

Indian Farmers Fertiliser Cooperative ... vs Deputy Commissioner Of Income Tax on 14 March, 2023

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

\$~37 & 41

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3082/2023 & CM Nos.12012-13/2023

INDIAN FARMERS FERTILISER
COOPERATIVE LIMITED

..... Petiti

Through: Mr Arvind P. Datar, Sr. Adv. wi
Kavita Jha, Mr Vaibhav Kulkarn
Mr Himanshu Aggarwal, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent

Through: Mr Sunil Agarwal, Sr Standing
Counsel with Mr Shivansh B. Pand
Jr Standing Counsel and Mr Utkar
Tiwari, Adv.

+ W.P.(C) 3099/2023 & CM Nos.12075-76/2023

INDIAN FARMERS FERTILISER
COOPERATIVE LIMITED

..... Petiti

Through: Mr Arvind P. Datar, Sr. Adv. wi
Kavita Jha, Mr Vaibhav Kulkarn
Mr Himanshu Aggarwal, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent

Through: Mr Sunil Agarwal, Sr Standing
Counsel with Mr Shivansh B. Pa
Jr Standing Counsel and Mr Utk
Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

W.P.(C) 3082/2023 & 3099/2023

page 1

Signature Not Verified
Digitally Signed By:TARUN

RANA

Signing Date:17.03.2023

16:29:59

ORDER

% 14.03.2023 [Physical Hearing/Hybrid Hearing (as per request)] CM No.12013/2023 in W.P.(C) 3082/2023 & CM No.12076/2023 in W.P.(C) 3099/2023

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing. W.P.(C) 3082/2023 & CM No.12012/2023 W.P.(C) 3099/2023 & CM No.12075/2023 [Applications filed on behalf of the petitioner seeking interim relief]

2. These writ petitions concern Assessment Year (AY) 2013-14 [W.P.(C) No.3082/2023] and AY 2011-12 [W.P.(C)No.3099/2023].

3. The record shows, that Section 153C proceedings have been triggered against the petitioner/assessee, which is, admittedly, a multiunit cooperative society.

3.1 Broadly, the record also shows, that search action was carried out against one, Mr Rajiv Saxena. The respondent/revenue have triggered the impugned proceedings against the petitioner/assessee, allegedly on the ground that incriminating material was found against it.

4. Mr Arvind P. Datar, learned senior counsel, who appears on behalf of the petitioner/assessee, says that no incriminating material was found vis-à- vis the petitioner/assessee.

4.1 It is also not in dispute, that the search action against one, Mr Rajiv Saxena was carried out on 30.06.2019, whereas the impugned proceedings were triggered against the petitioner/assessee on 16.12.2022.

W.P.(C) 3082/2023 & 3099/2023 page 2 of 4

5. According to the respondent/revenue, Mr Rajiv Saxena, via entities controlled by him, passed on commission to the son of the Managing Director of the petitioner/assessee. The son of the Managing Director of the petitioner/assessee is one, Mr Amol Awasthi.

5.1 The father of Mr Amol Awasthi i.e., Mr Udai Shanker Awasthi, we are told, continues as the Managing Director of the petitioner/assessee.

6. Mr Datar says, that the material on record, which also includes the statements given by Mr Rajiv Saxena and one, Mr Amrendra Dhari Singh do not suggest that any money was paid in the import of fertilisers to the petitioner/assessee.

6.1 It is Mr Datar's contention, that the petitioner/assessee did not directly import potash. We are informed, that the petitioner/assessee had an arrangement in this behalf with an entity going by the name Indian Potash Limited [IPL].

6.2 Potash was imported by the IPL in bulk, and under an arrangement with IPL, the petitioner/assessee received a part of the bulk consignment against agreed consideration.

6.3 Therefore, the exporter, in this case Uralkali, had, according to Mr Datar, no privity of contract with the petitioner/assessee, as alleged, or at all.

7. Mr Agarwal says, that since the period involved spans over 10 years i.e., AY 2011-12 to 2020-21, he would require specific instructions to obtain a holistic view of the matter.

8. We may note, that the petitioner/assessee had filed objections dated 03.02.2023, 13.02.2023 and 20.02.2023 qua the notice dated 16.12.2022, which have been dismissed by the Assessing Officer (AO) via order dated W.P.(C) 3082/2023 & 3099/2023 page 3 of 4 04.03.2023.

9. In our view, the matter requires further examination.

10. Accordingly, issue notice.

10.1 Mr Sunil Agarwal, learned senior standing counsel, accepts notice on behalf of the respondent/revenue.

11. Counter-affidavit will be filed within the next six weeks. 11.1 Rejoinder thereto, if any, will be filed before the next date of hearing.

12. At this stage, Mr Agarwal says, that the AO need not have decided the objections, as no such procedure is envisaged under Section 153C of the Act.

12.1 According to us, this aspect of the matter is now water under the bridge, because objections were raised and decided by the AO via order dated 04.03.2023.

13. List the above-captioned matters on 31.08.2023.

14. In the meanwhile, no precipitate action will be taken against the petitioner/assessee, till further directions of the Court.

15. Parties will act based on the digitally signed copy of the order.

RAJIV

TARA VITAST

MARCH 14, 2023/aj

[Click here to check corrig](#)

W.P. (C) 3082/2023 & 3099/2023

