



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITAs No.839/2009 & 1037/2010**

% **Date of Decision: 03.05.2011**

Commissioner of Income Tax **APPELLANT**

Through: Ms. Prem Lata Bansal, Sr. Advocate with
Mr. Deepak Anand, Advocate for the
appellant.

Versus

National Agricultural Co-op. RESPONDENT
Marketing Federation of India
Limited

Through: Mr. S. Ganesh, Sr. Advocate with Mr.
Satyen Sethi, Advocate for the
respondent

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

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|----|---|-----|
| 1. | Whether reporters of Local papers be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

M.L. MEHTA, J. (Oral)

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- These two appeals are under Section 260(A) of the Income Tax Act (hereinafter referred to as "the Act"). ITA No.839/2009 is



against the impugned order dated 07.11.2008 of the Income Tax Appellate Tribunal (hereinafter referred to as the “Tribunal”) and the ITA No.1037/2010 is against the impugned order dated 14th May, 2009 of the Tribunal. In both these appeals, there is one common question regarding the correctness of the order of the Tribunal in deleting the addition made by the Assessing Officer on proportionate basis out of total indirect expenses related to PSS operations of the assessee.

2. In addition to this, there were raised two other questions in ITA No.839/2009 – one related to the order of the Tribunal deleting the addition made by the Assessing Officer on account of disallowance of prior period expenses and the second regarding the direction given by the Tribunal to the Assessing Officer to allow deduction to the assessee under Section 80P(2)(d) of the Act. Before dealing with the common question arising in both the appeals regarding the expenses related to PSS operations of the assessee, we may take up the additional questions which were raised in ITA No.839/2009, as noted above.
3. With regard to the addition made by the Assessing Officer on account of disallowance of the prior period expenses of the assessee, it may be stated that assessee preferred an appeal



against the said order of the Assessing Officer before CIT(A) which passed the order in this regard in the following manner:

“b) In respect of the amount of Rs.15,29,671/- pertaining to the prior period expenditure, the appellant’s arguments are that the AO did not consider that as per the accounting policy being followed by the appellant the expenses below Rs.5,000/- are always accounted for in the year in which they are incurred. This issue has been decided in the appellant’s own case for the immediately preceding assessment year i.e. A.Y. 2003-04 in Appeal No.226/06-07 vide appellate order dated 15.03.2007 under para 7.17 pages 85-87. It has been held that following the order of ITAT “C” bench for A.Y. 1989-90 in appellant’s own case in ITA No.226/D/88, the prior period expenses could not be disallowed.”

4. The Revenue filed appeal against the aforesaid order of the CIT(A) before the Tribunal, which confirmed the aforesaid findings of the CIT(A) on the said issue. In making such a confirmation, the Tribunal followed the decision of its Co-ordinate Bench in the assessee’s own case for the assessment year 1984-85 in ITA No.2296/D/88 dated 12.8.1991. Faced with this situation, learned counsel for the Revenue did not press this ground. In view of this, nothing survives for us to dwell on this issue.
5. With regard to the second issue that arises for consideration in ITA No.839/2009 regarding the direction of the Tribunal to the Assessing Officer to allow deductions under Section 80P(2)(d) of



the Act to the assessee, it may be noted that the assessee had claimed deductions under this Section in respect of the dividend received from other co-operative societies as per details as mentioned in Annexure 9 of the Tax Audit Report. The rectification order under Section 154 dated 7th February, 2007 was passed by the Assessing Officer in this regard. The Assessing Officer disallowed the deduction vide the said order and held the same to be not falling within the scope of Section 154 of the Act being not an error apparent on the record. The CIT(A) in appeal while allowing the claim referred the matter back to the Assessing Officer to verify the amount of claim. The order in this regard came to be passed by the CIT(A) in the following manner:

“10.5 ... It is noted that similar issue has been decided in appellant’s own case for A.Y. 2003-04 in appeal No.226/06-07 vide appellant order dated 15.3.2007. In para 20.6 page 329 of the aforesaid order, it has been held that the provisions of section 80P(2)(d) are very clear about the income being exempt in respect of investment made by one Society in another Society. The action of the AO was, therefore, directed to be deleted. Following the same, it is held that the appellant is entitled to deduction of Rs.10,54,409/- in respect of dividend income received from other Co-operative Societies u/s 80P(2)(d). The AO may, however, verify the exact amount of claim in this regard from annexure 9 of the Tax Audit Report and allow the same as per law.”



6. In appeal before the Tribunal, the Revenue again submitted that the assessee was not entitled to deduction under Section 80P(2)(d) of the Act. While maintaining the order of the CIT(A), the Tribunal recorded a finding in this regard as under:

“15.2 A perusal of para 10.5 of the order of the learned CIT(Appeals) clearly shows that even though the learned CIT(Appeals) has held that the assessee is entitled to the deduction in respect of the dividend received from other co-operative societies as rightly provided in section 80P(2)(d), he has given liberty to Assessing Officer to verify the exact amount of the claim in this regard from annexure 9 of the tax audit report and to allow the same as per law. This being so, it is noticed that the issue has been restored to the file of Assessing Officer and consequently no interference to the findings of learned CIT(Appeals) is called for and consequently ground No.3 is dismissed.”

7. We have considered the submissions made by the learned counsel for the Revenue as well as the assessee. There is no dispute that the assessee was entitled to claim deduction in respect of the dividend received from other co-operative societies as per provisions of Section 80P(2)(d), in case it was so able to prove the same on record. We do not see any infirmity or perversity in the order of the CIT(A) and the Tribunal in this regard whereby the matter has been remitted back to the Assessing Officer to verify the exact amount of the claim from



Annexure 9 of the Tax Audit Report and allow the same as per law. The contentions raised by the learned counsel for the Revenue stand rejected.

8. With regard to the common question that arises regarding the claim of indirect expenses relating to PSS operations of the assessee, we may state that the order of the Tribunal dated 14th May, 2009 was passed for the assessment year 2003-2004 (related to ITA No.1037/2010) relying upon the order of the Tribunal dated 07.11.2008 passed for the assessment year 2004-05 (related to ITA No.839/2009). Therefore, we will confine to the facts as borne out from ITA NO.839/2009 for considering this question.
9. During the assessment year 2004-05, assessee filed return declaring loss of Rs.2,96,87,782/-. During the assessment proceedings, AO noticed that the assessee had not allocated any direct expenses to PSS operations while it was acting as nodal agency to the Government of India (GOI) according to which profits of PSS were to be given to GOI and losses were to be recovered from GOI. In the absence of any details, the assessee allocated indirect expenses on proportionate basis in the ratio of turnover of PSS operations to turn over of other activities, which came to Rs.20,34,42,180/-. The Assessing Officer did not allow



deduction on this account of indirect expenses stating that it had not furnished any computation as regard to the proportionate allocation of indirect expenses for the PSS operations.

10. It may be stated that the assessee was carrying out PSS operations on the part of the GOI. As per this scheme, assessee was responsible for procuring and marketing a particular agricultural commodity solely and exclusively on behalf of GOI in order to provide minimum support price to the farmers. Any loss or profit on account of such PSS operations is to the account of GOI. The assessee was paid service charges at the rate of 1.5% for non-perishable commodities and 2.5% for perishable commodities on procurement cost in lieu of administrative and overhead expenses.

11. In the assessment year 2004-05, the AO had stated that the assessee had furnished letter dated 21st December, 2006 from the Ministry of Agriculture, Government of India stating the operations of PSS and that the assessee is to be paid service charges at the rate of 1.5% for non-perishable commodities and 2.5% for perishable commodities on procurement costs under PSS. The AO had further stated that non-charging of indirect expenses attributable to the PSS operations is adversely



affecting the profitability of the assessee. Not being satisfied with the explanation given by the assessee, the AO held that the indirect expenses claimed in the P&L account of the assessee are required to be apportioned in the ratio of turnover of PSS operations to the turnover of other activities of the assessee. In this way, the AO calculated a sum of Rs.20,34,42,180/- being 68.19% of the total turnover as indirect expenses related to PSS operations. However, subsequently in the rectification order of 7th February, 2007 under Section 154 of the Act, the AO recomputed the disallowance by reckoning the percentage of PSS sales to the total sales at 5.87% and, therefore, reduced the quantum of addition to an amount of Rs.1,78,11,260/-.

12. The assessee preferred appeal against the order of the AO before CIT(A). The CIT(A) relying upon the order of the CIT(A) of the same very assessee of the assessment year 2003-04 in appeal No.226/06-07 dated 15th March, 2007 allowed the appeal of the assessee on this account and proceeded to order the deletion of the additions. The CIT(A) while disagreeing with the proportionate disallowance of the indirect expenses of PSS operations recorded as under:

“It has been held that there is no case for any proportionate disallowance of the administrative overheads being attributed by the AO to PSS



operations in appeal related to A.Y. 2003-04). It has been also held that the expenditure in question has been incurred on account of business expediency which is ultimately designed to further the object and purpose of the appellant's business and any incidental benefit to a third party should not come in the way of allowing such expenditure as business expenditure. In view of the similar facts involved, following the earlier appellate decision for A.Y. 2003-04 discussed (supra), the addition on this account is deleted."

13. In the appeal preferred by the Revenue against the order of CIT(A) on this account, the Tribunal confirmed the order of the CIT(A). In arriving at this the Tribunal gave the reasoning as under:

"It is noticed that assessee is deriving a service charge at 1.5% for non-perishable commodities and 2.5% for perishable commodities on the procurement cost under the PSS scheme. It is also noticed that the profits and losses on account of the PSS scheme is on account of the Government. Thus, what becomes evident here when the assessee is acting as an agent of the Government in regard to the PSS operations. The service charges received by the assessee which is in the nature of commission is included in the total receipts of the assessee. Thus, what is done by assessee by acting as an agent of the Government in the PSS operation is one of the business activities of the assessee. Just because an assessee does not make adequate profit or any profit in a particular transaction it does not mean that there can be any proportionate disallowance of expenditure. The expenditure incurred by the assessee are in the course of its normal business activities and the genuineness of the same having not been doubted, no disallowance is called for. In



this circumstance, the findings of the learned CIT(Appeal) on this issue stands confirmed.”

14. In both the cases before us, AO had worked out the percentage of 68.19% (later reduced to 5.87%) for assessment year 2004-05 and 65.73% for assessment year 2003-04 on account of PSS sales. We may note that Section 37 of the Act deals with deletion of all expenses allowed wholly or exclusively for the purpose of business or profession not being expenditure of the nature particularly and specifically described under Sections 30 to 36. Analyzing the provisions of Section 37, the conditions precedent for deduction of expenses under this Section are as under:

- (i) Expenditure must be revenue expenditure and not in the nature of capital expenditure;
- (ii) It must be laid out or expended wholly and exclusively for the purpose of the business or profession;
- (iii) It must not be of the nature described in Sections 30 to 36 and;
- (iv) Expenditure should not be personal expenditure of the assessee.

15. Considering to the above conditions laid down for claiming the expenses as deductible, we may note that the assessee satisfies all the conditions referred to above. It is not the case of the



Revenue that the expenses had not been incurred by the assessee for the purpose of business or that they are not genuine. In totality, we see that CIT(A) and the Tribunal rightly recorded the gross impropriety committed by the AO in assuming indirect expenses on proportionate basis to the total sale of the assessee. It has been seen from the tenor of the scheme of PSS that the assessee was only entitled to reimbursement of the direct expenses as prescribed by GOI and this arrangement/scheme is not challenged either by the Revenue or by the Special Auditor. All the calculations done by the AO in both the cases are based on surmises and conjectures.

16. We do not find any perversity or illegality in the orders of the Tribunal in both the cases. Accordingly, the appeals are dismissed.

**M.L.MEHTA
(JUDGE)**

**A.K. SIKRI
(JUDGE)**

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