

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On : 11.08.2018

Order Pronounced On : 02.11.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.8362 to 8365 of 2009
and M.P.Nos. 1, 1 and 1 of 2009

The Cheyyar Milk Producers,
Co-operative Milk Society Ltd.,
Represented by its Special Officers,
K.V.Shanthakumar, Cheyyar.

... Petitioner
in all writ petitions

Vs.

1. The Commissioner of Income Tax,
Chennai VIII, Office of the
Chief Commissioner of Income Tax,
121, Nungambakkam High Road,
Chennai - 600 034.

2. The Income Tax Officer,
Ward I(4), Vellore.

.... Respondents
in all writ petitions

PRAYER in W.P.No.8362 of2009: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent Commissioner of Income Tax, Chennai VIII, Chennai in his file 22(1)/C.VIII/07-08 assessment year 2001-2002 and quash the impugned order dated 23.03.2009 and consequently direct the second respondent to allow the claim for "purchase bonus" while computing its business income.

PRAYER in W.P.No.8363 of2009: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent Commissioner of Income Tax, Chennai VIII, Chennai in his file 22(3)/C.VIII/07-08 assessment year 2003-2004 and quash the impugned order dated 23.03.2009 and consequently direct the second respondent to allow the claim for "purchase bonus" while computing its business income.

PRAYER in W.P.No.8364 of2009: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent Commissioner of Income Tax, Chennai VIII, Chennai in his file 22(2)/C.VIII/07-08 assessment year 2002-2003 and quash the impugned order dated 23.03.2009 and consequently direct the second respondent to allow the claim for "purchase bonus" while computing its business income.

PRAYER in W.P.No.8365 of2009: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent Commissioner of Income Tax, Chennai VIII, Chennai in his file 22(4)/C.VIII/07-08 assessment year 2004-2005 and quash the impugned order dated 23.03.2009 and consequently direct the second respondent to allow the claim for "purchase bonus" while computing its business income.

For Petitioners : Mr.R.Kumar for
(in all writ petitions) Mr. T.N.Seetharaman

For Respondents : Mr.P.Rajkumar Jhabak
(in all writ petitions)

C O M M O N O R D E R

The petitioner herein, seek s to challenge the order of the Commissioner of Income Tax VIII, Chennai dated 23.03.2009 passed under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as "The Act").

2.For deciding the controversy before us, it is necessary to set out the following facts:-

The assessee is a primary society, which procures milk form its members and supplies this milk to NGO canteens, Government Hospitals, etc. The assessee filed a NIL return of Income for the assessment years 2001-2002, 2003-2004, 2004-2005 claiming various deductions under Section 80P of the Act and other provisions.

3.The Assessing Officer vide his order dated 27.03.2006 noticed that in respect of assessment year 2003-2004, the Assessee had claimed a deduction of Rs.3,500/-for tax audit purposes. The Assessee however, filed its return of income using the cash system of accounting, as per Form 3CD Report. As such, a deduction for tax audit is not permissible under the cash system of accounting and the same was disallowed. The Assessing Officer also took the view that the deductions claimed by the Assessee under the provisions of Section 80P of the Act, were not in order.

4.The relevant portions of Section 80P of the Act, for the purposes of deciding the controversy before this Court is extracted for reference:

80-P. Deduction in respect of income of cooperative societies._

(1) where, in the case of an assessee being a cooperative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following namely:

.....

(b) in the case of a cooperative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to-

(i) a federal cooperative society, being a society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

(ii) the Government or a local authority; or

(iii) a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case maybe, to the public), the whole of the amount of profits and gains of such business;

(c) in the case of a cooperative society engaged in activities other than those specified in clause (a) or clause (b), either independently of, or in addition to, all or any of the activities so specified, so much of its profits and gains attributable to such activities as does not exceed,-

(i) where such cooperative society is a consumer's cooperative society, 2[one hundred thousand rupees]; and

(ii) in any other case, 3[fifty thousand rupees].

Explanation;- In this clause, "consumers' cooperative society" means a society for the benefit of the consumers;

(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other cooperative society, the whole of such income;

5. Section 80P(2) (b) provides that any profits and gains made by a cooperative society engaged in the business of supplying milk, oilseeds, fruits or vegetables is deductible insofar as

the supply is made to organisations covered in clause (i), (ii) and (iii) of Section 80P(2)(b) shall be deductible from the income of an Assessee. Section 80P(2)(c) provides that the profits and gains from business and profession of any cooperative society, insofar as it relates to income not covered by 80P(2)(a) and 80P(2)(b) shall be deductible to the extent of Rs.1,00,000/- for consumer's cooperative societies and Rs.50,000/- for other cooperative societies. The meaning of the expression consumer's cooperative society is provided in the explanation appended to Section 80P(2)(c). Further 80P(2)(d) provides that any income derived by way of interest and dividends shall be deductible from the income of an Assessee.

6. In the present case, the petitioner-Assessee is a primary society engaged in the supply of milk to NGO's, Govt Hospitals and other entities and as such is entitled to deductions under 80P(2)(b). The amount of money raised from the supply of milk to the organisations which fall under Section 80P(2)(b) (i), (ii) and (iii) is therefore deductible from the gross income of the Assessee. The Assessee is also entitled to deductions under Section 80P(2)(d) of the Act, being a Cooperative Society.

7. Insofar as deduction under 80P(2)(c) (i) are concerned, it is only available to those cooperative societies which are created for the benefit of its consumers. The consumers of a society would include the persons who purchase goods or services from the society, and not persons who supply a cooperative society with goods and services. In other words, to be eligible for this deduction, the Assessee would have to work for the benefit of the organisations to whom they supplied the milk. The Assessee admittedly works for the benefit of the dairy farmers who supply it with the milk, and as such cannot be a consumer's cooperative society within the meaning of the explanation to Section 80P(2)(c) of the Act. The Assessee would therefore only be entitled to a deduction as under 80P(2)(c)(ii) of the Act.

8. The Assessee in respect of the assessment year 2003-2004, claimed a deduction of Rs.2,76,572/- as against net profit of Rs.5,26,043/-. However, the deduction ought to have been claimed against only a sum of Rs.2,02,260/- [Rs.5,26,043/- - Rs.3,23,833/- (which was the interest received from other cooperative societies, deductible under 80P(2)(d))]. The Assessing Officer took the view that the Assessee was only entitled to claim a deduction of Rs.1,08,170/- under 80P(2)(b) and had overstated its entitlement.

9. Moreover, the Assessing Officer also took the view that since the Assessee was not a consumer's cooperative society, it was only entitled to the deduction of Rs.1,00,000/- as against its entitlement of Rs.50,000/- and the same was disallowed to the extent of Rs.50,000/-. The total income of the Assessee for the assessment year 2003-2004 was assessed at Rs.47,590/- as against NIL that was claimed by the Assessee.

10. The Assessing Officer thereafter issued notices under Section 142(1) and 143(2) of the Act, to the Assessee in respect of assessment years 2001-2002, 2002-2003, and 2004-2005.

11. After giving the Assessee a hearing and an opportunity to justify the various deductions claimed under Section 80P, the Assessing Officer vide orders dated 14.12.2006, assessed the income of the Assessee at Rs.1,52,550/- for the assessment year 2001-2002; Rs.18,020/- for the assessment year 2002-2003; Rs.1,04,320/- for the assessment year 2004-2005. The order imposed a tax demand on the Assessee and ordered the initiation of penalty proceedings under Section 271(1)(c) of the Act, against the petitioner for each of the assessment years. It may be noted that the findings of the Assessing Officer, in respect of the improperly claimed deductions for tax audit and under Section 80P of the Act, were never challenged. Thus, it is evident that the Assessee did claim deductions, it was not entitled to multiple times over the course of the 4 assessment years in question.

12. After receiving the assessment order, which comprised of the tax demand, the Assessee thereafter filed Revision Petitions under Section 264 of the Act on 10.12.2007, seeking a revision of the assessment orders, on the ground that the Assessee had failed to take deduct the bonuses it gave its members, from its profits. It appears that this revision was maintained in light of the fact that an adverse order had made payment of tax, after discovering its improperly claimed deductions. The Assessee in the revision petition stated that it distributes all of its profits amongst its members, as a Member's Bonus, and that the same is treated as an additional purchase price of milk, and therefore, deductible as a business expense. The Assessee claimed that a sum of Rs.2,00,513/-, Rs.2,74,890/-, Rs.2,63,046/- and Rs.2,50,698/- as Member's bonus, was deductible from its gross income for the assessment years, 2001-2002, 2002-2003, 2003-2004 and 2004-2005 respectively.

13. Vide orders dated 23.03.2009, in respect of all 4 assessment years, the CIT took the view that the Assessee had not sought the revision of any of any issue that had been considered by the Assessing Officer, but had in fact come up

with a new claim altogether. Moreover, the CIT noted that the figures claimed in respect of each assessment year, as the so called "members bonus", did not figure anywhere in the accounts available before the Assessing Officer. The Assessing Officer was of the opinion that the revisions were therefore devoid of any merit and dismissed the same. The orders dated 23.03.2009, have been assailed in the present proceedings.

14. Learned Counsel appearing on behalf of the Assessee, has cited the decisions of several High Courts before us. In the case of Smt. Sneh Lata Jain vs. CIT reported in (2004) Taxman 156 (J & K), it was held that where the Assessee failed to claim a certain deduction, and the time period for a revised assessment under Section 139 of the Act, had expired, her only remedy was to file a revision under Section 264. In that case, the CIT rejected her claim for deduction, as the same was not within the revisional powers under Section 264 of the Act. The High Court while allowing the Assessee's writ petition took the view that the powers conferred on the CIT under Section 264 and this the CIT ought to have considered the same, and remanded the matter for reassessment. Similarly, in the case of Ramdev Exports vs. CIT (2001) 251 ITR 873 (Guj), the revision application of the Assessee under Section 264 of the Act was rejected without going into the merits of the deductions claimed. The Revisional Authority therein took the view that the assessment orders were perfectly valid in light of the return of income filed. The Gujarat High Court, however, took the view that the Revisional Authority ought to have examined the merits of the deductions claimed, and remanded the matter back for fresh adjudication. It is crucial to note that both these decisions were in the context of a revision petition under Section 264 of the Act, made by the Assessee, immediately after the order of assessment, and not pursuant to an order passed after an enquiry under Section 142(1) and 143(2) of the Act, had been made, and are distinguishable on this basis from the present case.

15. In the case of Smt. Phool Lata Somani vs. CIT, (2006) 150 Taxman 225 (Cal), the Assessee was unable to prove certain investments claimed by her in proceedings under Sections 142(1) and 142(3). She thereafter approached the CIT under Section 264, with proof of these investments. Her petition under Section 264 was rejected on the ground that she had failed to produce the relevant documents in the original proceedings, though the claim in respect of the investments had already been made. Her revision petitions were dismissed. In this context the High Court took the view that the CIT ought to have considered the documents on their merits, and ought not to have refused to entertain the Assessee's petition under Section 264

of the Act, and remanded the matter for fresh adjudication. It is important to note that this decision was in the context of a claim that had already been made in the proceedings under Section 142(1) and 143(2), but where the documents relating to such claim were not produced before the Assessing Officer. In the present case, it must be noted that the claim for deduction in respect of member's bonus was made for the first time in the revision petition under Section 264 of the Act.

16.The petitioner Assessee has also relied on the decision of this Court in the case of Tamil Nadu Brick and Tile Manufacturers Industrial Service Cooperative Society Ltd. vs. CIT (2004) 265 ITR 332 (Mad), the decision of the Gujarat High Court in the case of CIT vs. Mehasana Dist. Coop. Milk Producers Union (2006) 282 ITR 24 (Guj), and the decision of the Bombay High Court in the case of CIT vs. Solapur Dist. Coop. Milk Producers and Process Union Ltd. (2009) 315 ITR 304 (Bom). In all these decisions it has been held that purchase bonus, year-end bonus, and payments out of the net profits of a cooperative society to its members, and payment of a similar nature, where the cooperative society was in the business of the supplying milk, are deductible from the gross income of the cooperative society. Thus, it is seen that ordinarily, such deductible from the total income of the Assessee.

17.However, it must be noted that the present lis is only concerned with the correctness of the order of the CIT, in a revision petition made before it, after an enquiry had been conducted after the issuance of notices under Section 142(1), 143(2) of the Act. It is reiterated that the Assessee made the claim for deduction, of bonus money paid for the first time only in its revision petition, only after its improperly claimed deductions were discovered by the Assessing Officer. The CIT rejected the revision petition of the Assessee on the ground that it had failed to claim this deduction during the assessment proceedings, and also because the books of accounts submitted by the Assessee during the assessment proceedings did not reflect the deductions so claimed by the Assessee.

18.Thus, not only did the Assessee make the claim for deduction in respect of the Members Bonuses, after the proceedings under Section 142(1) and 143(3) of the Act, it had also failed to properly show the CIT in the proceedings under Section 264 of the Act, through its books of accounts that the sums of money it claimed to have paid as Member's bonuses were in fact legitimate claims. In the facts and circumstances of this case, and in light of the impropriety observed by the

Assessing Officer during the assessment proceedings, in respect of deductions claimed under Section 80P of the Act, I do not think this is an appropriate case for interference by this Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. The writ petitions are therefore dismissed. Parties are to bear their own costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsp

To

1. The Commissioner of Income Tax,
Chennai VIII, Office of the
Chief Commissioner of Income Tax,
121, Nungambakkam High Road,
Chennai - 600 034.

2. The Income Tax Officer,
Ward I(4), Vellore.

+1cc to Mr.T.N.Seetharaman, Advocate, S.R.No.76061

+1cc to Mr.J.Narayanasamy, Advocate, S.R.No.76062

W.P.Nos.8362 to 8365 of 2009
and M.P.Nos. 1, 1 and 1 of 2009

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