

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 144/Kol/2016
Assessment Year: 2012-13

Income-tax Officer, Wd-36(4), Kolkata	Vs.	The Electro Urban Co-op. Credit Society Ltd., (PAN:AAAJT0889L)
Appellant		Respondent

Date of Hearing	27.09.2017
Date of Pronouncement	17.11.2017
For the Appellant	Shri Kalyan Nath, Addl. CIT
For the Respondent	Shri Dilip Kumar Kar, Officer-in-Charge

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-10, Kolkata dated 10.11.2015 for AY 2012-13.

2. At the time of hearing, Ld. AR for the assessee submitted an application praying for adjournment of the appeal. After hearing the submission of the Ld. AR and also considering the adjournment application, we reject the adjournment application and the appeal is taken up for hearing.

3. The sole issue involved in this appeal of revenue is against the order of Ld. CIT(A) in holding that the interest income from nationalized banks was income from business and was eligible for deduction u/s. 80-P of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

4. Briefly stated facts are that the assessee is a primary employee co-operative credit society registered in 1911. The assessee has filed its return of income for the relevant assessment year under consideration on 28.09.2012 declaring a gross total income of Rs.3,79,82,041/- and after taking deduction of sec. 80P of the Act it has declared the total

income at Rs. Nil. The AO noted from the P&L Account of the assessee society that it has received interest on its investment from various banks at Rs.3,34,19,457/- and the same has been taken by the assessee under the head "Profit and Gains from business". The AO issued show cause notice to the assessee to explain as to why income received on investment should not be treated as income from other sources and why it should not be added to its total income. In its reply, the assessee, inter alia, submitted that the ITAT, 3rd Member bench, Kolkata, in assessee's own cases for AYs 1989-90 to 1992-93 has held that investments made by the assessee, was part of the normal business activities of the assessee and thus the interest earned from such investments would be eligible for deduction u/s. 80P of the Act. But the AO being dissatisfied with the reply of the assessee and, inter alia, relying on the decision of Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. Vs. ITO (2010) 188 Taxman 282 (SC) allowed the interest income derived by the co-operative society from its investments with other co-operative society amounting to Rs.90,21,660/- as deduction u/s. 80P(2)(d) of the Act and remaining interest income received of Rs.2,43,97,796/- was added to the total income of the assessee under the head "Income from Other Sources." Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who allowed the assessee's grounds of appeal by following the judgment of Hon'ble jurisdictional High Court at Calcutta in the case of SE, SEC & E.Co. Railways Employees' Cooperative Credit Society Vs. ACIT (2014) 41 CCH 218 and also the Third Member decision in assessee's own case in ITA Nos. 1168 & 1169/Cal/1994, ITA No. 746/Cal/1995 & ITA No. 816/Cal/1996 for AYs. 1989-90 to 1992-93 dated 26.09.2000 by distinguishing the case law referred by the revenue in Totgar's Co-operative Sale Society Ltd. (supra). Aggrieved, the revenue is in appeal before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the issue before us is against the order of Ld. CIT(A) in holding that the interest income from nationalized banks was income from business and was eligible for deduction u/s. 80-P of the Act. We note that the issue is squarely covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court at Calcutta in the case of SE, SEC & E.Co. Railways Employees' Cooperative Credit Society (supra) and also the Third Member decision in assessee's own case in ITA Nos. 1168 & 1169/Cal/1994, ITA No. 746/Cal/1995 & ITA No. 816/Cal/1996 for AYs. 1989-90 to 1992-93 dated 26.09.2000. We

also note that the Ld. CIT(A) has allowed the appeal of assessee by following the aforesaid two decisions, cited supra, and has observed as under:

“..... The above reasoning has also been followed by the Hon’ble ITAT “SMC” Bench, Mumbai in ITA No. 6627/Mum/2014 dated 10.08.2015.

In the background of the above discussion and given the fact that on identical matters, the Hon’ble jurisdiction of High Court of Kolkata has adjudicated in favour of a similarly placed assessee in a similar matter, the grounds taken by the appellant in this matter (disputed amount of Rs.2,43,97,796/-) are allowed.”

Since the Ld. CIT(A) has allowed the appeal of assessee by following the aforesaid to decisions, cited supra and the Ld. DR was unable to controvert the aforesaid finding of the Ld. CIT(A) by bringing to our notice any change in fact or law, we find no infirmity in the order of the Ld. CIT(A) and the same is hereby upheld. The appeal of revenue is, therefore, dismissed.

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

Order is pronounced in the open court on 17th November, 2017

Sd/-

Sd/-

(J. Sudhakar Reddy)
Accountant Member

(Aby. T. Varkey)
Judicial Member

Dated :17th November, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Wd-36(4), Kolkata.
2. Respondent – The Electro Urnban Co-op. Credit Society Ltd., CESC House, Annex Building, 1st Floor, Chowringhee Square, Kolkata-1.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary