

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “D”: NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2829/Del/2015  
(Assessment Year: 2011-12)

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| The Mantola Cooperative Thrift &<br>Credit Society,<br>541, Mantola, Pahargaj, New Delhi<br>PAN:AAAJT1976A<br>(Appellant) | Vs. | ITO,<br>Ward-38(4),<br>New Delhi<br>(Respondent) |
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| Assessee by :         | Shri Gaurav Jain, CA<br>Shri Deepesh Jain, CA |
| Revenue by:           | Shri Shravan Gotru, Sr. DR                    |
| Date of Hearing       | 17/08/2017                                    |
| Date of pronouncement | 10/10/2017                                    |

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of income tax (appeals)-XX, New Delhi dated 26/02/2015 confirming the order of the Ld. assessing officer that the assessee is not eligible to claim deduction under section 80P(2)(D) of income tax act, 1961 on the interest income of Rs. 995019/- from investment made in the listed Cooperative bank on the ground that Delhi State Cooperative bank was not a member of the appellant society.
2. The assessee has raised following grounds of appeal :
  - “1. That the CIT(A) erred on facts and in law in holding that the appellant is not eligible to claim deduction under section 80P(2)(d) of the Income Tax Act, 1961 (‘the Act’), on the interest income of Rs.9,95,019 from investments made in Delhi State Co-operative Bank (‘DSCB’), on the ground that DSCB was not a member of the appellant society.
  - 1.1 That the CIT(A) erred on facts and in law in holding that since DSCB is a cooperative bank not entitled to deduction under section 80P in terms of section

80P(4) of the Act thereof, interest income earned from such Bank is not even eligible for deduction under section 80P(2)(d) of the Act in the hands of the appellant society.

- 1.2 Without prejudice to the above, the CIT(A) erred on facts and in law in not allowing deduction of expenditure incurred in relation to earning of the aforesaid interest income from the co-operative banks.
2. That the CIT(A) erred on facts and in law in denying deduction of expenditure amounting to Rs.3,01,753/- under section 57 of the Act incurred by the appellant in relation to earning interest income, on the ground that there was no direct co-relation between the expenditure incurred and the interest income earned on deposits made with Banks by the appellant.
  - 2.1 That the CIT(A) erred on the facts and in law in not appreciating that expenditure incurred by the appellant had direct nexus with earning of interest income from Banks, in as much that the interest expenditure incurred by the appellant related to the funds that were subsequently invested in the Banks and the interest income was earned thereon.”
3. Brief facts of the cases that assessee is running credits society and is providing credit facility to its members. It earns interest from loans and advances to its members and nonmembers on account of certain expenses record like postage, and couriers judges etc the assessee has declared a nil come after claiming deduction of Rs. 3753844/- under section 80P of the income tax act. The assessee filed its return of income on 30/08/2012 showing nil income.
4. During the course of assessment proceedings, the Ld. assessing officer found that assessee is also receiving interest from nonmember scheduled banks etc and whether the same is eligible for deduction under section 80 P of the income tax act or not. Therefore, as assessee has received interest on fixed deposit receipts with the bank amounting to Rs. 3343470/-, Id. assessing officer treated it as income from other sources. He further granted deduction of 7% of the world investment made by the assessee society as an expenditure amounting to Rs. 1406253/- and that interest income, after this deduction of expenses is brought to tax as income from other sources. The resultant effect of the same was that the assessee was denied deduction under section 80 P of the income tax act on that some. The Ld. assessing officer further noted that the assessee is also received interest from other co-operative societies which is also chargeable to tax as income from other sources and therefore he charged a sum of Rs. 7283439/- as income from interest on other co-operative societies. Consequently, the income of the assessee was assessed under section 143 (3) of the income tax act dated 16/01/2014 at Rs. 9220656/-against the nil returned income.

5. Therefore the assessee is aggrieved with the order of the Ld. assessing officer preferred an appeal before the Ld. CIT (A). The Ld. CIT (A), confirmed the taxation of the income received by the assessee from the FDR with banks and also from various other co-operative societies. The Ld. CIT appeal further held that the deduction of interest expenditure cannot be granted to the assessee and therefore she enhanced the income of the appellant dismissing the appeal of the assessee denying the deduction of interest expenditure against the borrowing interest income. See also held that assessee is not entitled to deduction under section 80 P of the income tax act on the about two sums.
6. Assessee aggrieved with the order of the Ld. CIT (A), assessee has preferred an appeal before us. It was contended by the assessee that issue is squarely covered against the assessee with respect to the not allowing deduction under section 80 P on interest income of the assessee derived from nonmembers. However, the issue with respect to deduction of interest expenditure from such income was principally accepted by the ITAT in the assessee's own case for earlier years and the issue was set aside to the file of the Ld. assessing officer to allow the allocation of expenses as per the method of calculation derived by the assessee. He submitted the coordinate bench in ITA No. 483 del 2013 for assessment year 2004 – 05 along with the orders for another 7 years dated 30/06/2016 in the case of the assessee.
7. The Ld. authorized representative also submitted the copy of the decision of the Hon'ble Supreme Court in case of similar appeal No. 10245 of 2017. In case of Citizen co-operative society Ltd versus ACIT dated 08/08/2017 on this issue.
8. The Ld. departmental representative vehemently defended the order of the Ld assessing officer and stated that assessing officer has correctly tax the income from the FDR with other co-operative banks and from nonmembers under the head income from other sources. He further submitted that the order of the Ld. CIT (A) has also correctly confirmed the above addition.
9. We have carefully considered the rival contentions and also perused the orders of the lower authorities. As the issue is squarely covered by the decision of the coordinate bench in the case of the assessee itself in ITA No. 483/del/2013 for assessment year 2004-05 dated 30/06/2016 wherein the coordinate bench has held that that assessing officer is right in allowing the deduction under section 80P only to the extent of interest on from members who avail the credit facility. And therefore the coordinate bench upheld the order of the Ld. assessing officer in treating the above income of interest on FDR with other co-operative

banks and interest from nonmembers as income from other sources. However, with respect to the deduction of interest expenditure from the interest income chargeable to tax under the income from other sources. It has been held by the coordinate bench that assessee should be allowed the expenditure from the interest income assessed under section 56 of the income tax act. In view of this we dismiss ground No. 1 of the appeal of the assessee.

10. With respect to the deduction of expenditure amounting to Rs. 301753/- under section 57 of the income tax act by ground No. 2 of the appeal of the assessee has been remitted back to the file of the Ld. assessing officer to granted deduction of expenditure to the assessee in accordance with the decision of the coordinate bench in case of earlier years. Accordingly, ground No. 2 of the appeal of the assessee is allowed with about direction.

11. In the result appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 10/10/2017.

-Sd/-

(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:10/10/2017  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi