

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.225/Coch/2016 : Asst.Year 2012-2013

The Kerala State Homoeopathic Co-op. Pharmacy Limited C/o. Joseph & Nampiathiri Chartered Accountants Baiban Shopping Complex West of MCH Junction Alappuzha – 688 001. PAN : AAJTO881C.	Vs.	The Asst. Commissioner of Income-tax, Circle – 1 Alappuzha.
(Appellant)		(Respondent)

Appellant by : Sri. A.Krishnan, Advocate
Respondent by : Smt.Swapna Nanu Ambat

Date of Hearing : 12.03.2018	Date of Pronouncement : 13.03.2018
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ORDER

Per George George K., JM

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax (Appeals)'s order dated 31.03.2016. The relevant assessment year is 2012-2013.

2. The grounds raised read as follows:-

1. *The order of the learned CIT (Appeals) on the facts and in the circumstances of the appellant's case is contrary to the facts and is opposed to law.*

2. The learned assessing officer went wrong in disallowing the deduction claimed by your appellant, which was later confirmed by learned CIT [Appeals], u/s. 80 P (2) (d) of the I. T Act of interest on investment with Alleppey District Co-op. Bank amounted to Rs. 1,047,808/- It was held in CIT vs Anr. V Iqbalpur Co-opeartive Cane Development Union Ltd [2009] 29 (I) ITCL 645 [Uttarakhand HC] that interest earned by a society from its unutilized fund invested in banks other than co-operative bank is eligible for deduction u/s. 80 P. Further the Hon'ble Patna High Court in Bihar State Housing Co-operative Federation Ltd vs CIT [2009] 315 ITR 286 also supports the proposition that income earned on deposit of surplus funds with bank is entitled to exemption u/s. 80P of the Act.

3. The learned CIT [Appeals] has to appreciate the fact that any interest / dividend received by any Co-operative Society from its investment with any other Co-operative Society are subject to deduction u/s. 80 P (2) (d) of the I T Act, 1961. In the appellant's case, your appellant has received an interest amounted to Rs. 1,047,808/- from Alleppey District Co-operative Bank, being a Co-operative Society registered u/s. 10 of Travancore-Cochin Co-operative Societies Act, 1951, which is subject to deduction specified u/s. 80P (2)(d) of the Act.

4. The learned CIT [Appeals] has to take into consideration that Section 80 P (2) (d) of the I T Act is a beneficial provision and it should be construed beneficially to the assessee. The learned CIT [Appeals] has to understand the fact that the benefit given under the provisions of the Sec. 80 P (2) (d) of the I T Act to the eligible Co-operative Societies is being completely exhausted by disallowing the deduction claimed by your appellant.

In view of the above grounds your appellant prays

that the disallowance of Rs.10,47,808/- made in respect of deduction claimed u/s 80P shall be deleted."

3. The brief facts of the case are as follow:-

3.1 The assessee is a Co-operative Society. It is engaged in the business of manufacturing and sale of homoeopathic medicines. For the assessment year 2012-2013, return of income was filed on 29.09.2012, declaring total income of Rs.1,39,30,980. The assessment was completed u/s 143(3) of the I.T.Act vide order dated 31.01.2015. In the assessment completed, the Assessing Officer had denied the assessee's claim of deduction u/s 80P(2)(d) of the I.T.Act. The reasoning for the Assessing Officer to deny the benefit of deduction u/s 80P(2)(d) of the I.T.Act was that the payer of the amount, viz., Alleppey District Co-operative Bank is not a Co-operative Society and interest / dividends paid by the Co-operative Society alone is entitled to exemption u/s 80P(2)(d) of the I.T.Act.

4. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

"9. The assessee has submitted that the amount claimed u/s 80P(2)(d) is the interest received from Alleppey District Co-operative Bank. As per section 80P(2)(d) deduction can be claimed only in respect of interest or dividend from investments with a co-operative society. Hence the interest was received from Alleppey District Co-operative Bank which does not fall under the category of Co-operative Society. The

assessing Officer states that the assessee does not satisfy the conditions as per section 80P(4). Hence the deduction claimed under 80P is disallowed and added to the income of the assessee.

10. The action of the assessing officer is supported by the decision of ITAT in the case of Aryad Block Small Scale Coir Fibre Mats Manufacturers' Co-op. Society (I.T.A.No.787/Coch/2013). Hence, the argument of the assessee is not accepted in the issue of deduction u/s 80P(2)(d) to the extent of Rs.10,47,808/-."

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned Counsel for the assessee had filed a petition to produce additional evidence. The additional evidence in the registration certificate of the payer, viz., Alleppey District Co-operative Bank under the Travancore-Cochin Co-operative Society Act, 1951. It was submitted by the learned AR that the certificate could not be produced before the authorities below since it was not sought by them. It was submitted that the document now produced is vital and goes to the root of the issue to determine whether interest received on investment made by the assessee with Alleppey District Co-operative Bank was entitled to exemption u/s 80P(2)(d) of the I.T.Act and same may be taken on record.

6. The learned Departmental Representative, on the other hand, supported the assessment order and the CIT(A)'s order.

7. We have heard the rival submissions and perused the material on record. Section 80P(2)(d) exempt income received by a Co-operative Society by way of interest or dividend from

another Co-operative Societies. In the instant case, the claim of deduction u/s 80P(2)(d) was denied for the reason that the payer, viz., Alleppey District Co-operative Bank is not a Co-operative Society and hence the provisions of section 80P(2)(d) does not apply. The assessee has now produced a certificate stating that the payer, viz., Alleppey District Co-operative Bank is a Society registered under the Travancore-Cochin Co-operative Society Act, 1951. For substantial cause and justice, we are of the view that the certificate now produced needs to be taken on record, since the same is vital and goes to the root of issue. Accordingly, we admit the additional evidence and take the same on record. Since the additional evidence is taken on record, the matter necessary have to be examined by the Assessing Officer. The Assessing Officer shall afford reasonable opportunity of hearing to the assessee and shall take a decision whether assessee is entitled for deduction u/s 80P(2)(d) of the I.T.Act for an amount of Rs.10,47,808. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 13th day of March, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 13th March, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr.CIT Kottayam.
4. The CIT(A) , Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin