

IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 7018/Mum/2017 (Assessment Year 2014-15)

M/s. Lokhandwala Residency Towers CHS Ltd. L.N. Papan Marg Worli, Mumbai-400 018. PAN : AAAAL1747L (Appellant)	Vs.	ITO-21(2)(2) Room No. 111 Piramal Chambers Parel Mumbai-400 012. (Respondent)
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Assessee by	Shri Vimal Punmiya
Department by	Smt. N. Hemalatha
Date of Hearing	05.4.2018
Date of Pronouncement	20.4.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 06-09-2017 passed by Ld CIT(A)-33, Mumbai and it relates to the assessment year 2014-15. The issues urged in this appeal are :-

- (a) Whether the assessee is eligible for deduction u/s 80P(2)(d) of the Act in respect of interest received from co-operative banks?
- (b) Whether the rent received by the assessee from letting its Guest house is exempt under Principles of Mutuality.
- (c) Whether the rent received from Digital Display board is covered by the principles of mutuality.

2. The assessee is a housing co-operative society. The first issue relates to the deduction claimed u/s 80P(2)(d) of the Act in respect of interest income received from co-operative banks. It earned interest income of Rs.14.33 lakhs from deposits kept with co-operative banks and other banks. The assessee claimed that the interest received from co-operative banks is deductible u/s 80P(2)(d) of the Act. The AO rejected the said claim and the Ld CIT(A) also upheld the same.

3. We heard the parties on this issue and perused the record. We notice that an identical issue was considered by the co-ordinate bench in the case of Lands End Co-operative Housing society Ltd Vs. ITO (ITA No.3566/Mum/2014 dated 15-01-2016) and this issue was decided in favour of the assessee with the following observations:-

*8.3 We have heard the rival submissions and perused the material on record. We find that the CIT(A) enhanced the income of the assessee by rejecting the deduction u/s 80P(2)(d) of the Act of Rs.14,88,107/- being interest on investment with other Coop. banks by following the decision in the case of Bandra Samruddihi Co-operative Housing Society Ltd.(Supra) which was passed on the basis of the decision passed by the Hon'ble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd. In the case of Totagar's Co-operative Sale Society Ltd v/s ITAT (supra) the Hon'ble Supreme Court while interpreting the section 80P(2)(a)(i) of the Act held that surplus funds not immediately required in the business and invested in the short term deposit would be assessable under the head "income from other sources" where the Cooperative society is engaged in carrying on business of banking or providing credit facilities to its members and consequently no deduction is allowable u/s 80P(2)(a)(i) of the Act. Whereas in the case before us the issue is whether a co-operative society which has derived income on investment with cooperative banks is entitled to deduction u/s 80P(2)(d). The provisions of Section 80P(2)(d) of the Act provide deduction in respect of income by way of interest or dividend on investments made with other Cooperative society. For the purposes of better proper understanding of these two provisions the relevant extract of the section are reproduced below:*

*80P: Deduction in respect of income of co-operative Societies.*

*1. Where, in the case of an assessee being a co-operative society, the gross total income, includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*

*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.*

*The whole of the amount of profits and gains of business attributable to any one or more of such attributes.*

*(d) In respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income.”*

*From the close perusal of the provisions of u/s 80P(2)(a)(i) and 80P(2)(d) it is clear that the former deals with deduction in respect of profits and gain of business in case of the co-operative society carrying on business of banking or providing credit facilities to its members if the said income is assessable as income from business whereas latter provides for deduction in respect of income by way interest and dividend derived by assessee from its investments with other cooperative society. Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(d)(i) in respect of its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. Now will evaluate the assessee's case in the light of the decision of the Hon'ble Supreme court. The Hon'ble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd.(Supra) held that a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit facilities to its members in that case the said income from short term deposits shall be treated and assessed as income from other sources and deduction u/s 80(P)(2)(a)(i) would not be available meaning thereby that deduction u/s 80(P)(2)(a)(i) is available only in respect of income which is assessable as business income and not as income from other sources. Whereas in distinction to this , the provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop society if such income is included in the gross total income of the such coop society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/- in respect of interest received/derived by it on deposits with coop. banks and therefore the appeal of the assessee is allowed by reversing the order of the CIT(A). The AO is directed accordingly.”*

4. Consistent with the view taken by the co-ordinate bench, we hold that the assessee is entitled for deduction u/s 80P(2)(d) of the Act in respect of interest income earned on deposits kept with the co-operative banks. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow deduction as stated above.

5. The Ld A.R submitted that it has also received interest of Rs.1,28,421/- from its members and claimed that the same is exempt under Principles of mutuality. Since the Principles of Mutuality shall apply to the amount

contributed by the members, we direct the AO not to tax the above said amount received from the members.

6. The Ld A.R submitted that there is a casting error of Rs.42,940/- in the disallowance made by the AO. We direct the AO to examine the said claim of the assessee and take appropriate decision.

7. The next issue urged by the assessee relates to the rent from guest houses let out by the assessee to its members. The Ld A.R submitted that the guest houses are taken on rent only by its members in order to accommodate their relatives. Since the contribution for rent has been received from the members, the Ld A.R submitted that the Principles of Mutuality shall apply and accordingly the rent received by the assessee on renting of guest house is not taxable.

8. We heard the parties on this issue. We notice that the AO has observed that the rent has been received from non-members, while the assessee submits that the rent has been received from its members only, though occupied by the relatives of members. If the guest house has been taken on rent by the members and rent is paid by them, then the principles of mutuality shall apply. If the payments have been made by outsiders, then the Principles of Mutuality will not apply. Hence it is required to be seen as to whether the booking of guest house and the payment for the same has been made by the members or not. These facts require verification in view of conflicting claims. Accordingly, we restore this issue to the file of the AO for examining the same in the light of principles discussed above.

9. The next issue relates to the rent received on Digital Display Board. Since it is received from outsider, the same is liable to be taxed. Such kind of income is taxable as income from house property as held by Delhi bench of Tribunal in the case of Manpreet Singh (2015)953 taxmann.com 244). Accordingly we direct the AO to assess this income under the head Income from House Property and allow deduction allowable u/s 24 of the Act.

10. The order of Ld CIT(A) would stand modified accordingly.
11. In the result, the appeal of the assessee is treated as allowed.  
Order has been pronounced in the Court on 20.4.2018.

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 20/4/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,  
(Senior Private Secretary)  
ITAT, Mumbai