आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCHE, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.1054/Ind/2016
Assessment Year: 2006-07

M/s Nanda Nagar Sahkari Sakh Sanstha C/o M. Mehta & Co., 11/5, South Tukoganj, Indore	**बनाम**/ Vs.	ITO-3(3) Range-3 Indore
(Appellant)		(Revenue)
P.A. No.AAAAN1784B		

Appellant by	Shri S.N. Agrawal & Shri Pankaj Mogra CAs
Respondent by	Shri K.G. Goyal Sr. DR
Date of Hearing:	**17.07.2018**
Date of Pronouncement:	**03.08.2018**

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal is filed by the assessee against the order of Commissioner of Income Tax (appeals)-I, Indore, dated

14.07.2016 pertaining to the A.Y. 2006-07. The assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case the Ld. CIT(A) erred in maintaining the addition as made by the ld. AO of Rs.1,36,600/- in respect of Rent Received by the assessee during the year under consideration thereby denying the exemption as claimed by it u/s 80P(2)(a)(ia) of the Income Tax Act."*

2. The only effective ground in this appeal is against rejecting the claim of the assessee for deduction u/s 80P(2)(a)(ia) of the Act.

3. Briefly the stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961(hereinafter called as 'the Act') was framed vide order dated 26.09.2008. While framing the assessment the assessing officer observed that the assessee society had earned income from interest on various loans/advances, investments and other receipts which includes rent of Rs. 1,36,600/- & MPEB electricity Bill commission net Rs.9809/-, Mela rental income Rs.20,000/- included in Sundry receipts. It was observed that the income under the above head, was claimed exempt u/s. 80P(2)(a)(ia) of the Act.

4. Aggrieved by this the assessee preferred an appeal before the Ld. CIT(A), who after considering the submissions sustained the disallowances. Now the assessee is in appeal before the Tribunal.

5. The only issue in this appeal is that whether the assessee is eligible for deduction u/s 80P(2)(a)(ia) of the Act, qua the income received on own giving part of the property on rent.

6. The Ld. Counsel for the assessee vehemently argued that the issue has been decided in favour of the assessee by the by the judgment of the Hon'ble Karnataka High Court rendered in the case of CIT & Anr. Vs. The grain merchants Co-operative (2004) 186 CTR Kar 166. Ld. Counsel has also placed reliance on the decision of Co-ordinate Bench in the case of Chitradurga City Multi-Purpose Co-Op Society vs. ITO in ITANo.302/Bang/2014. Ld. Counsel submitted that in the light of the decision the assessee is entitled for deduction as claimed.

7. Ld. counsel has also taken as through the clause(b) of section 6 of the Banking Regulation Act, 1949 and the judgment of the Hon'ble Andhra Pradesh High Court rendered in the case of Vavveru Co-operative Rural Bank Ltd. Vs. Chief Commissioner of Income Tax and another

(2017) 396 ITR 371 (AP). Ld. Counsel submitted that the authorities were not justified in declining the exemption claimed u/s 80P(2)(a)(ia) of the Act. Per contra Ld. DR opposed the submission of AR. He submitted that Hon'ble Supreme Court in the case of IPCA Laboratory Ltd. v. DCIT 266 ITR 521 (Hon'ble Supreme Court) has held that if the wordings of the section are clear then benefits, which are not available under the section, cannot be conferred by ignoring or misinterpreting words in the section. The Ld. DR further submitted that in the case of Pandian Chemicals Ltd. v. CIT 262 ITR 278 (SC) it has been held that the rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation. He submitted that Hon'ble Supreme Court in the case of CIT vs. N.C. Budharaja & Co. 204 ITR 412 (SC), it has held that the principle of liberal construction as contended by the assessee could not be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the court to rewrite the section or substitute words of its own for the

actual words employed by the legislature in the name of giving effect to the supported underlying object.

8. Ld. DR has also relied upon the judgment of the Hon'ble Supreme Court rendered in the case of Totgars, Co-operative Sale Society Ltd. vs. ITO, Karnataka 322 ITR 283 (SC). Ld. DR submitted that the ratio of this judgment squarely applicable in the facts of the present case.

9. We have heard the rival contentions, perused the material available on record and gone through orders of the authorities below. The disputed facts are that the assessee is a Co-operative Society and its authorize objective are as reproduced as under:

"उपविधि क्रमांक -3 उद्देश्य-

इस सहकारिता का उद्देश्य अपने सदस्यों में मितव्ययता, आत्मनिर्भरता और सहयोग द्वारा उनकी आर्थिक एवं सामाजिक उन्नति तथा शिक्षित करने का है । इसे उद्देश्य की पूर्ति के लिए सहकारिता निम्नलिखित कार्य करेगी ।

01. सदस्यों मे बचत करने का अभ्यास उत्पन्न करना ।
02. रकम के सुरक्षित विनियोजन का प्रबंध करना ।
03. सदस्यों को आवस्यकतानुसार योग्य ब्याज पर ऋण देने की व्यवस्था करना ।
04. सदस्यों के लिए अन्य आर्थिक सुविधाएं उपलब्ध करना तथा उपयोगी वस्तुओं का क्रय विक्रय करना तथा अन्नदान करना ।
05. सदस्यो के आर्थिक उत्थान के लिए उपयोगी वस्तुओं का निर्माण एवं क्रय विक्रय करना व अन्य कार्य करना जो सदस्यों के हित मे हो तथा सामाजिक, धार्मिक, सांस्कृतिक संस्थाओं को आर्थिक सहयोग प्रदान करना ।

06. सदस्यों एवं उनके परिवार जनों को तकनीकी प्रशिक्षण एवं शिक्षा हेतु कार्यक्रम बनाना एवं लागू करना तथा शिक्षण संस्थाओं का संचालन करना ।
07. सदस्यो के लिये सामाजिक एवं मनोरंजन विकास के कार्यक्रम बनाना और क्रियान्वित करना तथा सामाजिक विकास के कार्य करना ।
08. सदस्यों के हितार्थ सदस्य परिवार सहयोग निधि योजना, निराश्रित व विधवा विकलांग पेंशन योजना स्वास्थ्य संरक्षण योजना बनाना व लागू करना तथा आर्थिक सहयोग करना ।
09. एजेन्सी आधार पर वे सभी कार्य करना जो सदस्यों के व उनके परिजनों के व आम नागरिकों के हितार्थ हो ।
10. संस्था के सदस्यों एवं आमजनों के हितार्थ शिक्षा तथा प्रशिक्षण केन्द्र की स्थापना करना व संचालन करना ।
11. संस्था के सदस्यों एवं आमजनों के लिए चिकित्सालय का संचालन करना ।
12. अन्य ऐसे कार्य करना जो उपरोक्त उद्देश्यों की पूर्ति के लिए किया जाना आवश्यक हो ।

10. From the above objects it is clear that the assessee was required to act for the financial and economic development of the members. Admittedly, the property in question is not let out to any of the members but it is let out to an independent/third party entity. The act is also not in furtherance of the objectives of the society. We find that the AO has recorded that the assessee has claimed deduction in respect of income from rent of Rs.1,36,600/-. This amount is claimed by the assessee exempt u/s 80P(2)(a)(ia). For the sake of clarity the said provisions is reproduced as under:

"80P.(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 or."

From the above provisions it is clear that for the purpose of availing deduction such receipts should be out of the activity referred to in sub-section 2 of section 80P. In the present case, assessee's contention is that income received of partly linked property is eligible for deduction u/s 80P(2)(a)(ia).

11. Now, let us examine the contention of the assessee, in the light of the judgment relied upon by the Ld. Counsel for the assessee. The ld. counsel has placed reliance on the judgment by the Hon'ble Patna High Court in the case of Bihar State Cooperative Bank Ltd vs. CIT 328 ITR 139. The facts as recorded by the Hon'ble High Court in that case are that the AO declined the claim of the assessee in respect of claim for exemption namely the interest earned

by it on the compulsory investment and the income received from lease of immovable property. Further, reliance is placed on the decision of the Hon'ble Karnataka High court rendered in the case of CIT and Another vs. The Grain Merchants Co-operative (supra) wherein the Hon'ble Court has held as under:

> *"Now, we will proceed to consider each one of the contentions advanced by Sri Sesachala. So far as the first contention is concerned, the same is covered against the revenue by our earlier decision rendered in the case of Karnataka Central Co-operative Bank Ltd. (supra). In the said decision, we have taken the view that the income received out of the reserve fund is exempted from payment of tax. The said decision was rendered by us following the decision of this court rendered in the case of the CIT v. Sri Ram Sahakari Bank Ltd. made in ITA No. 137 of 2002 disposed of on 5-9-2002, wherein the Division Bench of this court following the decision of the Hon'ble Supreme Court in the case of Bihar State Co-operative Bank Ltd. v. CIT (1960) 39 ITR 114 (SC), has taken the view that the income received out of reserve fund is exempted from payment of tax. In the case of Bihar State Co-operative Bank Ltd. (supra) the Honble Supreme Court has observed as follows :*
>
> *"... As we have pointed out above, it is a normal mode of carrying on banking business to invest moneys in a manner that they are readily available and that is just as much a part of the mode of conducting a banks business as receiving deposits or lending moneys or discounting hundies or issuing demand drafts. That is how the circulating capital is employed and that is the normal course of business of a bank. The moneys laid out, in the form of deposits as in the instant case would not cease to be a part of the circulating capital of the appellant nor would they cease to form part of its banking business. The returns flowing from them would form part of its profits from its*

business. In a commercial sense the directors of the company owe it to the bank to make investments which earn them interest instead of letting moneys lie idle. It cannot be said that the funds of the bank which were not lent to borrorwers but were laid out in the form of deposits in another bank to add to the profit instead of lying idle necessarily ceased to be a part of the stock-in-trade of the bank, or that the interest arising therefrom did not form part of its business profits."

Therefore, there is no merit in the first contention advanced by Sri Sesachala. In the light of the above discussion, we find it unnecessary to refer to the decision of Gujarat State Co-operative Bank Ltd. (supra) relied upon by Sri Prasad.

6. To examine the correctness of the second contention of Sri Sesachala, it is useful to refer to clause (k) and (1) of sub-section (1) of section 6 of the Regulation Act, which reads as hereunder

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"6. Forms of business in which banking companies may engage

(a) to (j) xxx xxx xxx

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company,.

(l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account of otherwise dealing with all or any part of the property and rights of the company; "

8. The reading of clauses (k) and (1) of section 6 of the Regulation Act, to our mind, appears that in addition to the business of banking set out in clause (b) of section 5 of the Regulation Act, acquisition, construction, maintenance and alteration of any building or works necessary or convenient for

the purpose of the banking company and also selling/improving or leasing or otherwise dealing with all or any part of the property and rights of the company, also should be treated as a banking business.

8. The reading of clauses (k) and (1) of section 6 of the Regulation Act, to our mind, appears that in addition to the business of banking set out in clause (b) of section 5 of the Regulation Act, acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purpose of the banking company and also selling/improving or leasing or otherwise dealing with all or any part of the property and rights of the company, also should be treated as a banking business.

9. No doubt, it is true, as contended by Sri Sesachala that the businesses referred to in clauses (a) to (o) of sub-section (1) of section 6 of the Regulation Act cannot be treated as a banking business within the meaning of clause (b) of section 5 of the Regulation Act. But as noticed by us earlier, section 6 of the Regulation Act intends to make several businesses referred to in clauses (a) to (o) of sub-section (1) of the Act as banking business in addition to the definition of "banking" provided under clause (b) of section 5 of the Regulation Act. In support of our view, we derive support from the observation made by the Honble Supreme Court in the case of Gujarat State Co-operative Bank Ltd. (supra). In the said decision, while considering the question whether locker rent received by the banking company is not deductible under section 80P(2)(a)(i) of the Act, the Honble Supreme Court has taken the view that the safe-deposit vault is part of the ordinary banking business of the bank in terms of section 6(1)(a) of the Regulation Act. It is useful to refer to the observation made by the Honble Supreme Court at p. 524 of the judgment, which reads as follows :

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"... it is clear that the provision of safe deposit vaults is part of the ordinary banking business of a bank; this is shown by section 6(1)(a) of the Banking Regulation Act, 1949. Therefore, the income derived by the assessee from the hiring out of safe deposit vaults is income from the business of banking and, therefore, deductible under section 80P(2)(a)(i) of the Income Tax Act, 1961..."

Clause 6(1)(a) is one of the items of businesses referred to in section 6(1) of the Regulation Act. Further, in the case of Kerala State Co-operative Marketing Federation Ltd. & Ors. (supra) the Honble Supreme Court has observed that whenever a question arises as to whether any particular category of income of a co-operative society is exempt from tax, what has to be considered is, as to whether the income falls within one of the several heads of the exemption and if it falls within any one of the heads of the exemption, it would be free from taxes notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The Honble Supreme Court has observed that the correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. In this connection, it

is useful to refer to the observation made by the court at p, 819 of the judgment, which reads as hereunder :

"We may notice that the provision is introduced with a view to encouraging and promoting the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the government, the correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether the income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The expression "marketing" is an expression of wide import. It involves exchange functions such as buying and selling, physical functions such as storage, transportation, processing and other commercial activities such as standardisation, financing, marketing intelligence, etc. Such activities can be carried on by an apex society rather than a primary society."

12. We are unable to accept the contention of the Ld. counsel for the assessee that the present case is squarely covered by the judgment of Hon'ble Karnataka High Court. The facts are distinguishable as the objects of the assessee are not leasing or giving property on rent. In our considered view deduction would be available if the assessee is carrying on the business of banking or providing credit facility to its members. In the present case it is not so. The Revenue has brought to our notice, Judgment of Hon'ble

Supreme Court rendered in the case of Tatgars, Co-operative Sale Society Ltd. v. Income Tax Officer, 322 ITR 283 (Hon'ble Supreme Court) wherein the Hon'ble Court held as under:

> *"At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is - whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under Section 28 of the Act? In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under Section 56 of the Act, as rightly held by the Assessing Officer. In this connection, we may analyze Section 80P of the Act. This section comes in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain Incomes". The Headnote to Section 80P indicates that the said section deals with deductions in respect of income of cooperative Societies. Section 80P(1), inter alia, states that where the gross total income of a cooperative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-Society. An income, which is attributable to any of the specified activities in Section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined under Section 2(24)(i) of the Act to include profits and gains.*

This sub-section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in Section 80P(2) of the Act. In the present case, as stated above assessee-Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under Section 56 of the Act.

An alternative submission was advanced by the assessee(s) stating that, if interest income in question is held to be covered by Section 56 of the Act, even then, the assessee-Society is entitled to the benefit of Section 80P(2)(a)(i) of the Act in respect of such interest income. We find no merit in this submission.Section 80P(2)(a)(i) of the Act cannot be placed at

par with Explanation (baa) to Section 80HHC, Section 80HHD(3) and Section 80HHE(5) of the Act. Each of the said sections has to be interpreted in the context of its subject-matter. For example, Section 80HHC of the Act, at the relevant time, dealt with deduction in respect of profits retained for export business. The scope of Section 80HHC is, therefore, different from the scope of Section 80P of the Act, which deals with deduction in respect of income of cooperative Societies. Even Explanation (baa) to Section 80HHC was added to restrict the deduction in respect of profits retained for export business. The words used in Explanation (baa) to Section 80HHC, therefore, cannot be compared with the words used in Section 80P of the Act which grants deduction in respect of "the whole of the amount of profits and gains of business". A number of judgements were cited on behalf of the assessee(s) in support of its contention that the source was irrelevant while construing the provisions of Section 80P of the Act. We find no merit because all the judgements cited were cases relating to Cooperative Banks and assessee-Society is not carrying on Banking business. We are confining this judgement to the facts of the present case. To say that the source of income is not relevant for deciding the applicability of Section 80P of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee- Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act.

13. Further reliance is placed on the judgment of Hon'ble Supreme Court rendered in the case of IPCA Laboratory ltd. v. Deputy Commissioner of Income Tax 266 ITR 521 (Hon'ble Supreme Court) wherein the Hon'ble Court held as under:

> *" We are unable to accept the submission of Mr. Dastur. Undoubtedly section 80HHC has been incorporated with a view to providing incentive to export house. Even though a liberal interpretation has to be given to such a provision the interpretation has to be as per the wordings of this section. If the wording of the section are clear then benefits, which are not available under the section, cannot be conferred by ignoring or misinterpreting words in the section."*

14. There is no ambiguity under the law, the deduction would be available if the sum claimed for deduction is out of business of banking for providing credit facilities to these members. In the present case, admittedly properties are not given on rent to the members of society. Hence, it cannot be construed that the sum is earned out of banking business or providing credit facilities to its members. Even, otherwise also the society is not authorized by its objectives as is evident from the objects. Hence, the case laws as relied by the Ld. counsel for the assessee are distinguishable. Respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of Tatgars, Co-

operative Sale Society Ltd. v. Income Tax Officer,(supra). The grounds raised in this appeal are dismissed.

15. In the result, the appeal filed by the assessee is dismissed.

Order was pronounced in the open court on 03 .08.2018.

Sd/-	Sd/-
(MANISH BORAD)	(KUL BHARAT)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Indore; दिनांक Dated : 03/ 08/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore