IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH 'B', CHANDIGARH

BEFORE Ms. SUSHMA CHOWLA, JUDICIAL MEMBER
AND SHRI MEHAR SINGH, ACCOUNTANT MEMBER

ITA No.548/Chd/2011
(Assessment Year : 2007-08)

The A.C.I.T., Circle 4(1), Chandigarh.	Vs.	M/s Punjab State Coop & Marketing Fed.Ltd., Markfed, Plot No.4, Sector 35-B, Chandigarh.

And

ITA No.579/Chd/2011
(Assessment Year : 2007-08)

M/s Punjab State Coop & Marketing Fed.Ltd., Markfed, Plot No.4, Sector 35-B, Chandigarh.	Vs.	The A.C.I.T., Circle 4(1), Chandigarh.

PAN: AAAAT3454G

(Appellant) (Respondent)

Assessee by : Shri Yashpal Goyal
Department by : Shri Ajay Sharma,DR

Date of hearing : 07.09.2011
Date of Pronouncement : 30.09.2011

O R D E R

PER SUSHMA CHOWLA, J.M, :

The cross appeals filed by the Revenue and the assessee are against the order of the Commissioner of Income-tax(Appeals), dated 02.02.2011 relating to assessment year 2007-08 against the order passed under section 143(3) of the I.T. Act, 1961.

2. The Revenue has raised the following grounds :

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the A.O. on account of wrong claim of deduction u/s 80P(2)(e) by the assessee.

3. On the facts and circumstances of the case the CIT(A) has erred in directing to charge interest only

on Rs.7.01 crore whereas the amount outstanding was of Rs.17.01 crore.'

4. *On the facts and circumstances of the case the CIT(A) has erred in deleting the interest of Rs.12,60,45,571/- on the amount receivable from Punjab Government while paying interest on loans raised to run the business.*

5. *On the facts and circumstances of the case the CIT(A) has erred in deleting the interest of Rs.62,50,99,650/- on the amount receivable from FCI while paying interest on loans raised to run the business.*

6. *On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.21,68,942/- made by the A.O. on account of advertisement expenses claimed as there were no business exigencies for incurring such expenditure.*

7. *On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.12,73,462/- in view of the provisions of section 14A of the IT Act."*

3. The assessee has raised the following grounds :

"1. The Ld. CIT(A) has erred in sustaining disallowance of interest u/s 36(1)(iii) on advances of Rs.7.01 crores to Sugar fed. The Ld. CIT (A) failed to appreciate the facts and circumstances of the case. Moreover, charging of interest does not increase taxable income of the society as interest, even if charged, is exempt under provisions of section 80P (2)(d) of the Act.

2. A) The Ld. CIT (A) has erred in sustaining an addition of Rs.73,21,700/- under section 40(a)(ia) of the Act.

B) The Ld. CIT (A) has failed to appreciate the facts and circumstances of the case. The written submissions have not been properly considered and appreciated. The amount of TDS shown as payable in the balance sheet as on 31.03.2007 relates to period prior to the date of incorporation of provision of section 40 (a) (ia). The Ld. CIT (A) failed to appreciate this fact and thus arbitrarily sustained an addition of Rs.7321700/-.

C) Without prejudice to above ground of appeal i.e.(B), the Ld. CIT (A) has failed to appreciate the facts as well as details of amounts on which tax has been deducted at source. The A.O. as well as CIT (A) erred in arriving at total amount of Rs.7321700/- by calculating rate of tax @ 1% as against details furnished along with the written

submissions. The rate of tax of 1% has been calculated on mere assumption and estimate. Thus the principles of natural justice have been violated by the A.O. and Learned. CIT (A).”

4. These cross appeals were heard together and are being disposed off by this consolidated order for the sake of convenience.

ITA No. 579/Chd/2011 (assessee’s appeal) :

5. Ground No.1 raised by the assessee is not pressed by the learned A.R. for the assessee. It was pointed out by the learned A.R. for the assessee that as the issue raised vide ground No.1 has been decided by the Tribunal in assessee’s own case and in view thereof the said ground is not pressed.

6. We find that the issue of disallowance of interest u/s 36(1)(iii) on interest free loan advanced to Sugarfed arose before the Tribunal in assessee’s own case relating to assessment year 2006-07. The Tribunal in assessee’s appeal being ITA No.802/CHD/2009 and Revenue’s appeal being ITA No.875/CHD/2009, vide order dated 30.6.2010 addressed the aforesaid issue of disallowance of interest on loan advanced to M/s Sugarfed totaling Rs.17.02 crores. After elaboration of the issue the Tribunal vide paras 10 to 13 held that as the assessee had failed to prove the commercial expediency of transaction with M/s Sugarfed, the provisions of section 36(1)(iii) of the Act were applicable and disallowance sustained by the CIT (Appeals) on interest free advance of Rs.7.01 crores as against Rs.17.01 crores considered by the Assessing Officer was upheld. The issue raised vide ground No.1 in the present appeal is identical to the issue raised before the Tribunal in assessee’s own case relating to assessment year 2006-07 and following the order dated 30.6.2010 we dismiss the ground No.1 raised by the assessee.

7. The issue raised in ground No.2 by the assessee is against the addition made u/s 40(a)(ia) of the Act. The Assessing Officer from the books of account noted the assessee not to have deposited tax at source amounting to Rs.73,217/- before the due date of filing the return of income. The Assessing Officer further noted that the assessee, in the return of income while computing the income, had not added Rs.73,217/- as disallowance u/s 40(a)(ia) of the Act. The assessee was asked to furnish the details of the total amount on which TDS of Rs.73,217/- was deducted. In the absence of any details being filed by the assessee, the Assessing Officer held that tax had been deducted @ 1% and consequently the total amount was worked out at Rs.73,21,700/- and addition of the same was made u/s 40 (a)(ia) of the Act.

8. Before the CIT (Appeals) the claim of the assessee was as under :

“The TDS of Rs.73217/-, shown as payable as on 31.03.2007, has been brought forward from preceding assessment years. As the offices of the society are spread over through out Punjab and the books of accounts of past years were required for verification of the amounts on which the amount of TDS had been deducted. It was, therefore, not practically possible to furnish the information in before the Assessing Authority. The details are now enclosed for kind consideration and necessary

perusal. The details of payments, on which the TDS had not been deposited, comes to Rs.544940/- as against assumed figure of Rs.7321700/- in the assessment order and further it is very important to explain that all these amounts of TDS payable relates to period from 01.04.2001 to 31.03.2004."

9. The CIT (Appeals) observed that *"I find that although it seems that the TDS payable relates to the period 1.4.2001 t 31.3.04, no details were furnished before the Assessing Officer".* The contention of the assessee to furnish additional evidence was rejected and it was observed that the information was old and was available with the assessee, but no cogent reasons were given for not furnishing the same before the Assessing Officer.

10. The learned A.R. for the assessee placed reliance on the submissions before the CIT (Appeals) and pointed out that TDS of Rs.73,217/- was deducted out of payment of Rs.5,44,940/- and related to the period prior to 31.3.2004 and the provisions of section 40 (a)(ia) of the Act inserted w.e.f. 1.4.2005 were not applicable to such amounts.

11. The learned D.R. for the Revenue placed reliance on the order of the CIT (Appeals).

12. We have heard the rival contentions and perused the record. The assessee in its balance sheet had shown a sum of Rs.73,217/- as payable on account of TDS as on 31.3.2007. The plea of the assessee before the CIT (Appeals) was that as the aforesaid details were to be verified from the books of account of past years and since the offices of the assessee society were spread over throughout Punjab, it was not possible to furnish the aforesaid evidence before the Assessing Officer. However, the details in connection with TDS of Rs.73,217/- were furnished before the CIT (Appeals) and it was claimed that the said TDS was in connection with the payments of Rs.5,44,940/-. The CIT (Appeals) has rejected the plea of the assessee observing that no cogent reasons were forwarded by the assessee in respect of the said additional evidence being now furnished during the appellate proceedings. In the facts and circumstances of the case, we find merit in the plea raised by the assessee that it was prevented by a reasonable cause in not furnishing information before the Assessing Officer and in view of the provisions of Rule 46A of the Income Tax Rules such information should have been admitted and addressed by the CIT (Appeals). We find merit in the claim of the assessee and admitting the aforesaid additional evidence, we are of the view that the same needs verification at the level of the Assessing Officer. Accordingly, we direct the Assessing Officer to verify whether the TDS of Rs.73,217/- is relatable to the payment of Rs.5,44,940/- which relates to the period upto 31.3.2004. In case the claim of the assessee is found to be correct, there is no merit in any addition on this account as the provisions of section 40 (a)(ia) of the Act were introduced w.e.f. 1.4.2005 by the Finance (No.2) Act, 2004. The aforesaid provisions are not applicable to the amount of TDS deducted on or before 31.3.2004. In any case, there is no merit in addition of Rs.73,21,700/- being relatable to TDS of Rs.73,217/- on mere estimation. The Assessing Officer shall decide the issue after affording reasonable opportunity of hearing to the assessee. The ground NO.2 raised by the assessee is allowed.

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13. Ground No.1 raised by the assessee is general and hence dismissed.

14. Ground No.3 is in relation to the issue raised by the assessee in ground No.1. Following the order of the Tribunal in assessee's own case relating to assessment year 2006-07 and as pointed out by us in paras hereinabove and the issue being identical, ground No.3 raised by the Revenue is dismissed.

15. The learned A.R. for the assessee pointed out that the issue raised by the Revenue vide ground Nos.4 to 6 of appeal are identical to the issue raised in Revenue 's appeal before the Tribunal relating to assessment year 2005-06.

16. The learned D.R. for the Revenue placed reliance on the order of the Assessing Officer.

17. The issue in ground No.4 is in connection with the deletion of interest on amount receivable from Punjab Government. The assessee had shown recovery of Rs.1,73,85,59,612/- from State Government. The Assessing Officer was of the view that the assessee was not doing any business with the Punjab State Government, instead had paid amount on behalf of the State Government, which was shown recoverable in form of ID Cess, Guarantee fee, paddy claim out of turn ration of paddy. The Assessing Officer observed that the assessee had diverted its funds to State Government interest free and at the same time was paying interest to various banks on loans raised by it. The Assessing Officer further observed that even the State Government charges costs/interest from the Markfed. Applying the ratio laid down by the Punjab & Haryana High Court in Abhishek Industries Ltd. Vs. CIT [(286 ITR 1)(P&H)], in the absence of any commercial expediency, the Assessing Officer held that the interest @ 7.25% on the abovesaid advances amounting to Rs.16,60,45,571/- was disallowed. The CIT (Appeals) allowed the claim of the assessee following the order of the Tribunal relating to assessment year 2006-07. The relevant extract of the order of the Tribunal is reproduced under para 19 of the order of the CIT (Appeals).

18. We find that the issue raised in the present grounds of appeal is identical to the issue raised before the Tribunal in assessee's own case in appeal filed by the Revenue relating to assessment year 2006-07. The Tribunal in ITA No.875/CHD/2009 alongwith ITA No.802/CHD/2009 (assessee's appeal) relating to assessment year 2006-07, order dated 30.6.2010, vide para 22 held as under :

> *"22. We have considered the rival submissions carefully. The assessee before us is a Co-operative Society, which is an agency of the State Government for procurement of wheat and paddy. It also undertakes such activities for FCI. In the course of carrying on of such activities, it incurred amounts which were recoverable from the State Government and FCI. Quite clearly, such recoveries are on account of trading activities carried out by the assessee. Therefore, the amount outstanding for recovery at the end of the year on account of such activities cannot be equated to interest-free advances so as to require the same to be decided in terms of Section 36(1)(iii) of the Act. In this regard, the CIT(Appeals) has categorically held that the Punjab Government and FCI are trade debtors and incomes thereof have been offered for taxation in the earlier assessment*

years. In the face of such a fact situation, we find no justification for the Assessing Officer to make any disallowance out of interest expenditure claimed by the assessee on account of impugned debits. Hence, in this background, we hereby affirm the order of the CIT(Appeals). Thus, Ground Nos. 3 & 4 raised are dismissed."

19. In the present ground of appeal the issue being identical to the issue raised before the Tribunal in assessment year 2006-07 and the CIT (Appeals) in the present case having followed the above said ratio, we are in agreement with the order of the CIT(A). Upholding the same we dismiss ground No.4 raised by the Revenue.

20 The issue raised vide ground No.5 is in connection with the interest charged on the amount receivable from FCI. The AO during the course of assessment proceedings noted that guarantee fee, interest structure development, Cess and such other liabilities of FCI were borne by the assessee and the amount recoverable from FCI was also increasing. On the other hand, the assessee was paying interest by raising loans to run the business. The Assessing Officer disallowed the interest @ 7.25% on advance of 862.20 crores amounting to Rs.62.50 crores and added the same to the income of the assessee. The facts in the present case are identical to the facts relating to assessment year 2006-07 and following the order of the Tribunal (supra) in assessee's own case, the order of CIT (Appeals) is upheld. The CIT(Appeals) had decided the issue in line with the issue raised in relation to the amount due from State Government. Following the ratio laid down by the Tribunal as referred to by us in paras hereinabove, we are in agreement with the order of the CIT(Appeals) and dismiss the ground No.5 of appeal raised by the Revenue.

21. The issue in ground No.6 raised by the Revenue is against the deletion of addition of Rs.21,68,942/-. The Assessing Officer on perusal of the advertisement expenses which are incorporated under para 5 of the assessment order was of the view that the expenses had not been made by the assessee at its own but at the direction of the Chief Secretary/Deputy Commissioner, the functionaries of the State Government and the Board of Directors had given ex-post facto approval. The Assessing Officer was of the view that at the most the expenditure was donation for the promotion of sports and was not wholly and exclusively incurred for the purpose of business of the assessee. Accordingly, a sum of Rs.21,68,942/- was disallowed by the Assessing Officer. The CIT(Appeals) noted that similar issue arose before the Tribunal in assessment year 2005-06 in ITA No.727/Chd/2009 and vide order dated 30.10.2009 the entire expenditure was allowed as business expenditure. The findings of the Tribunal in ITA No.727/Chd/2009 are reproduced by the CIT(Appeals) at pages 12 and 13 of the appellate order.

22. We find that the present issue raised vide ground No.6 is identical to the issue raised before the Tribunal in assessment year 2005-06 and following the ratio laid down by the Tribunal we uphold the order of the CIT(Appeals). For the sake of brevity we are not reproducing the extract of the order of the Tribunal which is incorporated at pages 12 and 13 of the appellate order though a reference is being made to the same. Ground No.6 raised by the Revenue is thus dismissed.

23. Ground No.7 is in connection with the provisions of section 14A of the Income Tax Act. The assessee had made investments in shares of Indian companies totaling Rs.1.75 crores and it was submitted by the assessee that the said investments were made out of its reserves and surplus and no expenditure was incurred for earning dividend income during the year under consideration. The investment was claimed to be very old and no new investment was made during the year. The Assessing Officer noted that the assessee from the year of its inception had always raised loans in each and every year to run its business activities. It was observed by the Assessing Officer that the provisions of section 14A of the Income Tax Act were attracted and as the assessee had paid interest @ 7.25% on the loans raised during the current financial year, same rate of interest was applied and addition of Rs.12,73,462/- was made under the provisions of section 14A of the Income Tax Act. The CIT(Appeals) in view of the investments being old and not related to the period under consideration and following the ratio laid down by the Hon'ble Punjab & Haryana High Court in CIT Vs. Winsome Textiles India reported in 319 ITR 204 and CIT Vs. Hero Cycles Ltd. reported in 323 ITR 518 held that '*where there was no nexus between borrowed funds and investments made in purchase of shares, no disallowance u/s 14A was warranted'*.

24. The Revenue is in appeal; against the aforesaid order of the CIT (Appeals).

25. The learned D.R. for the Revenue placed reliance on the ratio laid down by the Hon'ble Bombay High Court in Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT & Another (328 ITR 81) (Bom)] and also placed reliance on the findings of the Assessing Officer.

26. The learned A.R. for the assessee pointed out that the onus is upon the Revenue to establish the nexus which the Revenue failed to do so in the present case. Reliance was placed on the ratio laid down in CIT Vs. Metalman Auto P. Ltd., 336 ITR 434 (P&H)]. It was further pointed out by the learned A.R. for the assessee that the dividend income received by the assessee was Rs.4,00,410/- against which disallowance of Rs.12,73,462/- was made by the Assessing Officer.

27. We have heard the rival contentions and perused the record. The assessee has placed on record the details of investment along with the amount of investment in shares in five companies made by the assessee. On perusal of the said details reveal that majority of the investments were made prior to 1994 and on the said investments no dividend has been received by the assessee during the year. The assessee had received the dividend of Rs.3,96,000/- from Indian Potash Supply Agency Madras, in which the investment was made between the years 1970 to 1975. Another dividend of Rs.4410/- received from Central Warehousing Corp. Ltd. In which the investment was made during the years 1950 to 1962. No fresh investment has been made during the year under consideration. The CIT (Appeals) at page 17 of the appellate order had reproduced the observations of the Hon'ble Punjab & Haryana High Court in CIT Vs. Winsome Textile Industries Ltd.(supra), under which it was laid down that where there is nothing to indicate that investment in purchase of shares was made out of borrowed funds, no disallowance was warranted u/s 14A of the Income Tax Act. Following the above said ratio laid down by the Jurisdictional High Court in CIT Vs. Winsome Textile Industries Ltd.(supra) and followed in CIT Vs.

Metalman Auto P. Ltd. (supra) we find no merit in the grounds of appeal raised by the Revenue in this regard. The total dividend income received by the assessee was Rs.4,00,410/- against which disallowance of Rs.12,73,462/- by invoking the provisions of section14A of the Act is not warranted. Upholding the order of the CIT (Appeals) we dismiss the ground No.7 raised by the Revenue.

28. The last issue raised in the present appeal is by way of ground No.2. The assessee in its return of income had claimed depreciation of godowns of Rs.98,52,912/- on which deduction u/s 80P (2)(e) of the Act was claimed. The Assessing Officer noted that the addition on this account was made in assessment year 2006-07 and though the assessee had raised the said ground of appeal but the same was not pressed for adjudication before the CIT (Appeals). The Assessing Officer held the assessee to have wrongly claimed deduction u/s 80P(2)(e) of the Act by not deducing the depreciation on godowns of Rs.98,52,912/- and had shown less income to the extent of Rs.98,52,912/-. Accordingly, the same was added to the total income of the assessee and was held that the claim of deduction u/s 80P(2)(e) of the Act would remain the same. It was further observed by the Assessing Officer that deduction can be raised through revised return and though the assessee revised its return of income, but did not revised its computation to the extent of excess claim of depreciation, hence addition of Rs.98,52,912/- was made to the income of the assessee.

29. Before the CIT (Appeals) the assessee claimed that it had credited Rs.45,14,49,575/- as storage income and depreciation on godowns relating to the storage income. As per the assessee storage income was separately computed in the computation chart and depreciation should have been reduced from the said income which was inadvertently omitted at the time of filing the return of income. The learned A.R. for the assessee further pointed out that the storage income would stand reduced by the amount of depreciation and it would not have any impact on the gross total income of the assessee , however, shall reduce the amount of deduction claimed u/s 80P(2)(e) of the Act by Rs.98,52,912/-. The assessee had furnished revised return of income in which the claim of deduction was shown reduced. The CIT (Appeals) vide para 6 to 8 at page 4 of the appellate order observed as under :

> *"6. Considering the rival contentions and material on record, I find that in the original return of income, the appellant had claimed deduction u/s 80P(2)(a)(iv) at Rs.317017810/- which was revised and claim of deduction reduced to Rs.307164848/-. In the original return, the appellant claimed exemption u/s 80P(2)(e) – Storage income at Rs.294177213/- and in the revised return, the same has been claimed at Rs.284324301/-, thereby reducing the income by Rs.9852912/-.*
>
> *7. The Assessing Officer did not accept the contention on the ground that though the return of income was revised, the computation of deduction claimed has not revised. The Assessing Officer relied on the decision of Hon'ble Apex Court in the case of Goetz India vs. CIT, 284 ITR 323.*

8. In my considered opinion, if the return of income is revised and deduction u/s 80P(2)(e) is recomputed, it ultimately effects other deductions as well. The Assessing Officer's contention that for claiming the deduction, a revised computation was a prerequisite is not based on facts of the case or even the facts of the case relied upon by the Assessing Officer (supra). The Assessing Officer has nowhere stated that the deduction was not allowable or wrongly claimed by the appellant. Not filing a revised computation cannot lead to denial of a genuine claim where the return was duly revised and claim duly recomputed. The appellant's plea on this ground is therefore allowed."

30. The learned D.R. for Revenue has failed to controvert the finding of the CIT (Appeals) except for placing reliance on the order of the Assessing Officer.

31. The assessee before us claimed that the revised return was furnished within the time allowed to the assessee. In the entirety of the facts and circumstances we find no merit in the ground No.2 raised by the Revenue. Upholding the order of the CIT (Appeals) the ground No.2 raised by the Revenue is dismissed.

32. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 30th day of September, 2011.

Sd/-	Sd/-
(MEHAR SINGH)	**(SUSHMA CHOWLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 30th September, 2011

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

True Copy

By Order

Assistant Registrar, ITAT, Chandigarh