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

% *Decision delivered on : 08.02.2023*

\+ **ITA 72/2023 & CM No.6063/2023**

PC COMMISSIONER OF INCOME TAX – 20 ..... Appellant
Through: Mr Zoheb Hossain, Sr. Standing Counsel with Mr Vipul Agarwal and Mr Parth Semwal, Standing Counsels.

versus

M/S FISH POULTRY AND EGG MARKETING COMMITTEE ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.6063/2023 ***[Application filed on behalf of the appellant seeking condonation of delay of 331 days in re-filing the appeal]***

1. This is an application moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 331 days.

2. For the reasons given in the application, the delay is condoned.

3. The application is, accordingly, disposed of.

ITA 72/2023

4. This is an appeal preferred against the order dated 31.05.2019 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"]. The appeal

concerns Assessment Year (AY) 2012-13.

5. The short point, even according to Mr Zoheb Hossain, who appears on behalf of the appellant/revenue, is whether the income received by way of fee by the respondent/assessee, is amenable to deduction under Section 10(26AAB) of the Income Tax Act, 1961 [in short, "1961 Act"].

6. The facts which have emerged from the record [and which are not in dispute], are the following:

(i) The respondent/assessee had filed its return on 29.09.2012 declaring a loss of Rs.2,23,585/- after excluding Rs.6,04,06,259/- from its total income by taking recourse to the provisions of Section 10(26AAB) of the 1961 Act.

(ii) The respondent/assessee is an Agricultural Produce Marketing Committee.

(iii) The respondent/assessee's return was subjected to scrutiny, whereupon an assessment order was framed under Section 143(3) of the 1961 Act. The assessed income was pegged at Rs.7,16,62,760/-, after making various disallowances.

(iv) Since the Assessing Officer (AO) [as is apparent from what is stated above] made an addition of Rs. 6,04,06,259/-, it impelled the respondent/assessee to prefer an appeal with the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"], who ruled in favour of the respondent/assessee. The appellant/revenue, aggrieved by the said order, carried the matter in appeal to the Tribunal.

7. Therefore, before the Tribunal, the aspect which arose for consideration was as to whether the fee i.e., income derived by the respondent/assessee for regulating the market dealing with products such as fish, poultry and eggs, would fall within the scope of Section10(26AAB). In

other words, whether the expression "agricultural produce" would cover the subject products [i.e., fish, poultry and eggs] regulated by the respondent/assessee.

8. Since there is no definition of "agricultural produce" provided in the 1961 Act, the Tribunal took recourse to the definition provided under Section 2 of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 [in short, "1998 Act"]. The definition, which has been extracted *in extenso* in the impugned order passed by the Tribunal, along with the schedule, for the sake of convenience, is set forth hereafter:

> *"2. Definitions – (1) In this Act, unless the context otherwise requires,*
> *(a) "agriculture produce" means* ***all produce and commodities, whether processed or unprocessed, of agricultural, horticulture, apiculture, viticulture, pisciculture, sericulture, animal husbandry, fleeces and skins of animals and forest products as are specified in the Schedule and such other produce as may be declared by the Government by notification to be an agricultural produce*** *and also includes admixture of two or more of such produce.*
>
> *xxx* *xxx* *xxx*
>
> ***I. Animal Husbandry Products –***
> *1.* ***Eggs***
> *2. Butter*
> *3.* ***Poultry***
> *4. Cattle Meat*
> *5. Ghee*
> *6. Goat Meat*
> *7. Milk & Milk*
> *II. Apiculture –*
> *1. Honey*
> *III. Cattle Feeds –*
> *IV. Cereals –*
> *V. Condiments, Spices and others –*
> *VI. Fibers –*
> *VII. Fruits –*
> *VIII. Grass and fodder*
> *IX. Gur, Sugar, Sugarcane, Khandsari, Shakhar and rashkat.*
> *X. Narcotics – Tobacco*

XI. Oilseeds – Castor seed, Cotton seed, Sarson, Toria etc.
*XII. Pesciculture – **Fish***
XIII. Pulses – Arhar, Beans, Gram, Moth, Mung, Peas etc.
XIV. Vegetables – Arvi and Arvi Patta, Carrots – all types, Onion etc.
XV. Horticulture – Flowers, cut flowers and Potted Plants.
XVI. Forest Products – Bamboo, Baheda, Gum, Honey, Karela, Mahua flowers."

[Emphasis is ours]

9. After taking into account the definition and contents of the schedule the Tribunal made the following observations:

*"21. **The above definitions show that DAPM Act does not restrict constitution of committee only for marketing agricultural product. It has within its scope various other commodities like decorative plants productions of honey and silk. It also includes the marking of forest products which otherwise do not fall within the definition of agriculture. The DAPM, Act, therefore, has given very wide meaning to the word agricultural produce. Apparently, the Income-tax Act has also imported the word agricultural produce from the DAPM, Act, 1998 to cover APMC notified under it to provide the benefit to all APMCs provided in the DAPM Act or similar Acts, in other states. It could not have been the intention of the Act to leave out some of the committees, notified under the DAPM especially when all the committees were rendering similar services in respect of various products**.*

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*23. As discussed above, **the word agricultural produce, used in connection with APMC connotes a very wide meaning bringing within its preview a large gamut of commodities besides agricultural products. Since the income accrues to the APMCs from pursuing these activities, the Income Tax Act, also perceives a wider meaning by referring to the DAPM**.*

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25. It is however observed that the assessee has claimed a loss of Rs.2,23,585/- in her return of Income. The same represents depreciation for the year, which has not been set off against the profits/income of the committee. In fact, the assessee has committed a mistake in filing the return, whereby the figure of income Rs.6,04,06,259/- (item 43 of schedule P&L has been entered as NIL under schedule BP), even otherwise, the profits can be calculated only after deducting the depreciation u/s 32 of the Act.

> *26. Without prejudice to the above, the Supreme Court in the case of CIT vs Harprasad & Company (P) Ltd. (99 ITR 118) has held that "From the charging provisions of the Act, it is discernible that the words 'income' or 'profits and gains' should be understood as including losses also that, in one sense 'profits and gains ' represent plus 'income' whereas losses represent 'minus income'. In other words, loss is negative profit. Both positive and negative profits are of a revenue character. Both must enter into computation, wherever it becomes material, in the same mode of the taxable income of the assessee. "*

10. Mr Hossain says that the Tribunal has committed an error by holding that the subject products fell within the scope of the expression "agricultural produce". According to Mr Hossain, agricultural produce will be that produce which is yielded in the course of cultivation and not the kind referred to in the Tribunal's order.

10.1. Mr Hossain goes on to argue that since the income earned by the respondent/assessee is not derived from agricultural produce, the respondent/assessee could not have excluded it from its total income by taking recourse to the provisions of Section 10(26AAB) of the 1961 Act.

11. It is, however, not disputed by Mr Hossain that the definition of the expression "agricultural produce" is not provided in the 1961 Act. Before we proceed further, it would be relevant to extract the provision in issue, i.e., Section 10(26AAB) of the 1961 Act:

> *"Section 10(26AAB):* ***any income*** *of an agricultural produce market committee or board constituted under any law for the time being in force* ***for the purpose of regulating the marketing of agricultural produce****"*
>
> [Emphasis is ours]

11.1, This definition, if broken down, would entail the following:

(i) It concerns "any income" of the Agricultural Produce Market

Committee or Board.

(ii) The said Agricultural Produce Market Committee or Board should be one, which is, constituted under any law in force.

(iii) The income earned by the Agricultural Produce Market Committee or Board should have nexus with the purpose of regulating the marketing of agricultural produce.

12. Therefore, the argument advanced by Mr Hossain, on behalf of the appellant/revenue, that unless income which is earned is relatable to agricultural produce, it cannot be kept out of the pale of total income of the assessee, is clearly not tenable, since the expression incorporated in Section 10(26AAB) of the 1961 Act is "any income" and not "agricultural income" of the Agricultural Produce Market Committee or Board.

13. In the given case, admittedly, the respondent/assessee earned a fee. The facts, as disclosed, are that the wholesalers of the produce bring their products, which include fish, poultry and eggs, to the designated spots where they are cleaned, sorted and sold to the traders.

13.1. It is on this account that the fee is earned by the respondent/assessee. The fee that the respondent/assessee obtains helps the purpose for which it is constituted i.e., regulating the marketing of agricultural produce.

14. Since "agricultural produce" is not defined in the 1961 Act, the Tribunal, as noted above, has taken recourse to Section 2 of the 1998 Act.

14.1. The respondent/assessee has been constituted under the Delhi Agricultural Marketing (Regulation) Act 1976 and was appointed as regulator under the 1998 Act to facilitate trading in fish, poultry and eggs.

14.2. The definition of agricultural produce, as contained in Section 2(1)(a) of the 1998 Act, read with schedule, as extracted above, is wide,

which includes all kinds of produce, including fish, poultry, and eggs. Therefore, even otherwise, the fee earned by the respondent/assessee, as held by the Tribunal, would constitute income derived from regulating agricultural produce.

15. Thus, according to us, the conclusion reached *via* the impugned order by the Tribunal is unimpeachable and does not need any interdiction by this court.

16. The appeal is, accordingly, dismissed.

17. Parties will act, based on the digitally signed copy of the order passed today.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 8, 2023
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