

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1314/Kol/2015
Assessment Year:2012-13

Income Tax Officer, Ward-32(3), 10B, Middleton Row, 2 nd \Floor, Kolkata-71	बनाम / V/s.	M/s Bokaro Steel Employee’s (Calcutta), Co- operative Credit Society Ltd., Rajkamal Building, 13, Camac Street, Circus Avenue, Shakespeare Sarani, Kolkata-17 [PAN No.AAAAN 5093 M]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Arindam Bhattacharjee, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri U.S. Saha, FCA
सुनवाई की तारीख/Date of Hearing	29-01-2018
घोषणा की तारीख/Date of Pronouncement	21-03-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-9, Kolkata dated 26.08.2015. Assessment was framed by ITO Ward-32(3), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 29.08.2014 for assessment year 2012-13. The grounds raised by the Revenue per its appeal are as under:-

“Ground No.1: That, on the facts and in circumstances of the case the Ld. CIT(A)-9, Kol, erred in allowing the interest income of Rs.36,88,150/- claimed by the assessee under the head of interest of Fixed Deposit as Deductible u/s. 80P.”

Ground No.2: "That on the "facts and circumstances of the case, the Ld. CIT(A)-9, Kolkata failed to appreciate the ratio of judgment of the Apex Court in the case of M/s. The Totgars' Co-operative Sale Society Limited Vs. Income Tax Officer (2010) 322 ITR 383 (Sc) wherein it was held that income by way of interest on deposits held with scheduled Banks, Bonds and others securities falls in the category of 'Other Income' which had been rightly taxed by the department."

Ground No.3: "That, the appellant craves leave to submit additional grounds of appeal, if any, at or before the time of hearing and/or alter, modify, reframe any grounds of appeal at or before the time of hearing."

Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue and Shri U.S. Saha, Ld. Authorized Representative appeared on behalf of assessee.

2. Brief description of the case is that assessee is a co-operative society & engaged in providing the credit facilities to its members. The assessee filed the return of income declaring the total income of Rs. Nil after claiming the deduction u/s 80P(2)(a)(i) of the Act. During the assessment proceedings Assessing Officer found that assessee has invested the surplus funds in the short-term deposits and securities and earned the interest income of Rs.36,88,150.00/- on such investment. Against such interest income, the assessee has claimed deduction u/s 80P(2)(a)(i) of the Act.

2.1 However AO was of the view that the impugned interest income represents the income from other sources under section 56 of the Act as it is not arising in the course of providing credit facilities to the members of the society. Thus the deduction under section 80P of the Act in respect of such income cannot be allowed. Accordingly the AO issued a show-cause notice to the assessee for the clarification.

2.2 In compliance thereto the assessee submitted that all the investments have been made as per the provisions of section 79 of the West Bengal Co-operative Societies Act 2006. There was no diversion of funds for the purpose other than the objectives mentioned in the bye laws.

2.3 That principles laid down in the judgment of Hon'ble Supreme court in the case of M/s The Totgars' Cooperative State Society Limited Vs. ITO (322 ITR 283) are not applicable to the instant case as in that case the assessee was not an employee co-operative credit society.

2.4 However the AO after due consideration of submission made by the assessee during the assessment proceeding concluded that the deduction u/s 80P is available to the assessee in respect of the interest income from the members as well as in respect of the income on the investment made in other co-operative society. Accordingly, the AO observed that the income being interest income from the members and from the investment in the co-operative society is eligible for deduction u/s 80P(2)(a)(i) & 80P(2)(d) of the Act. Thus, the amount of income for Rs.36,88,150/- is not eligible for deduction u/s 80P(2)(a)(i) of the Act and liable to be Taxed u/s 56 of the Act as income from "other sources". Accordingly, the addition was made by the AO in the hands of the assessee.

3. Aggrieved assessee preferred an appeal before the Ld. CIT(A) against the order of AO. During the appeal proceedings before Ld. CIT(A) assessee submitted that interest income arising from the investments is in the nature of "Income from Business" and not from income from other sources.

3.1 The amount of such interest income was distributed among the members of the society as dividend as well as it was used for providing the loan.

3.2 In all earlier years & succeeding years there was no such disallowance made by the AO.

3.3 The assessee in support of its claim relied on the order of this Hon'ble ITAT in the case of South Eastern Railway Employees Co-Op Credit Society Ltd. Vs ACIT, **ITA No. 1693/Kol/2012** for the AY 2008-09 and submitted that in the same facts and the circumstances the issue was decided in favour of assessee. Hence there should not be any disallowance with regard to the deduction u/s 80P of the Act on account of interest income on the investment.

The ld. CIT(A) after considering the facts and submission of the assessee deleted the addition made by the AO.

The Revenue, being aggrieved by the order of ld. CIT(A) is in appeal before us.

4. Ld. DR argued that the impugned issue has already been decided in favour of the Revenue by the Hon'ble Supreme Court in the case of *Totgar's Cooperative Sale*

Society Limited -vs.- ITO reported in [2010] 322 I TR 283, wherein it was held that interest income arising to a Cooperative Society carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members, on the surplus, which is not required immediately for business purposes, from investment in short-term deposits and securities, has to be taxed as income from other sources. He also contended that there is no information whether the investment was made out of the surplus fund or out of the deposits made by the members which are shown as liability in the balance sheet of the assessee. The ld. DR vehemently supported the order of the AO.

On the other hand the ld. Counsel for the assessee submitted that the deduction on account of interest income on the money deposited with the bank is available in view of the judgment of the Hon'ble Uttarkhand High Court in the case of *CIT Vs. Iqbalpur Co-operative Bank development Union Ltd* (2009) 315 ITR 441 (Uttarkhand) and the identical issue was also decided in favour of the assessee by the Hon'ble Patna High Court in the case of *Bihar State Housing Co-operative Federation Ltd. Vs. CIT* (2009) 315 ITR 286 (Pat). Therefore, on the facts and circumstances of the above cited case law, the AO was not right in taxing the business income of the assessee-society as interest income" which should be allowed in full u/s. 80P(2)(a)(i) of the Act as the same are for the interest of the members as well as the same are wholly and exclusively , the interest income is attributable to the activities of the assessee, which is carrying on the business of providing credit facilities to its members. The interest income received from investment of GOI bonds by the assessee is eligible to deduction u//s 80P(2)(a)(i) of the Act is directly attributable to the business of the assessee-Co-Op society.

5. We have heard the submissions made by the rival parties. We have also examined the orders passed by the Authorities Below and the judgments / orders cited by the representatives of both the parties. In the present case, the amount was invested by the assessee in the form of short term deposits / other deposits in the bank. Accordingly the assessee on such investment earned interest income which was treated by the AO as income from other sources. Thus the impugned interest income

was not eligible for deduction u/s 80P(2)(a)(i) of the Act. Accordingly the deduction claimed by the assessee on such interest for Rs. 36,88,150/- was denied by the AO. However, the Id CIT(A) reversed the order of AO by observing that such interest income is eligible for deduction u/s 80P(2)(a)(i) of the Act. Now, the issue before us arises whether such interest income is eligible for deduction u/s 80P(2)(a)(i) of the Act. In this regard, we note that Ld. AR cited the case law of Hon'ble Supreme Court in the case of *Totgar's Cooperative Sale Society Limited* (supra) the sale proceed of agricultural produce, which was payable to its members, in many cases, was retained by the assessee-society and the same was invested in short-term deposits/securities. In such facts and circumstances of the case, interest income received on short-term deposits/securities was held to be chargeable to tax under the head “**income from other sources**” by the Hon'ble Supreme Court by observing that the amount invested by the assessee was a liability payable to its members, and, therefore, the interest income could not be said to be attributable to the activity mentioned in section 80P(2)(a)(i).

5.2 However it was contended by the Id. AR that the amount was not invested in bank to earn interest out of the money payables to the members. As such, the amount invested was not immediately required by the assessee for lending money to the members as there was no applicant looking for the loan from the assessee. Thus, surplus money was deposited in a bank so as to earn interest income.

In view of above we note that in the identical facts and circumstances the Co-ordinate Bench of this Tribunal in the case of *ITO Vs. The Baksara Co-operative Credit Society Ltd.* in **ITA No.1890/Kol/2012** order dated 18-11-2015 has restored the appeal to the AO for fresh adjudication in accordance with the law. In the order of this Tribunal the case of *Totgar's Cooperative Sale Society Limited* (supra) was duly considered. The relevant extract of the order is reproduced below:-

“11. We have considered the rival submissions and carefully perused the relevant material available on record. In the case of *Totgar's Cooperative Sale Society Limited* (supra) cited by the Id. D.R. in support of the revenue's case on the issue under consideration, the assessee-Society besides carrying on the business of providing credit facilities to its members was also marketing its agricultural produce. The sale

proceed of such agricultural produce, which was payable to its members, in many cases, was retained by the assessee-Society and the same was invested in short-term deposits/securities. In these facts and circumstances of the case, interest income received on short-term deposits/securities was held to be chargeable to tax under the head 'income from other sources' by the Hon'ble Supreme Court observing that the amount invested by the assessee was a liability payable to its members, and, therefore, the interest income could not be said to be attributable to the activity mentioned in section 80P(2)(a)(i). In the case of Tumkur Merchants Souharda Credit Cooperative Limited (supra) cited by the ld. Counsel for the assessee, the amount, which was invested in Bank to earn interest, was not an amount due to any member and which was not the liability shown in their accounts. In fact, the said amount, which was in the nature of profit and gains, was not immediately required by the assessee for lending money to the members as there were no takers and the same, therefore, had been deposited in a Bank so as to earn interest. In these facts and circumstances of the case, as involved in the case of Tumkur Merchants Souharda Credit Cooperative Limited (supra), the decision of the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Limited was found to be distinguishable on facts by the Hon'ble Karnataka High Court and the interest income received by the assessee- Society on Bank deposits was held to be its business income being attributable to carrying on the business of banking eligible for deduction under section 80P(2)(a)(i) of the Act.

12. Keeping in view the decision of the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Limited (supra) cited by the ld. D.R. and the decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Limited (supra) cited by the ld. Counsel for the assessee, the question that arises in the case on hand, is whether the investment, which is made by the assessee-Society and which has fetched interest income in question, is made out of its own surplus fund, as was the case in Tumkur Merchants Souharda Credit Cooperative Limited (supra) or the same is made out of the amount payable by the assessee-Society to its members, which represent its liability as was the case in Totgar's Cooperative Sale Society Limited. In this regard, it is observed that this aspect has not been specifically considered either by the Assessing Officer or by the ld. CIT(Appeals) in their respective orders and, therefore, there is no finding specifically given by them on this relevant aspect. In this regard, a perusal of the relevant balance-sheet of the assessee as on 31.03.2009 (copy of which at pages 67 & 68 of the paper book), shows that the total investment made by the assessee-Society was Rs.22.08 crores as on 31.03.2009, whereas the Reserves & Surplus and Profit & Loss A/c. balance as on the said date were Rs.1.76 crores and 1.73 crores respectively. The major amount appearing on the liability side of the balance-sheet as on 31.03.2009 was deposit and other account aggregating to Rs.28.89 crores, which comprised of various funds and deposits. Keeping in view these facts and figures, we are of the view that the issue as to whether the relevant investment is made by the assessee out of its own surplus funds or out of the amount payable to its members, which represent its liability, requires verification in order to determine the exact head of income under which the interest on such investment is chargeable to tax in the hands of the assessee by applying the relevant case laws. We, therefore, set aside the impugned order of the ld. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after verifying the relevant factual position from record and after giving the assessee proper and sufficient

opportunity of being heard. Ground No. 2 of the Revenue's appeal is accordingly treated as allowed for statistical purposes."

In the case on hand there is no information whether the money invested in the bank was out of the money payable to the members or out of the surplus fund retained by the assessee. In the absence of the necessary information, we are inclined to restore the issue back to the file of AO for fresh adjudication in accordance with the provisions of law and in the light of the decision of this Tribunal in the case of *the Baksara Co-operative Credit Society Ltd. (Supra)*. Hence the ground of appeal of the Revenue is allowed for statistical purposes.

6. In the result, for statistical purpose, the appeal of Revenue is treated as allowed.

Order pronounced in open court on 21/03/2018

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 21/03/2018 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO, Wd-32(3), 10B Middleton Row, 2nd Floor, Kolkata-71
2. प्रत्यर्थी/Respondent-M/s Bokaro Steel Employee's (Calcutta) Co-Op. Credit Society
Ltd. Rajkamal Building, 13, Camac St, Circus Avenue
Shakespeare Sarani, Kolkata-17
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता