

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (SMC), KOLKATA

[Before Shri P.M. Jagtap]

I.T.A. No. 2370/Kol/2016
Assessment Year 2012-13

ACIT, Circle - 41, Nadia.....Appellant
Kurchipota Lane, Krishnanagar,
Nadia - 741101

M/s. Saktinagar Samabay Krishi Unnayan Samity Ltd.....Respondent
Vill & P.O. Saktinagar,
Nadia (W.B.) - 741102
[PAN: AALS1367C]

Appearances by:

Shri D.C. Mondal, Addl. CIT appearing on behalf of the Revenue.
Shri V.N. Purohit, CA appearing on behalf of the Assessee.

Date of concluding the hearing : October 24, 2017
Date of pronouncing the order : October 27, 2017

ORDER

This appeal is preferred by the revenue against the order of Ld. CIT (A) – 12, Kolkata dated 18.09.2016 and the grounds raised by the revenue therein read as under:

“1. The Assessing Officer has invoked the provisions of section 40(a)(ia) of IT Act, 1961 because the assessee not deducted at source from interest payment amounting to Rs. 40,90,771/-. The assessee has submitted new evidence before the Ld. CIT(A)-12, Kolkata and stated that each interest payment is below Rs. 10,000/-. The Ld. CIT (A) has erred as per the provision of Rule 46A of the I.T. Rule 1962 by admitting such evidence which was not produced before the A.O. at the assessment proceedings. Moreover, the A.O. was not given any opportunity to offer his comments on the new evidence.

2. The assessee has earned interest from NSC/KVP/Other banks amounting to Rs. 12,51,233/- on funds not immediately required for business purpose. The A.O. allowed expenditure of Rs. 3,17,598/- to earn such income and added Rs. 9,33,635/-. The Ld. CIT (A) has deleted this addition by agreeing with the contention of the assessee that it has not

claimed any exempted income u/s 10 of the I.T. Act, he has claimed deduction u/s 80P of the I.T. Act. Ld. CIT (A) has stressed upon the word 'exempt' use by the A.O. and stated that no income was claimed as exempt. However, he has overlooked the fact that the A.O. has also mentioned the relevant section 80P regarding assessee's claim of deduction. The A.O. has mentioned the word 'exempt' only to express the deduction with regard to chapter VIA. He has however mentioned the section also under which he has disallowed the deduction. In view of the same, Ld. CIT (A) erred in allowing relief to assessee where the A.O. has mentioned the section of disallowance."

2. The assessee in the present case is a co-operative society which is engaged in the business of banking and retail trading of fertilizers and seeds. The return of income for the year under consideration was filed by it on 21.03.2014 declaring a total income at NIL after claiming deduction under section 80P(2). During the course of assessment proceedings, it was noticed by the AO that the assessee has made payment of interest on various deposits aggregating to Rs. 40,90,771/- without deduction of tax at source. He, therefore, invoked the provision of section 40(a)(ia) and made a disallowance of Rs. 40,90,771/-. He also noted that interest received by the assessee from NSC/KVP/Other banks aggregating to Rs. 12,51,233/- was claimed to be exempt by the assessee under section 80P(2) of the Act. According to him, the said income did not represent the income of the assessee from banking business eligible for deduction under section 80P(2). He accordingly deducted the expenditure incurred for earning such income as worked out on proportionate basis at Rs. 3,17,599/- and the net amount of Rs. 9,33,635/- was held to be not deductible by him under section 80P(2) of the Act. The total income of the assessee thus was determined by the AO at Rs. 49,85,106/- after allowing the deduction of Rs. 50,000/- in the assessment completed under section 143(3) vide an order dated 09.03.2015.

3. Against the order passed by the AO under section 143(3), an appeal was preferred by the assessee before the Ld. CIT (A) disputing both the additions of Rs. 40,90,771/- and Rs. 9,33,635/- and since the submissions made by the assessee in support of his case on both these issues were found acceptable by the Ld. CIT (A), he deleted both these additions made by the AO to the total income of the assessee. Aggrieved by the order of Ld. CIT (A), the Revenue has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the disallowance made by the AO under section 40(a)(ia) for non-deduction of tax at source by the assessee from the payment of interest on various deposits was deleted by the Ld. CIT (A) after having found that the payment of such interest did not exceed Rs. 10,000/- in any single case. He relied on Clause (B) of Sub-section (3) of Section 194A which provided that TDS need not be deducted if payment by a co-operative society is made to a resident and the amount of interest so paid does not exceed Rs. 10,000/-. The learned DR has not disputed the applicability of the said clause in principle. He however has contended that this stand was not taken by the assessee before the AO and the same taken for the first time before him was accepted by the Ld. CIT (A) without giving any opportunity to the AO to verify the same. He has contended that there is thus a violation of Rule 46A by the Ld. CIT (A) and the matter may be send back to the AO for giving an opportunity to verify the stand of the assessee. The learned counsel for the assessee, on the other hand, has

invited my attention to the relevant portion of the assessment order to point out that no opportunity whatsoever was given by the AO to the assessee of being heard before making a disallowance under section 40(a)(ia). He has contended that the assessee thus got such opportunity for the first time during the course of appellate proceedings before the Ld. CIT (A) and there is no violation of Rule 46A as alleged by the learned DR. He has also raised an alternative contention by relying inter alia on the decision of Hon'ble Kerala High Court in the case of **Moolamattom Electricity Power Employees Co-operative Co. Ltd. & Ors. Vs ITO 238 ITR 630** wherein it was held that the primary credit cooperative societies, in view of clear exemption given under section 194A (3) (viiia), are not liable to deduct tax at source under section 194A. I find merit in this contention of the learned counsel for the assessee and uphold the impugned order of the Ld. CIT (A) deleting the disallowance made by the AO under section 40(a)(ia). Ground no 1 of the revenue's appeal is accordingly dismissed.

5. As regards the issue involved in ground no 2 of the revenue's appeal relating to the assessee's claim for deduction under section 80P in respect of interest earned from NSC/KVP/Other banks, it is observed that the same is squarely covered by the decision of the Division Bench of this Tribunal in the case of **S.E., S.E.C. and E. Co. Railways Employees Co-operative Credit Society Ltd. vs ACIT** rendered vide its order dated 30.10.2014 in ITA No. 1693/Kol/2012 wherein it was held by relying on the decision of the Hon'ble Kolkata High Court in the case of **CIT vs South Eastern Railway Employees Co-operative Credit Society (G.A. 1838 of 2010 dated 22.07.2010)**

that interest earned on excess funds by utilising the same for making deposits in bank and other investments has to be regarded as income from business of banking which is entitled for deduction under section 80P(2)(a)(ia) of the Act. Respectfully following the said decision of this Tribunal, I uphold the impugned order of the Ld. CIT (A) allowing the claim of the assessee under section 80P(2) in respect of interest earned on NSC/KVP/Other banks and dismiss ground no 2 of revenue's appeal.

6. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 27th October, 2017.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 27/10/2017

Biswajit, Sr. P.S.

Copy of order forwarded to:

1. M/s. Saktinagar Samabay Krishi Unnayan Samity Ltd.,
Saktinagar, Nadia – 741102, W.B.
2. ACIT, Circle – 41, Nadia.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata