Institution as only the institution which is mentioned u/s 43B of the Act is to be deemed so. There was a delayed payment of ₹80 Lakh and ₹60 Lakh as interest which was paid on 31.10.2021 for AY 2021-22 and according to the provision of section 43B of the Act the same is allowable in AY 2022-23, i.e. the year of payment. Our attention was also drawn to para 5.2.1 of the order of the Ld. Addl./Joint CIT(A) for the submission made before him and it was stated that only IFC/HFC have been duly notified as Public Financial Institution and our attention

was also drawn to page 13 of the paper book which is the Preamble to NCDC Act, 1962.

6. The Ld. DR drew our attention to the Notification No. 518 dated 09.05.2003 of the Ministry of Finance and the subsequent corrigendum dated 12.03.2003 in which NCDC is specifically mentioned as a Public Financial Institution. The Ld. AR countered this argument by stating that if it is not covered in Explanation 4(a) to section 43B of the Act it is not a public financial institution for the purpose of section 43B of the Act. As an alternate argument it was submitted that the assessee had paid the interest and therefore, the same should be allowed in the year of payment.

7. We have considered the facts of the case, the submissions made and the documents filed. It is relevant to understand the constitution of NCDC and it is pertinent to reproduce the Highlights in the Annual Report 2020-21 as under:

“1.1 National Cooperative Development Corporation (NCDC), a Statutory Corporation under the Ministry of Agriculture and Farmers Welfare, Government of India was established on 14.03.1963 under an Act of Parliament (NCDC Act of 1962) for economic development through cooperative societies. The major objective of the Corporation is to promote, strengthen and develop farmer cooperatives for increasing production and productivity and instituting post harvest facilities. The Corporation's focus is on programmes of agricultural marketing and inputs, processing, storage, cold chain and marketing of agriculture produce and the supply of seeds, fertilizer and other agricultural inputs etc. In the non-farm sector, the Corporation endeavours to equip cooperatives with facilities to promote income generating activities, with special focus on weaker sections such as dairy, livestock, handloom, sericulture, poultry, fishery, scheduled caste & scheduled tribes, women cooperatives etc.

1.2 NCDC functions under the over-arching principle of Sahakar-22 for a New India and for Doubling of Farmers Income. In FY 2020-21, NCDC continued to perform well.”



8. The genesis of NCDC is that the National Cooperative Development Corporation (NCDC) was established by an Act of Parliament in 1963 as a statutory Corporation under the Ministry of Cooperation, Government of India and was established by the Central Government under section 3 of the NCDC Act, 1962. The achievements in FY 2020-21 state that NCDC had sanctioned ₹36537.42 Crore for 487 units/projects benefiting 10567 cooperative societies, disbursed ₹ 24733.24 Crore including subsidy ₹311.67 of which ₹4.48 Crore from NCDC's own purpose and disbursement exceeds the target of ₹ 13,400 Crore by 184.58%. As regards prudential financial practices, the interest rates is maintained at competitive levels and there is organisation of professionals adhering to strict regulatory and financial norms and it is an ISO certified organisation. NCDC makes statutory compliances by furnishing Annual Reports and Annual Accounts for FY 2019-20 which were placed in Rajya Sabha on 12.02.2021 and in Lok Sabha on 09.02.2021 and conforms to all norms of Govt. of India. The sector-wise sanction of financial assistance for FY 2020-21 and the number of beneficiary societies and members are mentioned on page 2 of the Annual Report according to which 10,567 societies with 239.76 Lakh beneficiary members had been sanctioned credits of ₹ 36,537.42 Crore. There are other details which are not mentioned for the sake of brevity; therefore, by no stretch of imagination can it be stated that NCDC is not a public financial institution and as has been rightly pointed out by the Ld. AR that as per the General Circular No. 22/2003 No.2/28/2002-CL.V issued by the Under Secretary to the Government of India, Ministry of Finance, Department of Company Affairs dated 18.06.2003 and as per Notification No. S.O. 518 (E), dated 09.05.2003 and Notification No. S.O. 674 (E), dated 12.06.2003 mentioned therein,



the NCDC has been declared as a public financial institution u/s 4A of the Companies Act, 1956. That being so, the argument that NCDC is not a public financial institution fails as even for the purpose of clause (d) to section 43B of the Act read with Explanation 4(a), “public financial institutions” shall have the meaning assigned to it in section 4A of the Companies Act, 1956, and NCDC is a public financial institution as per section 4A of the Companies Act, 1956. Thus, the assessee was required to deposit the interest due on the loans availed within the due date and that having not being done and the same appearing in the audit report in Form No. 3CD, the *prima facie* adjustment was rightly made which has been rightly confirmed by the Ld. Addl/JCIT(A) even though for different reasons. Therefore, the Ground No. 3 is partly allowed, Ground No. 4 is allowed but NCDC is held to be a Public Financial Institution, Ground Nos. 5 and 6 are dismissed. Ground Nos. 1 and 8 are general in nature do not require any specific adjudication.

9. As regards additional Ground No. 7 relating to carry forward of the loss of ₹ 50,33,596/- and unabsorbed depreciation of ₹ 44,65,970/- which was not raised before the Ld. CIT(A) and requested to be admitted and decided being purely a legal ground as held in the case of National Thermal Power Co. Ltd. vs. Commissioner of Income-tax [1998] 97 Taxman 358 (SC)/[1998] 229 ITR 383 (SC)/[1999] 157 CTR 249 (SC)[04-12-1996], it has been held in that case that “*the view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings there is no reason why*



such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. The Tribunal has, therefore, jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee.”

10. Since allowance of depreciation and carry forward of loss is a question of fact as the amounts quantified and determined need verification with the record and is not merely a question of law and full facts are not on record, therefore, this Ground No. 7 of the appeal is also dismissed; more so when it was not raised before the first appellate authority. However, the assessee shall be at liberty to resort to other legal remedies available under the Act to make such a claim before the Ld. AO.

11. As regards Ground No. 2, it is submitted by the Ld. AR that out of interest of ₹80,80,225/-, a sum of ₹54,15,807/- was paid from 31/08/2020 to 31/03/2021 while another sum of ₹27,15,000/- was paid from 31/07/2021 to 21/02/2022. Out of the amount of ₹63,24,116/-, a sum of ₹40,00,000/- was paid from 29/10/2020 to 31/03/2021 and the same is requested to be allowed on payment basis. This issue is remanded to the Ld. AO and he is directed to allow the deduction as per the Proviso to section 43B of the Act after verifying with the challans to be furnished by the assessee and after ensuring that the sums were disallowed in the earlier assessment years or pertain to the assessment year 2021-22 and have been paid during the previous year relevant for the impugned assessment year 2021-22 so that no double deduction is allowed. For statistical purposes, Ground No. 2 of the appeal is partly allowed. We refrain from giving any findings for



allowing the deduction in subsequent assessment year as the appeal for A.Y. 2022-23 is not before us. However, the assessee shall be at liberty to make any such claim as per law in this regard before the Ld. AO.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 19th February, 2026.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 19.02.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Mahua Cooperative Cold Storage Ltd., Mahua, Vaishali, Bihar, 844122.**
2. **ADIT, CPC, Bengaluru.**
3. Addl/JCIT(A)-Gwalior.
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata



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Mahua Cooperative Cold Storage Ltd.
