

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'B', CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.362 & 363/Mds/2017  
&  
CO Nos.46 & 47/Mds/2017  
(in ITA Nos.362 & 363/Mds/2017)  
निर्धारण वर्ष / Assessment Years : 2008-09 & 2010-11

Income Tax Officer,  
Ward – 5,  
Namakkal.

Tiruchengode Agricultural  
Vs. Producers Co-operative  
Marketing Society Ltd.,  
No.9, katchery Street,  
Velur Road, Tiruchangode,  
Namakkal District.  
[PAN: AAAAT 2058C]  
(प्रत्यर्थी/Respondent/Cross  
Objector)

(अपीलार्थी /Appellant)

अपीलार्थी की ओर से / Appellant by : Mrs. Sumathy Venkatraman, CIT  
प्रत्यर्थी की ओर से/Respondent by : None  
सुनवाई की तारीख/ Date of hearing : 02.08.2017  
घोषणा की तारीख /Date of Pronouncement : 22.09.2017

**आदेश /ORDER**

Per Sanjay Arora, AM:

This is a set of two Appeals by the Revenue and the Cross Objections by the Assessee agitating the separate Orders by the Commissioner of Income Tax (Appeals), Salem ('CIT(A)' for short) dated 30.11.2016 allowing the assessee's appeals contesting the orders dated 17/12/2014 giving appeal effect to the

appellate order in respect of its' regular assessments under the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment years (AYs) 2008-09 & 2010-11, vide separate orders dated 27.03.2013.

2. The sole issue arising in these appeals by the assessee is whether the Assessing Officer (AO) has correctly given the appeal effect for the two years under reference to the order by the Tribunal, which is a common order dated 17.04.2015 for AYs. 2006-07 to 2008-09, and 2010-11 (in ITA Nos. 27 to 30/Mds/2015). The tribunal per its said order had confirmed that by the first appellate authority, allowing the assessee its claim for deduction u/s. 80P(2)(a)(i) on interest income on jewel loans, disallowed by the AO. The order by the tribunal has in fact been upheld by the Hon'ble jurisdictional High Court in Tax Case Appeal (TCA) Nos.484 to 487 & 490 of 2016 dated 02.08.2016. In other words, has the AO correctly allowed the deduction u/s. 80P(2)(a)(ii) on interest income on jewel loans to members. The same had been disallowed by the AO on the ground that the assessee, a co-operative bank, was neither a primary agricultural credit society nor primary co-operative agricultural and rural development bank, so as to be saved by the exclusion clause of s. 80P(4) and, two, the associate (Class B) members, to whom the bulk of the jewel loans had been extended, did not qualify to be members, for the assessee to be eligible for the deduction u/s. 80P(1) in respect of interest on jewel loans, claimed u/s. 80P(2)(a)(i), which reads as under:

**'Deduction in respect of income of co-operative societies.**

**80P.** (1) Where, in the case of an assessee being a co-operative society....

(2) The sums referred to in sub-section (1) shall be the following, namely:—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) .....

(iii) the marketing of agricultural produce grown by its

members, or  
(iv) to (vii) .....,  
the whole of the amount of profits and gains of business  
attributable to any one or more of such activities:’

The tribunal, in allowing the assessee’s appeals, met both the objections raised by the Revenue. The Hon’ble Court, in further appeal, cited several decisions by the tribunal, extracting there-from, as well as from its earlier decision in *Veerakeralan Primary Agricultural Co-operative Credit Society* (in TCA Nos.735, 755 of 2014 and 460 of 2015 dated 05.07.2016), by which judgment, in its view, the issue/s raised before it by the Revenue was squarely covered against it.

3. We have heard the parties, and perused the material on record, giving our careful consideration to the matter.

We are completely unable to understand as to what the controversy is about. The AO, as he is bound to, has given effect to the appellate order by the tribunal allowing deduction u/s. 80P(2)(a)(i) on the interest income on jewel and other loans to their members at ₹. 96,10,351/- and ₹. 1,35,97,524/- for AYs 2008-09 and 2010-11 respectively. If, in the view of the assessee, it is entitled to the said deduction in a larger sum/s, it ought to have furnished its calculation/s to the AO in its respect. Normally such calculations are exchanged so as to avoid omission or mis-calculation, particularly where a number of figures/variables are involved. The issue in principle, i.e., the assessee’s entitlement to deduction u/s. 80P(2)(a)(i) on jewel loans extended to members having been settled, i.e., in assessee’s favour, the matter reduces to essentially one of calculation. Either per an application u/s. 154 or an appeal, it was incumbent on the assessee to furnish an alternate calculation, i.e., to that provided by the AO per the appeal giving effect order or, in the least, specify the mistake/s or the omission/s inflicting the AO’s working. The same has not

been done either before the Revenue authorities or even before us. Merely stating that the AO has, in doing so, computed deduction u/s. 80P(2)(a)(i) *to the disadvantage of the assessee*, as does the Id. CIT(A), is neither here nor there, i.e., in the absence of any flaw in the AO's working being pointed out. The endorsement thereof by the Id. CIT(A) is thus completely misplaced. His further stating that the same defeats the 'outcome' of the appellate order fails to appreciate that it is this 'outcome' which is itself in dispute. As afore-noted, it is not the AO – as stated by the Id. CIT(A), but the assessee who has to, in case of difference/s, initiate action or take recourse to rectification/correction, pointing out the mistake/error/s attending the Revenue's calculation. In the present case we are at loss to understand as to what that mistake/error is, and which explains our observation to that effect earlier. The impugned order/s, which is identical in both the cases, is therefore unsustainable. The Id. counsel for the assessee, Shri S.Sridhar, Advocate, who appeared on 26.07.2017, also did precious little other than by way of furnishing some loose, unattested sheets, which appear to be extracts from the assessee's final accounts. Now, it is nobody's case that the figures drawn by the AO are not from the assessee's final accounts. As afore-noted, it is only where the error/s attending the AO's working are pointed out, preferably by furnishing an alternative working, that an adjudicating authority would be informed of all the differences and appreciate the reasons for the same, and decide as to which of the two is correct – in whole or in part. This is precisely what the Id. CIT(A) ought to have done, rather than inferring the AO to have exceeded his jurisdiction.

We, next, peruse the assessee's working to examine the basis of the difference. The assessee's claim u/s. 80-P(2)(a)(i) are both the years is as under:

<u>Particulars / Assessment Year</u>	<u>2008-09 (₹.)</u>	<u>2010-11 (₹.)</u>
Jewel loan	2,09,70,911	3,62,60,807
Other loan	61,87,994	--
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Total	2,71,58,905	3,62,60,807
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Less: Interest relating to other (marketing) division	58,27,616	66,42,295
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Interest income claimed deduction u/s. 80-P(2)(a)(i)	2,13,31,289	2,96,18,512
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The AO has, while allowing deduction under u/s. 80P(2)(a)(i) proceeded on the basis of these figures (which match with the accounts), reducing there-from the following:

Less:				
Interest expenditure	33,71,236		1,01,28,985	
Proportionate general expenditure	83,49,702	1,17,20,938	58,92,003	1,60,20,988
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		96,10,351		1,35,97,524
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While interest expenditure is on the basis of actuals, the general expenses (which figures also match with the accounts) are apportioned on the basis of gross income, i.e., comprising gross interest income and other income, both prior to the general expenses. What, then, one may ask, is wrong with the same a amiss therein? The expenditure, be it on account of interest on borrowed capital toward the relevant advances, or the establishment costs – as allocable to the relevant activity (being apportioned on gross income basis), has to be deducted to arrive at the income earned on the relevant advances. Income, after all, is only net of expenses (*CIT v. Walfort Share & Stock Brokers (P.) Ltd.* [2010] 326 ITR 1 (SC); *Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT* [2010] 328 ITR 81 (Bom)) and it is only the income as included in the gross total income (GTI) on which deduction under Chapter VI-A is allowable (s. 80AB), and toward which the Revenue relies on the decision in *Sabarkantha Zilla Kharid Venchan Sangh Ltd. v. CIT* [1993] 203 ITR 1027 (SC), a principle reiterated by it again recently in *The Citizen Co-operative Society Ltd. v. Asst. CIT* [2017]

397 ITR 1 (SC) (at para 3/pg.4 of the judgment). The law in the matter is well settled. Reference in this regard may also be made to decisions, *inter alia*, in *IPCA Laboratory Ltd. v. Dy. CIT* [2004] 266 ITR 521 (SC) and *CIT v. Kotagiri Industrial Tea Factory Ltd.* [1997] 224 ITR 604 (SC). The assessee has in fact not raised any dispute in this regard at any stage. Rather, on account of claiming deduction on gross income, i.e., without deducting expenses, its claim for deduction u/s. 80P exceeds the GTI, being at ₹ . 410.28 lacs and ₹ . 598.54 lacs as against the GTI at ₹ . 209.20 lacs and ₹ . 343.69 lacs for the two successive years respectively (PB pg. 59/AY 2008-09 and pg. 57/AY 2010-11). In other words, the claim for deduction (of income from the activities specified in s. 80P(2)) exceeds the income itself. As it, therefore, transpires, the assessee, in the garb of claiming deduction u/s. 80P(2)(a)(i), is seeking deduction *qua* other, non-eligible income, since already assessed and brought to tax. True, the AO has, while giving appeal affect, apportioned the general expenses on only interest income under reference, i.e., on jewel and other loans falling u/s. 80P(2)(a)(i). That, however, would make no difference to the net assessable (or total) income under the Act as interest income on the other (marketing) division has already been allowed deduction u/s. 80P(2)(a)(iii) on gross income basis. In fact, this is itself debatable as the said interest (for marketing the products) would equally be deductible u/s. 80P(2)(a)(i) – which he allows for the first time, as the provision makes no distinction with reference to the purpose for which the loan/credit is extended by a cooperative society to its member. In other words, we observe no infirmity, both in principle and in effect, in the AO's working for the two years under reference.

The assessee, per its COs, challenges the AO's impugned orders on the ground that no appeal had, similarly, been filed by the AO against the orders by the Id. CIT(A) for AYs. 2006-07 and 2007-08. The COs were, firstly, not pressed during hearing and, therefore, not responded to by the Revenue. Two,

the working by the AO and the order by the Id. CIT(A) for these two years is not before us to be able to make any comment on the assessee's charge, including on the tax effect of the appeals for those years. The same is even otherwise misplaced as each year is a separate and independent unit of assessment. The AO, in working the deduction u/s. 80P(2)(a)(i) on the (net) income from eligible/specified activities, has applied the correct principle of law. There is neither an estoppel against law nor any vested right against a statute. The assessee's COs are, therefore, without merit.

In sum, the AO, in the first instance, had rejected the assessee's claim for deduction u/s. 80P(2)(a)(i) at the threshold, i.e., on the ground of it being ineligible. That is, regarded it as not qualifying for deduction. The question of the quantum of deduction or its determination did not arise for consideration. The claim being held valid, he has allowed the same on the basis of the underlying facts and figures. It is only at this stage that he was called upon to, and has, accordingly, allowed deduction, which is to be at the correct amount. We have examined the algorithm of the assessee's working to find it to be in accordance with the fundamental principle of only the net income being assessable and, further, of only the relevant income as included in the GTI being eligible for deduction. Merely because the same works to a figure lower than that claimed by the assessee, is, by itself, no ground for regarding the same as erroneous. The assessee's working, after all, cannot be considered as sacrosanct. Deduction could only be of the income included in the GTI, so that the assessee's claim, made on the basis of gross interest income, is without basis in law as well as on facts. This has led to its claim u/s. 80P(1) exceeding the GTI. Further, no infirmity or fallacy in the AO's working has either been found by us or pointed out by the assessee at any stage. The AO has not exceeded his jurisdiction. Why, the Apex Court in *The Citizen Co-operative Society Ltd.* (supra) also made light of the inclusion of associate members, which aspect/s though cannot

be considered in appeal giving effect proceedings or the appellate proceedings arising there-from. The AO's working is accordingly confirmed. The assessee, as it transpires, by not taking the proportionate expenses into account, is seeking to claim deduction u/s. 80P on other, assessable income. As regards the assessee's COs, the same were not pressed and, besides, there is no estoppel against law (also refer: *C.K.Gangadharan & Anr. v. CIT* [2008] 304 ITR 61 (SC)). We, accordingly, have no hesitation in, setting aside the impugned order, restoring that of the AO. We decide accordingly.

4. In the result, the Revenues' appeals are allowed and the assessee's COs, dismissed.

*Order pronounced on September 22, 2017 at Chennai.*

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, September 22, 2017

EDN

Sd/-

(संजय अरोड़ा)

(Sanjay Arora)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF