



IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.6634/Mum/2017

(Assessment Year :2014-15)

M/s.Wooden Boxes Manufacturers Co-op Industrial Estate Limited C/o. Jayesh Sangharajka & Co. LLP Chartered Accountants Unit No.405, Hind Rajasthan Centre, D.S. Phalke Road Dadar (E) Mumbai – 400 014	Vs.	Assistant Commissioner of Income Tax 21(3) Mumbai
PAN/GIR No.AAAAW0647G		
Appellant)	..	Respondent)

Assessee by	Shri Harshvardhan Butar
Revenue by	Shri V. Vidhyadhar
Date of Hearing	22/06/2018
Date of Pronouncement	27/06/2018

आदेश / ORDER

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-33, Mumbai dated 18/09/2017 for the A.Y.2013-14 in the matter of order passed u/s.143(3) of IT Act.

2. Grievance of assessee relates to decline of claim of deduction u/s.80P of the Income tax Act, 1961, in respect of interest income received from co-operative society.

3. Following grounds have been taken by the assessee:-

1. On the given facts, circumstance and judicial pronouncements; learned CIT Appeals erred in denying the deduction u/s 80P of the Income Tax Act, 1961 in spite of the fact that interest is received from a co-operative society and such denial of deduction is bad in law and liable to be allowed.

2. On the given facts, circumstances and judicial pronouncements; learned CIT Appeals erred while denying the deduction u/s 80P without considering the order of Income Tax Appellate Tribunal in assessee's own case where in on the identical facts Hon'ble ITAT had allowed the deduction claimed by the assessee u/s 80P of Income Tax Act, 1961 and such non-consideration of ITAT judgement is bad in law and the same should be followed and deduction claimed should be allowed.

3. On the given facts, circumstances and judicial pronouncements; learned CIT Appeals erred in not following the settled proposition thereby leading to the unwarranted litigation, Hon' Bench is requested to grant the cost to the assessee.

4. The appellant craves leave to add, amend, alter or delete all or any of the previously mentioned grounds of appeal.

4. Rival contentions have been heard and record perused.
5. In this appeal, assessee is basically aggrieved for decline of claim of deduction u/s.80P in respect of interest received from Co-operative society. It was argued by learned AR that issue is covered by the order of the Tribunal in assessee's own case for the A.Y.2009-10 vide order dated 26/08/2014 and the decision in assessee's own case should not have been ignored by the lower authorities especially when earlier decision is not challenged in High Court and in subsequent period other than the year under appeal deduction under 80P has been allowed.
6. It was further submitted by learned AR that in the case relied by CIT(A), the assessee was in the business of banking and money lending

whereas assessee is co-operative society of residential and commercial units and not engaged in business of banking and hence, provisions of 80P(4) are not applicable to the assessee and hence, reliance by the CIT(A) on the case of Vaibhav Coop Society is misplaced.

7. We have carefully gone through the orders of the authorities below and found from record that issue under consideration is squarely covered by the decision of Co-ordinate Bench in case of M/s. Sea Green Co-operative Housing Society Ltd., in ITA No.1343/Mum/2017 vide order dated 31/03/2017. Precise observation of Tribunal was as under:-

5. We have carefully considered the rival submissions. The facts lie in a narrow compass, inasmuch as, the appellant is a Co-operative society, whose income , inter-alia, included interest earned on deposits with another Co- operative bank. Accordingly, such income was claimed as exempt under [section 80P\(2\)\(d\)](#) of the Act. The claim has been denied primarily on account of the fact that [section 80P\(2\)\(d\)](#) of the Act relates to the income earned from a Co-operative society. In this context, the decision of the Mumbai Tribunal in the case of Lands End Co-operative Housing Society Ltd. (supra) is rendered under identical circumstances and the following discussion is relevant:-

"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 Samruddhi 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 ITA

No.1343/MUM/2017 (AY. 2013-14) 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 Honble 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 ITA No.1343/MUM/2017 (AY. 2013-14) 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.

5.1 It is clear that the Tribunal in the case of Lands End Co-operative Housing Society Ltd. (supra) has considered a similar situation and allowed the claim of the assessee. We find that the CIT(A) has placed reliance on the decision of the Ahmedabad Bench of the Tribunal in the case of State Bank of India Employees Co-operative Credit Society Ltd 57 taxman.com 367. It is further noted by the CIT(A) that the said decision of the Ahmedabad Bench of the Tribunal has been referred to by the SMC Bench of Mumbai Tribunal in the case of Shri Saidatta Cooperative Credit Society Ltd. (supra). In our view, the reliance placed by the CIT(A) on the judgment of the Ahmedabad Bench of the Tribunal is quite untenable, inasmuch as, in the said case the interest income in question was earned from deposits kept with State Bank of India. Obviously, State Bank of India is not a Co-operative society so as to justify the claim that such interest

earnings fall within the scope of section 80P(2)(d) of the Act. Further, the reliance placed by the CIT(A) on the decision of the SMC Bench of Mumbai Tribunal in the case of Shri Saidatta Cooperative Credit Society Ltd.(supra) is also of no avail, inasmuch as, the Bench merely set-aside the matter to the file of the Assessing Officer for examination afresh, whereas in the case of Lands End Co-operative Housing Society Ltd(supra), the claim of exemption under section 80P(2)(d) of the Act ITA No.1343/MUM/2017 (AY. 2013-14) with respect to the interest earned from a Co-operative bank has been upheld. Therefore, in view of the said precedent, the claim of the assessee deserves to be allowed. We hold so.

6. In view of the above, the order of the CIT(A) is set-aside and the Assessing Officer is directed to allow deduction under section 80P(2)(d) of the Act with respect to the interest income earned from a Co-operative bank.

7. In the result, appeal of the assessee is allowed, as above.

8. We also found that similar issue has been decided by the Co-ordinate Bench in case of Lands End Co-operative Housing Society Ltd., vide order dated 15/01/2016.

9. The facts and circumstances in the case of instant assessee is similar to the facts discussed in above judicial pronouncements, wherein lower authorities have declined the claim of deduction u/s.80P in respect of interest received from Co-operative society. As the facts and circumstances are same, respectfully following the order of the Tribunal as stated above, we do not find any merit for the decline of claim of deduction u/s.80P of the IT Act.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 27/06/2018

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 27/06/2018
Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai