

## Cash paid to commission agent for facilitating transaction with framers won't attract sec. 40A(3) disallowance

**Summary – The Pune ITAT in a recent case of Anurag Radhesham Attal., (the Assessee) held that where assessee, engaged in business of ginning and pressing of cotton, failed to show that he was engaged in integrated activities of handling, storage and transportation of food grains, his claim for deduction under section 80-IB(11A) was to be rejected**

**Where assessee purchased agricultural produce from farmers through some parties who charged their commission for facilitating said transaction of sale and purchase, payments made to those parties could not be disallowed by invoking provisions of section 40A(3)**

### Facts

- The assessee was engaged in the business of ginning and pressing of cotton and warehousing. He filed return claiming deduction under section 80-IB(11A).
- The Assessing Officer held that the assessee was not engaged in the integrated business of handling, storage and transportation of food grains. It was neither having labourers on its payroll nor the assessee was having own fleet of vehicles for transportation. Therefore, the assessee did not fulfil the requisite conditions for claiming deduction under section 80-IB(11A) of the Act. Accordingly, assessee's claim was rejected.
- The Commissioner (Appeals) upheld the order of Assessing Officer.
- On second appeal:

### Held

- A bare perusal of the provisions of section show that deduction under section 80-IB(11A) is available in the case of an undertaking deriving profit from the 'integrated' business of handling, storage and transportation of food grains. The vital word used in the section is 'integrated'. The term integrated has not been defined in the Act nor it is defined under the General Clauses Act, 1897. Thus, to understand the meaning of word 'integrated' in common parlance, one has to refer to Oxford English Dictionary, which explains the word integrate as,
  - (i) Combine or be combined to form whole and (ii) Bring or come into equal participation in an institution or body.
- Thus, the word integrated used in the section connotes, that the business of handling, storage and transportation of food grains should be carried out in a combined manner. However, the section

does not put any pre-condition that for carrying out the integrated activities of handling, storage and transportation of food grains the assessee should own the infrastructure facilities or should have manpower on its rolls for carrying out such business activities. If the undertaking is carrying out these integrated activities by employing hired labourers or by taking warehousing facilities on rent and hiring transportation facilities, the undertaking is eligible to claim deduction under section 80-IB(11A).

- In the present case it is an undisputed fact that the assessee is neither having labour on its payrolls nor the assessee is owning fleet of vehicles for the transportation. However, the assessee is having warehousing facilities of his own. The assessee in support of its contention has placed on record vouchers for loading, unloading and transportation to substantiate that he is engaged in integrated business.
- In addition to above the Commissioner (Appeals) has also noted that the assessee has not filed Audit report in the prescribed form 10CCB for claiming deduction.
- As observed above, the deduction under section 80-IB(11A) can be claimed only if the assessee has been able to show that it is engaged in integrated activities of handling, transportation and storage of food grains. Owning of transportation facilities, warehousing facilities and manpower on payroll is not *sine qua non* for claiming the deduction. What is essential is that all the three activities of handling, storage and transportation should be sewn together in a manner that they become a single structured process.
- In the present case the assessee has not been able to show the integration of the three activities for claiming deduction. With regard to manpower the contention of the assessee is that it does not have skilled/unskilled labour on its payroll and has outsourced the same. However, the assessee has failed to place on record any document to show any agreement/arrangement with the outsourcing agencies for supply of labour. The assessee has further failed to show from the records that the payments have been made to labourers, except for some self made vouchers, the sanctity of which is highly doubtful, there is no other document to support the claim of assessee.
- Similarly, in respect of transportation activity the contention of the assessee is that he is using hired trucks. A perusal of records show, that the assessee has claimed *ad hoc* expenditure of `10,000/- per month for transportation that to on the basis of internal vouchers. The assessee had not placed on record any agreement/arrangement with the transporters for the transportation of food grains nor any bills/invoices had been produced to substantiate the payment for transportation. Although, the assessee has placed on record a report from the Joint Monitoring Committee to show that the warehouses owned by the assessee are as per Govt. specifications, but this is not sufficient to claim deduction under section 80-IB(11A).
- From the documents on record the only indelible inference that can be drawn is that the assessee is providing warehousing facilities for storage of food grains. The assessee had not been able to show from the records that the activities of handling, storage and transportation of food grains allegedly

carried out by it were part of one composite activity and were integrated in any manner. The assessee has failed to substantiate handling and transportation component of integrated business.

- Insofar as the objection of the revenue for non-filing of Audit report is concerned, the assessee can file Audit report even at the appellate stage for claiming deduction. The deduction cannot be denied merely on the ground that the assessee has not filed Audit report along with the return of income or at the time of assessment proceedings. In the present case, the assessee has not filed Audit report before the Assessing Officer. Thereafter, the assessee did not file the Audit report in the prescribed form before the First Appellate Authority. Although, one of the reasons for rejecting the claim of the assessee was non-filing of the Audit report. Now, before the Tribunal the assessee has filed an application for admission of additional evidence i.e. the Audit report. The assessee has placed on record Audit report in form 10CCB. In the application for admission of additional evidence the reason for non-filing of Audit report before the Assessing Officer, as well as, Commissioner (Appeals) has been mentioned as inadvertent mistake. No other reason has been given for non-filing of the Audit report.
- There is no bar for filing Audit report at later stage. However, the assessee has to show *bona fide* reason for not filing the same before the Assessing Officer and the Commissioner (Appeals). Non-filing of Audit report inadvertently before the Commissioner (Appeals) cannot be considered as sufficient cause when the Assessing Officer has specifically taken a ground to disallow deduction to the assessee for non-filing of Audit report before him. The assessee has been negligent and callous in pursuing his cause before the authorities below.
- Thus, in the facts of the case and documents on record, it is held that the assessee has failed to show that he is engaged in the integrated business of handling, storage and transportation of food grains and thus, the assessee is not eligible for claim deduction under section 80-IB(11A) of the Act.