

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A-SMC' BENCH : Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 42/Hyd./2019
Assessment Year: 2014-15**

Jyothi Waddera Labour Contract Co-Operative vs. ITO, Ward 15(3)
Society Ltd. Hyderabad
Hyderabad.

PAN: AAAAJ1115C

(Appellant)

(Respondent)

For Assessee: Sh. K.A. Sai Prasad, A.R.

For Revenue: Sh. Sandeep Kumar Mehta, D.R.

Date of Hearing : 10/02/20

Date of Pronouncement : 12/02/20

ORDER

This is assessee's appeal for A.Y. 2014-15 against the order of the Ld.CIT(A)-7, Hyderabad dated 14.11.2018.

2. Brief facts of the case are that the assessee is a Labour Contract Cooperative Society and has been filing the returns of income in the status of AOP. It filed its return of income for the A.Y. 2014-15 on 25.9.2014 admitting total income of Rs. 'nil' after claiming deduction u/s 80P of the I.T.Act, 1961 (the Act) of Rs.14,47,605/-. Subsequently, the case was selected for scrutiny under CASS and during the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee was carrying out works contracts and, therefore, is not eligible for deduction u/s 80P of the Act. Further, AO also observed that there is a difference in gross receipts as per the return of income and as per 26AS of the assessee. The AO, therefore, estimated the income on the difference in receipts at 12.8% and brought it to tax.

2.1. Aggrieved, assessee preferred an appeal before the CIT(A) who confirmed the order of the AO, but restricted the estimation of income on the difference of gross receipts at 8% instead of 12.5%.

3. Against the order of the CIT(A), the assessee in appeal before the Tribunal by raising the following grounds of appeal.

“1. The order of the first appellate authority is not correct either in law or on facts and in both.

2. The Ld. first appellate authority is not justified in restricting the deduction u/s 80P(2)(vi) claimed by the appellant from its activities of collective disposal of labour of its members. (Rs.6,16,817/-).

3. The Ld. first appellate authority failed to appreciate the fact that the expenditure incurred on material is incidental to the activity of collective disposal of labour force.

4. The appellant craves leave to add, amend or alter any of the above grounds of appeal at the time of hearing of appeal.”

3.1. The Ld.Counsel for the assessee submitted that the assessee is a Co-operative Society and has always been filing the returns of income as such and has been claiming the deduction u/s 80P(2)(vi) of the Act. Ld.Counsel for the assessee further submitted that the assessee is carrying on only labour contracts and if there is any income from any item other than the labour as noticed by the CIT(A), it is only incidental to the work carried on by assessee. Therefore, according to him, contracts carried on by the assessee are only labour contracts and not works contracts as held by AO and the CIT(A). He also placed reliance upon the decision of the Coordinate Bench of this Tribunal in the case of M/s Sai Krishna WLCCS in ITA No.234/Hyd/2016 for AY 2009-10 order dated 31.03.2017, wherein under similar circumstances it was held that the assessee was eligible for claiming deduction u/s 80P(2)(vi) of the Act. A copy of the same has been filed before us.

3.2. Ld.DR supported the orders of the authorities below and submitted that since the assessee was not only dealing with labour but was dealing with other material also, it was not a simple labour contract but was a works contract as held by the CIT(A), and therefore was not eligible for a deduction u/s 80P(2)(vi) of the Act.

4. Having regard to rival contentions and material placed on record, I find that in the case of M/s Sai Krishna WLCCS (supra), the SMC Bench of this Tribunal has followed the decision of Hon'ble Kerala High Court in the case of CIT vs. M/s Uralungal Labour Contract in ITA no.1722 of 2009 dated 29.10.2009 wherein it was held that the income earned from construction works qualifies for deduction u/s 80P(2)(vi) of the Act, and if there is a transaction which is incidental to such contracts, then the same is also eligible for deduction u/s 80P(2)(vi) of the Act. For the sake of clarity and ready reference, the relevant paras are reproduced hereunder.

"2. Briefly stated facts are that assessee is engaged in the business of civil contracts by its activities of collective disposal of labour of its members. Assessee is registered as a Labour Contract Co-operative Ltd., consisting of skilled and unskilled labour and executing contract works in various Government departments. For the impugned assessment year, assessee admitted income of Rs. 12,16,350/- claimed the entire amount of exemption u/s. 80P(2)(a)(vi). In the assessment u/s. 143(3), Assessing Officer (AO) disallowed the deduction on the ground that assessee was a civil contractor for GHMC and is not a labour contractor. Further, he estimated the profit at 8% of gross contract receipts and determined the total income at Rs. 14,28,370/-.

3. Before the Ld.CIT(A), assessee submitted that it is being filing returns in the status of society and deduction u/s. 80P has been allowed in earlier years on similar facts. Assessee also submitted that only labourers are members and the profits are shared by the members as dividend and the material and machinery hire charges are incidental to the contract work, wherein assessee's members put in their efforts in executing the contract. It was further submitted that even though the contracts include both labour contracts and civil contracts, the society is eligible for deduction u/s. 80P as it was stated that whole of amount of profits and gains of business attributable to any one or more of such activities are eligible for deduction.

3.1. Ld.CIT(A) is not convinced and rejected the claim stating as under:

"7.2 The information on record is carefully considered. As per the provisions of sec. 80P, the profits and gains attributable to activities of labour supply are only exempt u/s 80P.

In order to verify the quantum of surplus from the labour activity and the distribution of the same to the members of the society, the AR was asked to produce the bank a/c as to how the surplus was distributed to the members of the society. However such details were not produced. With the hope that certain basic details like registration of the society, members of the society etc would

be available in assessment record, the records were obtained from the Assessing Officer and were perused. No such information was available in assessment record. However interestingly in order sheet entry dated 24.11.2011 in assessment record was found which read as under:

"The assessee's AR appeared for hearing and case discussed. During the scrutiny proceedings the AR has been informed of various unverifiable nature of vouchers in material charges amounting to Rs. 4,40,000 and Rs. 2,00,000 towards hire charges.

For this the AR stated that since the society is meant for member and their relatives and kinsman, all the payments are made to them only. He further stated that the society is under continuous statutory audit. When pressed further, the AR stated that he has no objection for disallowances (out of ambit of 80P) and stated that they will not contest in appeals."

In any case from the perusal of P&L a/c, the quantum of expenses debited to P&L a/c with reference to material Rs.50,72,269 machinery hire charges, Rs.8.8 lakhs, material charges Rs.5.25 lakhs, VAT Rs.6.14 lakhs etc. It is evident that the entire profit does not pertain to labour supply alone. Substantial part is relatable to contract works executed by appellant to GHMC. In the absence of any mechanism to determine the profits exclusively attributable to labour works, proportionate amount of profits (Rs.74,38,580 / Rs. 1,73,76,419 X 12,16,349) which works out to Rs. 3,55,338 needs to be considered for the purpose of exemption u/s. 80P. Accordingly the Assessing Officer is directed to take action".

4. Ld. Counsel submitted that assessee's contentions are supported by the decision of the Hon'ble Kerala High Court in the case of CIT Vs. M/s. Uralungal Labour Contract in ITA No. 1722 of 2009 dt. 29-10-2009. He relied on the above order to submit that deduction was eligible on the entire income of the Society.

5. Ld.DR however, submitted that assessee is engaged in civil contracts and so the society was denied deduction. It was submitted that Ld.CIT(A) allowed proportionate deduction u/s. 80P to the extent of labour contract and vide corrigendum dt. 04-01-2016 deduction to an extent of Rs. 5,20,700/- was directed to be allowed. In reply, Ld. Counsel submitted that assessee is eligible for deduction and in the alternate, the deduction should be allowed on the income determined by the AO but not on the income offered by assessee.

6. I have considered the rival contentions and perused the record. On similar facts as that of assessee, in the case of CIT Vs. M/s. Uralungal Labour Contract in ITA No. 1722 of 2009 dt. 29-10-2009 (supra), it was held by Hon'ble Kerala High Court as under:

“4. So far as the merits of the case is considered, even though no specific question is raised in the appeals filed, Senior Standing Counsel for the appellant submitted that this is an omission and department wants to amend the appeal to cover such a question also. We do not think any written amendment is required for this court to permit the counsel to raise a question of law, if it is substantial question of law warranting decision by this court under Section 260A of the Income Tax Act. We, therefore, permitted the counsel to raise this question orally and argue on merits. However, after going through the Tribunal's order and after considering the constitution and nature of activities of the respondent-Society, we feel the Society is entitled to deduction under Section 80P(2)(vi) on the entire income because in the first place, all the members of the Society are workers and they engage themselves in the execution of civil works undertaken by them. There is no case for the department that Society consists of any member other than construction worker and there is also no case that all the member-workers are not engaged in the activities of the Society which is execution of civil construction work. A workers' Society undertaking civil construction work and executing the work by themselves rightly answers the activity referred to in Section 80P(2)(vi) i.e. collective disposal of labour of the members of the Society. If members of the Society are engaged in construction activities, then the Society itself should be held to be engaged in collective disposal of labour of it's members. Therefore, the income earned from construction work qualifies for deduction under Section 80P(2)(vi) of the Act. The remaining issue is only with regard to the trading done in construction materials like sand which are stated to have been purchased and sold by the Society. Here again, the transactions are incidental in nature and the members themselves are engaged in handling of the goods in the course of purchase and sale of the same. Construction material involved is also sand where the labour involved is substantial and the income earned is also not found to be attributable to profit in trading and not attributable to labour inputs. We, therefore, hold that the Tribunal rightly granted deduction on the entire income of the Society under Section 80P(2)(vi) of the Act. Consequently the appeals are dismissed”.

6.1. Since in this case also even though assessee is not involved in trading but is engaged in contract works, which included material being supplied by the Government, I am of the view that assessee is eligible for claim u/s. 80P(2)(a)(vi). No other contrary judgment has been brought to my notice. Respectfully following the principles laid down in the above judgment, I direct the AO to allow the deduction u/s. 80P(2)(a)(vi), as being allowed in earlier years also. Grounds are allowed.”

5. Since facts and circumstances in the instant case are similar to the case of M/s Sai Krishna WLCCS (supra), I deem it fit and proper to follow the

same and direct the AO to allow the deduction u/s. 80P(2)(a)(vi) of the Act. Further with regard to the estimation of income on the difference of amount as reflected in Form 26AS and the turnover declared by the assessee in its return of income, I find that the same is also eligible for deduction u/s. 80P(2)(a)(vi) of the Act. Accordingly, assessee's appeal is allowed.

6. In the result, assessee's appeal is allowed.

Order pronounced in Open Court on 12th February, 2020.

Sd/-

(P MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 12th February, 2020.

**GMP*

Copy forwarded to:

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2. ITO, Ward 15(3), Hyderabad.
3. JCIT/ACIT, Range 15, Hyderabad
4. CIT(A)-7, Hyderabad
5. Pr.CIT-7, Hyderabad
6. D.R. ITAT Hyderabad
7. Guard File

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