

आयकर अपील अाधिकरण, अहमदाबाद ढायापीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, AHMEDABAD
BEFORE, JUSTICE SHRI P.P. BHATT, PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.318/AHD/2017
ढाधारण वर्ष/Asstt. Year: 2012-2013

State Bank of India Employees Co-op. Credit & Supply Society Ltd., SBI Main Branch Bhadra, Ahmedabad-380001. PAN: AAAAS7450B	Vs.	ITO, Ward-3(4), Ahmedabad
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Divatia, A.R
Revenue by :	Shri Vinod Tanwani, Sr.DR

सुनवाई का ताराख/Date of Hearing : 03/01/2019
घोषणा का ताराख /Date of Pronouncement: 29/01/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-10, Ahmedabad [Ld.CIT in short], dated 28/12/2016 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 13/11/2014 relevant to Assessment Year (AY) 2012-13.

2. The assessee has raised the following grounds of appeal:

- 1.1 *The order passed u/s. 250 on 28-12-2016 for A.Y.2012-13 by CIT(A)-10 Abad, upholding the FDR interest from SBI as income from other sources and disallowance of the claim u/s. 80P(2)(a)(i) of Rs.46,19,612/- made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant.*
- 2.1 *The Ld. CIT(A) has grievously erred in law and or on facts in upholding that interest income on FDR's with SBI of Rs.73,76,497/- was assessable under the head "income from other sources". The Ld. CIT(A) has grievously erred in law and or on facts in up-holding that the interest income from FDR's with SBI was not income from operations from the society.*
- 2.2 *That in the facts and circumstances of the case as well as in law, the Id. CIT(A) has grievously erred in upholding that interest income on FDR's with SBI was assessable under the head "income from other sources" and income from operations of the business of the Society.*
- 3.1 *The Id. CIT(A) has grievously erred in upholding that interest income on FDR's with SBI of Rs.46,19,612/- (restricted out of Rs.73,76,497/-) was not eligible for deduction u/ s 80P(2)(a)(i).*
- 3.2 *That in the facts and circumstances of the case as well as in law, the Id. AO has grievously erred in holding that interest income on FDR's with SBI of Rs.46,19,612/- (restricted out of Rs.73,76,497/-) was not eligible for deduction u/s 80P(2)(a)(i).*
- 4.1 *The Id. CIT(A) has grievously erred in not allowing pro-rata expenses from interest income on FDR's with SBI and thereby making an addition of the entire Interest Income of Rs.73,76,497/-. The Id. AO has failed to appreciate that the gross interest income was not liable to tax without allowing expenses like interest, admn. Expenses.*
- 5.1 *The Id. CIT(A) has grievously erred in not allowing basic deduction of Rs. 50,000/- u/s 80P(2)(c)(ii) of the Act.*

It is therefore prayed that the addition of interest income from FDR's with SBI of Rs.73,76,497/- confirmed by CIT(A) should be deleted.

3. All the issues raised by the assessee are interconnected. Therefore we have clubbed all of them together for the sake of convenience and brevity to adjudicate the issue on hand. The issues raised in this appeal are summarized are as under:

- i) The first issue is against treating the interest income of Rs. 73,76,497/- under the head from other sources and denying the deduction u/s 80P(2)(a)(i) of the Act for Rs. 46,19,612/- only.
- ii) The second issue is against the expenses incurred in connection with the interest income which was not allowed as a deduction for working out the ineligible amount u/s 80P(2)(a)(i) of the Act.
- iii) The third issue is against for not allowing basic deduction of 50,000/- u/s 80P(2)(c)(ii) of the Act

4. The facts of the case are that the assessee is a Co-operative Society and engaged in the activity financing to its members. The assessee in the year under consideration claimed deduction u/s 80(P)(2)(a)(i) of the Act for an amount of Rs. 46,19,612/- only.

5. The AO during assessment proceedings observed that the assessee had shown interest income on the FD made with the SBI for Rs. 73,76,497.00 only. As per the AO, such interest income is ineligible for a deduction under section 80P(2)(a)(i) of the Act. The AO also found that the assessee has not claimed any expenses against the interest income earned on the fixed deposit with SBI. Accordingly, the AO treated the entire interest income under the head the other sources and no deduction u/s 57 of the Act was allowed to the assessee. Accordingly, the treated the same as income under the head other

sources and denied the deduction of Rs. 46,19,612/- only u/s 80(P)(2)(a)(i) of the Act.

6. Aggrieved assessee preferred an appeal to Ld.CIT (A) who has confirmed the order of the AO by treating the interest the income of Rs.73,76,497/- under the head income from other sources and accordingly denied the deduction claim by the assessee for Rs. 46,19,612/- u/s 80P(2)(a)(i) of the Act.

7. However, the Ld.CIT (A) regarding the expenses incurred against such interest income directed the AO to allow the deduction of administrative expenses in the manner as provided under Rule 8D of Income Tax Rule. Thus the Ld.CIT (A) confirmed the order of the AO in part.

8. Being aggrieved by the order of Ld.CIT (A) assessee is in appeal before us.

9. The Ld.AR, before us, filed a paper book running from pages 1 to 43 and fairly conceded the fact that the Jurisdictional High Court has decided the issue of interest income on the fixed deposit with the SBI in the case of State Bank of India Vs. CIT reported in 389 ITR 578 against the assessee.

10. However the Ld.AR, further submitted that the expenditure incurred corresponding to the interest income should be allowed as deduction. Thus the benefit u/s 80P(2)(a)(i) of the Act can be denied on the balance amount of interest income earned on the fixed deposit.

10.1 The Ld. AR also submitted that the assessee is entitled to the basic deduction of 50,000/- u/s 80(P)(c)(ii) of the Act.

10.2 The Ld. AR, also submitted that the similar issue was also there in the earlier years in the own case of the assessee which has been decided against the assessee by this Tribunal in ITA Nos. 1201-1205/Ahd/2015 pertaining to the Assessment Years 2007-08 to 2011-12.

10.3 The Ld. AR further submitted that the identical issue was admitted by Honøble Supreme Court in vide SLP Nos. 31717-31718/2016 dated 11-11-2016 in the proceedings of 263 of the Act pertaining to the AY 2009-10 & 2010-11 in the own case of the assessee. The Ld.AR, in support assessee's claim, filed a copy of the order of Honøble S.C. to demonstrate that the special leave petition has been admitted which is placed on record.

10.4 Accordingly, the Ld. AR requested the Bench to give direction to the AO that the matter should be kept in abeyance till the disposal of the appeal by the Honøble Apex Court as per the provision of section 158A of the Act. The Ld.AR, in support of his claim, filed the declaration in Form No. 8 as per Rule 16 of Income Tax Rule.

11. On the other hand the Ld. DR vehemently supported the order of authorities below.

12. We have heard the rival contentions and perused the materials available on record. There is no ambiguity that the interest income earned from the fixed deposit with the SBI is not eligible for deduction u/s 80P(2)(a)(i) of the Act given the judgment of Honøble High Court in the case of State Bank of

India Vs. CIT reported in 389 ITR 578. Accordingly, we do not find any infirmity in the order of Ld. CIT (A) regarding the non-availability of deduction u/s 80P(2)(a)(i) of the Act in respect of impugned interest income.

12.1 Regarding the expenses incurred by the assessee against such income, we note that the assessee has not produced the details of the expenses before the authorities below against such interest income. Therefore, the Ld.CIT(A) directed to allow the deduction of the administrative expenses incurred against such income in the manner as provided under Rule 8D of Income Tax Rule. There is no ambiguity that the provision of section 57 of the Act entitles the assessee to claim the deduction of the expenses incurred in connection with the income. Therefore in the interest of justice and fair play we are inclined to restore the matter to the file of AO for fresh adjudication as per the provision of Law with the direction to allow the deduction of the expenses which have a direct nexus with the impugned interest income.

12.2 Regarding the basic deduction of Rs. 50,000/- u/s 80P(2)(c)(ii) of the Act, we find that the Ld.AO has already given the benefit of this deduction as claimed by the assessee. Therefore, we are of the view that there is no grievance to the assessee as claim in its ground of appeals.

12.3 Regarding the direction to the AO u/s 158A of the Act, we note that the assessee has filed a declaration in form no. 8 as per the Rule 16 of Income Tax Rule which is available on record. In this connection, we further note that the provision of section 158A of the Act requires to obtain the comments from the AO before holding that there is an identical issue in the year under consideration which is pending before the Honøble Apex Court. However, we are of the view that the justice will be served to the assessee and Revenue if

the matter is restored to the file of the AO for considering the application of the assessee filed in form no.8 as discussed above. It is also pertinent to note that the above direction has been issued in the peculiar facts and circumstances considering the smallness of the amount involved. Therefore such direction should not be treated/ quoted as a precedent in the other cases.

13. In view of the above, the grounds of appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Court on 29/01/2019 at Ahmedabad.

**-Sd-
(JUSTICE P.P. BHATT)
PRESIDENT**

(True Copy)
Ahmedabad; Dated 29/01/2019
Manish

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

आदेश का प्रतिलिपि प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT
5. वृभागीय प्रतिलिपि, आयकर अपीलार्थी अधीकरण / DR, ITAT,
6. गार्डफाइल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलार्थी अधीकरण, अहमदाबाद / ITAT, Ahmedabad