Before Adarsh Kumar Goel & Ajay Kumar Mittal JJ.

THE COMMISSIONER OF INCOME-TAX, PANCHKULA,—*Appellant*

M/S HARYANA STATE CO-OPERATION SUPPLY AND MARKETING FEDERATION LTD.,—*Respondent*

ITA No. 112 of 2004

26th April, 2011

Income Tax Act, 1961—S. 80P(2)(a) (iii), 80P(2) (e), 260A, 263—Assessee is a federation of Co-operative Societies and engaged in marketing agricultural produce of its members—Claimed exemption U/S 80p(2)(a)(iii) of the Act in respect of income derived thereunder—Assessing Officer disallowed exemption—On remand matter decided afresh in favour of Assessee—In appeal u/s 263 the Commissioner set aside the order of assessing officer—Assessee filed appeal and Tribunal set aside order of Commissioner—Revenue appeal allowed.

Held, that deductions u/s 80P(2)(e) is available only in respect of income from letting out for storage and if Assessee used the storage only for marketing, deduction is not permissible.

(Para 5)

Further held, that the view taken by the Assessing officer was clearly erroneous and prejudicial to the interest of the revenue which justified invocation of powers under Section 263 of the Act. The view taken by the Tribunal cannot, thus, be sustained. Questions raised are answered in favour of the revenue.

(Para 6)

Yogesh Putney, Senior Standing Counsel *for the appellant.*

ADARSH KUMAR GOEL, J. (ORAL)

(1) This Appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (for short "the Act") against order dated 31st July, 2003 passed by the Income Tax Appellate Tribunal, Chandigarh

Bench 'A', Chandigarh in ITA No. 520/CHANDI/98, for the assessment year 1992-93, raising following substantial questions of law :—

"(i) Whether on the facts and in the circumstances of the case, the Ld. ITAT is justified in cancelling the order of Commissioner of Income tax u/s 263 by holding that the Assessing Officer order was not erroneous and was not prejudicial to the interest of revenue ?

(ii) Whether on the facts and in the circumstances of the case, the Learned ITAT is justified in cancelling the order of Commissioner of Income tax u/s 263 wherein he had held the action of the Assessing Officer as unsustainable in law ?"

(2) The assessee is a federation of cooperative societies and is engaged in marketing agricultural produce of its members. It claimed exemption under Section 80P(2)(a)(iii) of the Act in respect of income derived from marketing of produce of its members. The assessing officer disallowed the exemption but after remand, the assessing officer allowed claim under Section 80P(2)(e) of the Act which was set aside by the Commissioner under Section 263 of the Act on the ground that income was derived from business and not from letting out of storage space. It was observed :—

"The payment made to the assessee is not for letting out of a premises for storage, processing for facilitating the marketing of commodities. Rather the money is received as a component of the price at which the grain is further supplied by the assessee. Accordingly in my opinion, the case of the assessee is distinguishable from the case of Haryana Warehousing Corporation to which the assessee has referred to. It thus appears that the order of the A.O. was erroneous."

(3) On appeal of the assessee to the Tribunal, the order of the Commissioner has been set aside on the ground that the order of Assessing Officer could not be held to be prejudicial to the interest of revenue. It was observed :—

"Thus, as per provisions of the Act, the assessee was entitled to such deduction u/s 80P(2)(e). In fact such deduction in respect of storage charges amounting to Rs. 57,88,204 received from others had been claimed and allowed at the time of completing

the original assessment. The claim of assessee is also supported by the judgment of **Rajasthan High Court in the case of CIT** *versus* **Rajasthan State Warehousing Corpn.,** 210 ITR 906. where it has been held that only income derived from letting of godowns or warehouses for facilitating marketing of commodities qualifies for deduction. The ITAT, Delhi Bench in the case of **Haryana Warehousing Corporation** *versus* **DCIT, 61 ITD 420,** followed this judgment. Even the Hon'ble Supreme Court in the case of **Orissa State Warehousing Corporation and Rajasthan State Warehousing Corporation and Rajasthan State Warehousing** *versus* **CIT 237 ITR 589** has held that assessee is entitled to deduction in respect of income derived from letting of godowns and warehouses. We also observe that the total income of the assessee, as determined in the original order was Rs. 11,31,84,636. Thus the AO has not allowed deduction in respect of the entire income. He had restricted the deduction u/s 80P(2)(e) only in respect of income by way of storage charge received for letting of godowns and warehouses. These facts show that the AO has not decided the matter on incorrect facts or by incorrect application of law. Therefore, the order passed by the AO could not be considered as erroneous otherwise the order passed by the AO could also not be considered prejudicial to the interests of the revenue merely because the CIT did not agree with the view taken by the AO. We may further point out that this is a case of Government undertaking. The assessee had made purchases of wheat and rendered various service on behalf of FCI and the State Government. The amount received from the FCI were sanctioned by the Government of India. The same included not only the support price but also various other charges like Mandi charges, Mandi labour charges, internal movements, storage charges,establishment charges, interest charges etc. Thus, the assessee had not only purchased wheat but had rendered various other services also. It is also not denied that assessee owned warehouses and godowns where the wheat purchased was stored. Storage charges of such a huge amount of Rs. 5.87 crores were paid by own godowns the Government for providing storage facilities. Had the FCI owned its own

godowns the Government would have not paid such storage charges. The object of providing deduction in respect of income derived by cooperative societies from letting of godowns and warehouses is to promote the development of rural economy. In this case the object of providing such deduction to cooperative societies in respect of such income is fully met. It is not the case of the revenue that the AO had passed the order in undue haste without examining the relevant aspects of the case. Moreover, the claim of the assessee is also supported by the various judgments referred to above. The revenue has not led even a single case where such claim for deduction is held to be as not allowable thus such income qualified for deduction u/s 80P(2)(e) and the AO allowed the same after due application of mind and after making proper inquiries. In the light of these facts we do not find any error in the order of the AO. The AO took a reasonable view based on facts, evidence and material on record, therefore, such order cannot be called prejudicial to the interests of the revenue. We are, therefore, of the considered opinion that twin conditions from assuming jurisdiction u/s 263 i.e. (i) the order should be erroneous and (ii) it should be prejudicial to the interests of the revenue have not been satisfied in this case. Accordingly, we hold that CIT was not justified in revising the order of the AO u/s 263. We cancel the order of the CIT passed u/s 263 and allow the respective grounds of appeal."

(4) We have heard learned counsel for the appellant.

(5) Learned counsel for the appellant relied upon order of this Court dated 8th September, 2010 in **ITA No. 157 of 2005 The Commissioner of Income Tax, Panchkula** *versus* **M/s Haryana State Coop. Supply and Marketing Federation Limited, Panchkula** holding that deduction under Section 80P(2)(e) is available only in respect of income from letting out for storage and if the assessee used the storage only for marketing the deduction is not permissible. The observations therein are :—

"In the present case, it has been clearly held that the assessee was purchasing the goods and then selling the goods to FCI and in such a situation, storing was part of business of the assessee and did not amount to letting out of storage capacity as till the

goods were sold to FCI, goods belonged to the assessee itself and not to the FCI. This being the factual situation, the matter is fully covered by judgment of the Hon'ble Supreme Court in **Surat Venkar Sahakari Sangh** and **Ventaka Subbarao** as reiterated in **Udaipur Sahakari Upbhokta.** The income of the assessee for storage could not be treated at par with hire charges."

(6) We find the judgment relied upon is fully applicable. Accordingly, the view taken by the assessing officer was clearly erroneous and prejudicial to the interest of the revenue which justified invocation of powers under Section 263 of the Act. The view taken by the Tribunal cannot, thus, be sustained. Questions raised are answered in favour of the revenue. The appeal is allowed.

J. Thakur