

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

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 716/CHD/2019

निर्धारण वर्ष / Assessment Year : 2015-16

The Punjab State Coop Milk Producers Federation Ltd SCO 153-55, Sector 34—A, Chandigarh	बनाम	The ACIT, Circle 4(1), Chandigarh
स्थायी लेखा सं./PAN NO: AAAAP1208Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारिती की ओर से/Assessee by : Shri Amitaoz Singh Kamboj, CA

राजस्व की ओर से/ Revenue by : Dr. G.S. Phani Kishore, CIT

सुनवाई की तारीख/Date of Hearing : 08.06.2020

उदघोषणा की तारीख/Date of Pronouncement : 08.06.2020

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 18.02.2019 of the Commissioner of Income Tax (Appeals)-2, Chandigarh [hereinafter referred to as 'CIT(A)']

2. The assessee in this appeal has taken following grounds of appeal:-

1. *That the order of the Ld. AO is bad in law and is beyond all the cannons of law and justice.*

2. *That the order of the Ld. AO holding the provisions of Section 14A are applicable with respect to the Income entitled to deduction under the provision of section 80P(2)(d) to the appellant being a co-operative society in view of the decision of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Kribhco 349 ITR 618 as upheld by the Hon'ble Supreme Court of India is bad in law.*
3. *That the order of the Ld. AO holding Rs. 9,58,95,326/- as expenses attributable to the income not entitled to deduction under section 80P(2)(d) as per rule 8D is bad in law and on facts as the methods adopted and calculations done are not in line with the financial statements of the assessee.*

3. The sole issue raised in this appeal is as to whether the provisions of section 14A are attracted to an income claimed as exempt under the provisions of section 80P(2)(d) of the Income Tax Act. At the outset, both the Ld. representatives of the parties have submitted that the issue raised through above grounds of appeal is squarely covered by the decision of the Tribunal dated 25.2.2019 in the assessee's own case for assessment year 2014-15 ITA No. 686/Chd/2018. A copy of the order of the Tribunal dated 25.2.2019 (supra) has been placed on the file.

4. We find that the issue involved in this appeal is squarely covered by the order of the Tribunal dated 25.2.2019 (supra) rendered in the own case of the assessee for assessment year 2014-15, wherein, the Tribunal after deliberating upon the issue has dismissed the appeal of the assessee observing as under:-

“4. We have heard the rival submissions and perused the material on record. We find that on similar set of facts and circumstances, the Co-ordinate Bench considered an identical prayer of the assessee. For ready reference, we extract the specific

grounds raised by the assessee in 2013-14 assessment year considered in ITA 1666/CHD/2017 :

1. *That the order of the Assessing 'Officer as upheld by the Commissioner of Income Tax (Appeals)-2, Chandigarh is bad in law and is beyond all the cannons of law and justice.*
2. *That the order of the Assessing Officer as upheld by the Commissioner of Income Tax (Appeals)-2, Chandigarh attributing expenses to the income which is entitle to deduction u/s 80P(2)(d) amounting to Rs. 11,63,94,666/- against the gross interest income of Rs. 14,85,23,410/-by incorrectly applying the provisions of section 14-A read with rule 8-D is bad in law and is against the judicial decisions in this behalf.*
3. *That the appellant craves leave to add, amend or delete any of the grounds of appeal before the same is finally heard.*

It is therefore humbly prayed that the order allocating expenses u/s 14A read with rule 8D amounting to Rs. 11,63,94,666/- to the earning of interest income of Rs. 14,85,23,410/- may kindly be set-aside in view of the facts, circumstances and judicial decisions in this behalf.

4. *We note that the following submissions of the parties have been recorded in the order:*

2. *The ld. AR inviting attention to application dated 25th May,2013 u/s 158A by the Managing Director of the assessee society made a prayer that in order to avoid multiplication of appeals, the assessee requests that he would abide by the decision of Apex Court where SLP of the assessee stood admitted by the Court on same facts and similar issues as in the present appeal. Mr. D.S.Kalyan CIT -DR appearing on behalf of the Revenue sought time to place Assessing Officer's report thereon. It was also his submission that consistently the issue is covered against the assessee. Taking note of the submissions, time was granted.*

3. *On the next date, ld. CIT-DR filing Report of the AO dated 27.06.2018 stated that the AO has no objection to be bound by the decision of the Apex Court on similar facts in the case of the assessee itself.*

5. *It is seen that considering identical facts and circumstances, the issue was decided in the following manner :*

"4. We have heard the rival submissions and perused the material on record. We find that the assessee is an apex cooperative society duly registered under the Punjab Coop Societies Act, 1961. The main activity of the assessee society as noted is to assist its member co-operative societies in promoting production, procurement, processing and marketing of milk and milk products. The assessee is also stated to be providing for the economic development of dairy farmers who are the members of the societies who are further members of the assessee society. The assessee is also assisting its members in arranging city supply of milk, milk products i.e. Ghee, Paneer, Curd, Kheer and other milk products. The assessee is also assisting the farmers through their members societies in providing quality cattle feed through its two cattle feed plants in the state of Punjab. Considering the view taken in 2002-03 assessment years, additions by way of disallowances were made in the year under consideration by the AO.

4.1. In appeal before CIT(A), the following submissions were made on behalf of the assessee assailing the action of the AO :

6.1 During the course of appellate proceedings the appellant made the following submissions :-

"4. That the appellant during the year under consideration while filing its return of income computed the income and prepared a computation chart. The appellant filed computation chart along with the annual accounts and the audit reports in response to notice of the assessing officer. The Perusal of the computation chart reveals that the assessee had computed business loss to the extent of Rs 11,63, 94, 666/- as computed in the computation chart. Further the assessee had interest income from other member cooperative societies amounting to Rs 14,85,23,410/- income from the sale of seed amounting to Rs 2,65,89,053/- dividend income Rs 4,01,460/- interest income on FDR RS 7,42,777/- and interest income Rs 3,86,682/- as per schedule-M besides net agricultural income at Rs 57,37,775/-. The balance income works out to Rs 5,96,48,727/- as mentioned above. The appellant as per the chart of computation filed along with the return of income was eligible for Rs 77,57,62,468/- as deduction u/s 80P of the Income Tax Act. The said claim has been duly made in the return of income and the returned income has been declared by the assessee at Nil, which fact is evident from the perusal of the computation chart.

5. That during the course of hearing the appellant was asked to file various details by the assessing officers, which were duly filed as is evident from the perusal of the order of assessment. The assessing officer also desired to examine the books of account which were also produced before the assessing officer as admitted in the order of assessment passed in this case.

6. That during the course of the assessment proceedings the appellant also brought to the notice of the assessing officer that while allowing deduction u/s 80P(2)(d) it is the gross total income which an assessee is entitled to deduction and not the net income. This view has been expressed by the Punjab and Haryana High Court in the case of Commissioner of Income Tax vs. Doaba Cooperative sugar mills Ltd. 230 ITR page 774 it was also brought to the notice of the assessing officer that the SLP filed against this order has also been dismissed by the Hon'ble Supreme Court of India and as such this order has attained finality. The assessing officer has although referred to the submissions made by the appellant but has not followed the same without assigning any reason or contrary decision in this behalf.

7. That the assessing officer while completing the assessment has admitted that an amount of Rs 14,85,23,410/- has been received by the appellant as interest on the loans advanced to the member cooperative societies as per its bye laws. The assessing officer while completing the assessment has on the basis of rule 8D worked out Rs 77,63,94,666/- as expenses attributable to the earning of income by way of interest from the member cooperative societies at Rs 14,85,23,470/- by applying the ratio of the decision in the case of the assessee with regard to the disallowance of expenses in view of the provision as contained u/s 14-A of the Income Tax Act. Thus it is evident from the

perusal of the order of assessment that the Assessing Officer has determined Rs 77,63,94,666/- as expenses to earn the income by way of interest amounting to Rs 14,85,23,470/-.

8. That the Hon'ble P&H High Court in the case of CIT vs. Kings Export 378 ITR page 100 has held that the provision of section 14A relates to the exemption and not deduction. Since in the present case the deduction u/s has been claimed under chapter VI to the Income Tax Act as such no expenses can be attributed in view of the said judicial decision of the jurisdictional High Court.

9. That subsequently the Hon'ble Delhi Court in the case of CIT Vs. Kribhco 349 ITR page 618 as held as under:

That the Tribunal was correct in law in holding that no disallowance could be made against income which was not specifically exempt under the Act. Thus the provision of section 14-A are not applicable to the present case as it is a case of special deduction u/s 80P and as such the disallowance made needs to be deleted.

10. That the Commissioner of Income Tax filed SLP against the order of the Delhi High Court referred to above before the Hon'ble Supreme Court of India. The Said SLP has been dismissed. Accordingly in view of these facts and circumstances and the legal position in this behalf the disallowance u/s 14A is not called for. Thus the disallowance made amounting to Rs 77,63,94,666/- by the Assessing Officer is bad in law and needs to be deleted.

11. That the Hon'ble Delhi High Court in ITA no 548/2015 vide order dated 23.02.2017 upheld the order of the IT AT with regard to the applicability of rule 8-Deduction of the Income Tax Act.

12. That the appellant assessee has filed SLP no 9585 of 2076 before the Hon'ble Supreme Court on India where the leave has been granted to the above noted assessee. A copy of the same is being enclosed for your perusal and record."

4.2 The CIT(A) considering the same, came to the following conclusion:

"6.2 The assessment order and the submissions made during the course of appellate proceedings are perused. It is seen that this issue is covered against the assessee by the order dated 10.04.2015 of ITAT Chandigarh Bench 'A' in the case of the appellant for A.Y. 211-12 in ITA NO. 97/Chd/2015. Respectfully following the decision of Hon'ble ITAT, the disallowance made by the A.O of Rs. 11,63,94,666/- under section 14A as per Rule 8D is confirmed. Ground of appeal No. 2 is dismissed."

4.3 The above conclusion on facts as per position of law applicable to the assessee on facts, we notice has consistently been followed which till date has not been upset by any higher Forum. It is further seen that the following questions of law have been raised by the assessee before the Apex Court :

a. Whether in the facts and circumstances of the case the Hon'ble High Court was correct in law in upholding the orders of the ITAT to the effect that disallowance u/s 14A can be made against the income which is not specifically exempt u/s 10 of the Income Tax Act, 1961?

- b. *Whether in the facts and circumstances of the case the Hon'ble High Court was correct in law in upholding the decision of the ITAT with regard to the applicability of provision of section 14A of the Income Tax Act even in respect of income which has been claimed as a deduction under chapter VI-A and more specifically u/s 80P(2)(d) of the Income Tax Act, 1961?*
 - c. *Whether in the facts and circumstances of the case the Hon'ble High Court was correct in law in upholding the decision of the ITAT with regard to the applicability of Section 14A to the deduction which formed part of total income as defined in Section 2(45) of the Income Tax Act 1961 prior to the deductions claimed u/s 80P(2)(d) are legally sustainable in law more so when there is a decision of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Kribhco in ITA No. 444 of 2011 in favour of the appellant against which the SLP filed has also been dismissed by this Hon'ble Court?*
 - d. *Whether in the facts and circumstances of the case the Hon'ble High Court was correct in law in not placing reliance on the Judgment of Delhi High Court in the case of Commissioner of Income Tax Vs. Kribhco in ITA No.444 of 2011, more so when SLP filed by the Revenue in this Hon'ble Court was also dismissed in Limine?*
 - e. *Whether in the facts and circumstances of the case the Hon'ble High Court was correct in law in following its own decision enunciated in ITA No. 530 of 2006 dated 28.03.2011 against the Petitioner since the Judgment of the Hon'ble High Court of Delhi in the case of Commissioner of Income Tax Vs. Kribhco in ITA No. 444 of 2011 dated 18.07.2012 was passed later in time and was not available then?*
 - f. *Whether in the facts and circumstances of the case the Judgment and Final order of the Hon'ble Delhi in the case of Commissioner of Income Tax Vs. Kribhco in ITA No. 444 of 2011 wherein the appeal filed by the Respondent department has been dismissed by referring to various judgments of this Hon'ble Court, is exhaustive and settles the law correctly on the issue exactly the same as raised in the present petition. The judgment of the Punjab & Haryana High Court on which reliance is placed does not lay the correct law on the issue in hand?*
5. *Accordingly, considering the declaration made by the assessee u/s 158A(1) of the Act in response to which the Report of the AO under sub-section (2) of Section 158A is available, we confirm the order of the CIT(A) relying on past precedent subject to the outcome of the decision of the Apex Court. The AO, accordingly is directed to pass an appropriate order in terms of sub-section (5) of Section 158A when the decision on the question of law becomes final. With the above observations, the appeal of the assessee is dismissed.*
6. *In the result, the appeal of the assessee is dismissed.”*

4. *Thus, in the absence of any change in facts, circumstances or position of law, we dismiss the appeal of the assessee taking note of the fact that the parties in terms of application u/s 158A*

of the Act and the consent given thereunder, whereby the parties argue to be bound by the decision of the Apex Court on the question of law raised by the assessee. The appeal of the assessee is dismissed. Said order was pronounced in the Open Court at the time of hearing itself.

5. In the result, appeal of the assessee is dismissed.”

5. In view of this, following the order of the Tribunal dated 25.2.2019 (supra), this appeal of the assessee is hereby dismissed.

Order pronounced on 08.06.2020.

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 08.06.2020
“आर.के.”

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar