

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.1542/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Raje Dudh Utpadak Sahakari Sanstha Ltd., At Post Chinake, Tal. Sangola, Dist. Solapur – 413 307 PAN : AABAR5526L	Vs.	ITO, Ward-1, Pandharpur
Appellant		Respondent

ITA No.1545/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Shriram Dudh Vyvasayaik Sahakari Sanstha Ltd., At Post. Lonvire, Tal. Sangola, Dist. Solapur – 413 307 PAN : AAIAS8408B	Vs.	ITO, Ward-1, Pandharpur
Appellant		Respondent

ITA No.1546/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Shriram Sahakari Dudh Utpadak Sanstha Ltd., At Post. Nandeshwar, Tal. Mangalwedha Dist. Solapur – 413 307 PAN : AAMAS8292D	Vs.	ITO, Ward-1, Pandharpur
Appellant		Respondent

ITA No.1548/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Dhawal Singh Mohite Patil Sahakari Dudh Utpadak Sanstha Ltd., At Post. Gheradi, Tal. Sangola, Dist. Solapur – 413 307 PAN : AAIAS5157P	Vs.	ITO, Ward-1, Pandharpur
Appellant		Respondent

ITA No.1550/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Shree Siddhanath Dudh Utpadak Sahakari Sanstha Ltd., At Post. Mahim, Tal. Sangola, Dist. Solapur – 413 307 PAN : AAAAS9593D	Vs.	ITO, Ward-1, Pandharpur
Appellant		Respondent

ITA No.1552/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Sonar Siddha Sahakari Dudh Utpadak Sanstha Ltd., At Post. Babarwadi (Alegaon). Tal. Sangola, Dist. Solapur – 413 307 PAN : AAIAS7779P	Vs.	ITO, Ward-1, Pandharpur
Appellant		Respondent

Assessee(s) by None
Revenue by Shri S.P. Walimbe

Date of hearing 12-01-2022
Date of pronouncement 12-01-2022

आदेश / ORDER**PER R.S.SYAL, VP :**

This batch of appeals by different assesses relating to assessment year 2014-15 assail sustainability of the penalty u/s.271B of the Act.

ITA No.1542/PUN/2018 – Raje Dudh Utpadak Sahakari Sanstha Ltd. :

2. Succinctly, the facts of the case of *Raje Dudh Utpadak Sahakari Sanstha Ltd.* are that the assessee is a Cooperative

Society engaged in sale and purchase of milk and milk products along with Cattle feeds and Chara etc. A return was filed declaring Nil income. During the course of the assessment proceedings, the AO observed that the assessee-AOP was required to get its accounts audited as its receipts amounted to Rs.1.65 crore. In the absence of such auditing u/s.44AB, the AO initiated penalty proceedings u/s.271B of the Act. In the order passed u/s.271B, the AO imposed penalty, which came to be affirmed in the first appeal. Aggrieved thereby, the assessee has approached the Tribunal.

3. We have heard the ld. DR through Virtual Court and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. As such, we are proceeding to dispose of the appeal *ex parte qua* the assessee. It is seen that the assessee is primarily engaged in the business of purchasing milk from its members and sale of the same. The assessee has also been engaged in running a fodder camp aided by the Maharashtra State Government for the cattle of drought hit farmers. It received grant of Rs.81.38 lakh from the Government of Maharashtra and the turnover of milk and cattle

feed stood at Rs.84.34 lakh. The assessee did not get the accounts audited u/s.44AB within the statutory time allowed. However, the assessee got its books of account audited on 25-11-2014. The AO imposed penalty for failure to get the accounts audited in time. The assessee contended before the authorities below that it had maintained proper books of account as prescribed under the provisions of Maharashtra Cooperative Societies Act, 1960 which were duly audited as per the provisions of that Act. The assessee got directives from the Government of Maharashtra for undertaking the activity of maintaining Fodder camp for the cattle as a social responsibility. The assessee undertook this work as majority of its members were poor farmers from the immediate vicinity and were having dairy income on small basis to support their families. The assessee was in receipt of grant-in-aid from the Government of Maharashtra at predetermined rates on which deduction of tax at source was made u/s.194C. The assessee further submitted that its turnover during the year was below the limit specified u/s.44AB, if the amount of grant-in-aid was excluded. But for that, the accounts were audited by the Cooperative Auditor and

the Audit report was submitted to the AO as well as the Registrar of Cooperative Societies. From the above narration of facts, it is clear that the assessee's receipts, except from grant-in-aid received from Government of Maharashtra amounting to Rs.84.34 lakh, were less than the statutory limit of turnover for getting the accounts audited at Rs.1.00 crore. This shows that if the amount of grant-in-aid is excluded, the regular turnover of the assessee was only below the stipulated limit. It is undisputed that the assessee got its accounts audited under the Cooperative Societies Act and also furnished such report to the AO as well as the Registrar of Cooperative Societies. The fact that the amount received from Government of Maharashtra was chargeable to tax, against which the assessee incurred expenses is relevant only for determining the taxability or otherwise of the amount. It is further relevant to accentuate that section 271B requiring imposition of penalty for failure to get the accounts audited u/s.44AB, is covered u/s.273B, which, in turn, prescribes that no penalty shall be imposed if reasonable cause for the failure is established. We are confronted with a case of a Cooperative Society dealing with small farmers having turnover of less than

Rs.1.00 crore with the exclusion of the amount of grant-in-aid. The very fact that the assessee got its accounts audited under the Cooperative Societies Act *prima facie* shows that it entertained a *bona fide* belief that the amount of grant-in-aid received from Government of Maharashtra was not includible for the purposes of computing turnover u/s.44AB. Had it been otherwise, it would have got the accounts audited u/s.44AB apart from the auditing for the purposes of Cooperative Society Act. Considering the facts in totality, we are of the considered opinion that there was a reasonable cause in the assessee not getting the accounts audited u/s.44AB resulting in attracting of section 271B of the Act. Since the penalty section is covered u/s.273B, we hold that the penalty was not required to be levied and confirmed. The same is hereby directed to be deleted.

4. The ld. DR fairly admitted that the facts and circumstances of the other appeals are *mutatis mutandis* similar to those of *Raje Dudh Utpadak Sahakari Sanstha Ltd.* Following the view taken hereinabove, we delete the penalty in the case of other assesses as well since all of them are Cooperative Societies engaged in purchase and sale of milk from small farmers in the vicinity.

5. In the result, all the appeals are allowed

Order pronounced in the Open Court on 12th January,
2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 12th January, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-7, Pune
4. The Pr.CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A',
ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	12-01-2022	Sr.PS
2.	Draft placed before author	12-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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