

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.158/Del./2017
(ASSESSMENT YEAR : 2012-13)**

**ITA No.159/Del./2017
(ASSESSMENT YEAR : 2013-14)**

District Cooperative Bank Ltd., vs. DCIT,
Near Vikas Bhawan, Najibabad.
Civil Lines – II,
Bijnor.

(PAN : AABFD2205R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri P.S. Kashyap, FCA
REVENUE BY : Ms. Nidhi Srivastava, CIT DR

Date of Hearing : 09.07.2019
Date of Order : 11.07.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The aforesaid appeals filed by the assessee are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, District Cooperative Bank Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned orders dated 27.10.2016 & 30.11.2016

passed by the Commissioner of Income-tax (Appeals), Moradabad qua the assessment years 2012-13 & 2013-14 respectively on the grounds inter alia that :-

“ITA No.158/Del/2017 (AY 2012-13)

1. That on the facts and in law addition of Rs.206200/- and 50000/- made on account of dividend received from cooperative societies is totally wrong, unjustified and illegal, assessee has received dividend from cooperative societies namely KRIBHCO and IFFCO and same has been claimed to be exempt from tax on the basis of Principle of mutuality and hence Ld. CIT is not justified in confirming the said addition.

2. That on the facts and in law addition of Rs. 1000/- received by the assessee as dividend from industrial finance corporation which is company and dividend received from the said company is exempt u/s 10(34).

3. That on the facts and in law addition of Rs.27576000/- made an account of dividend received from V.P. Cooperative Bank Ltd. Lucknow is totally wrong, unjustified and illegal. Assessee has received dividend from Cooperative Society which is doing the banking business and is working as parent body of all the Cooperative Banks of the State.”

“ITA No.159/Del/2017 (AY 2013-14)

1. That on the facts and in law addition of Rs.277820/- made on account of dividend received from cooperative societies is totally wrong, unjustified and illegal, assessee has received dividend from cooperative societies namely KRIBHCO and IFFCO and same has been claimed to be exempt from tax on the basis of Principle of mutuality and hence Ld. CIT is not justified in confirming the said addition.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand in both the appeals are : assessee, being District Cooperative Bank operating in Bijnaur, Uttar Pradesh, filed return of income at Rs.88,15,600/- & Rs.5,25,63,310/- and the

assessment was completed at the total income of Rs.3,72,88,850/- & Rs.7,35,81,100/- for AYs 2012-13 & 2013-14 respectively. Assessing Officer noticed that the assessee has received dividend of Rs.2,56,200/- from KRIBCO & IFFCO and Rs.2,75,76,000/- from U.P. Cooperative Bank Ltd., Lucknow for AY 2012-13. Declining the contentions raised by the assessee, AO invoked the provisions contained u/s 2(24)(ii) of the Income-tax Act, 1961 (for short 'the Act') and disallowed the exemption claimed by the assessee on account of mutuality in respect of total dividend amounting to Rs.2,78,33,200/- received from KRIBCO, IFFCO, IFCI & UP Cooperative Bank Ltd. and made addition thereof. For AY 2012-13, AO also made addition of Rs.1,000/- on account of dividend received from IFCI which is a listed company by disallowing the same as exempt income u/s 10(34) of the Act.

4. In AY 2013-14, AO made addition of Rs.2,77,820/- on account of dividend received from KRIBCO and IFFCO by invoking the provisions contained u/s 2(24)(ii) of the Act.

5. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has partly allowed the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1 & 3 OF AY 2012-13

GROUND NO.1 OF AY 2013-14

7. At the very outset, Id. AR for the assessee fairly conceded that the issue in controversy has already been decided against the assessee by the coordinate Bench of the Tribunal vide *order dated 08.08.2014 in ITA Nos.2984/Del/2013 & 2985/Del/2013 for AYs 2009-10 & 2007-08*, hence he has nothing to argue further. For ready perusal, operative part of the aforesaid order passed by the coordinate Bench of the Tribunal is extracted as under :-

“6. We have heard the arguments of both the sides and perused relevant material placed before us. At the time of hearing before us, learned counsel fairly conceded that the dividend is not exempt under Section 10(34) read with Section 115-O because the companies from whom the assessee received the dividend has not paid dividend distribution tax. His claim is that the dividend received by the assessee company is exempt on account of mutuality because those companies which paid dividend to the assessee are also either cooperative banks or the companies which are basically rendering services to the cooperative societies. We are unable to accept the contention of the assessee. When the assessee claims any exemption on the ground of mutuality, the burden is upon the assessee to establish so. In this case, the learned counsel could not justify how the dividend

received by the assessee from three different companies is covered under the concept of mutuality. The assessee has received the dividend on account of assessee's investment in those companies. The dividend is not the contribution to the assessee by those companies and moreover, the assessee is not rendering services to them. In view of the above, we hold that the assessee's contention that dividend received from those companies is exempt on account of mutuality is untenable. The same is rejected.

7. The facts are similar in AY 2009-10 with the only difference in the quantum of dividend which is Rs.3,06,200/- instead of Rs.70,56,000/- in AY 2007-08. For the detailed discussion in paragraph 6 above, we hold that the dividend received in AY 2009-10 also cannot be said to be exempt within the concept of mutuality. Accordingly, the appeals of the assessee in both the years are dismissed.”

8. Following the aforesaid decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that dividend earned by the assessee during AYs 2012-13 & 2013-14 from KRIBCO, IFFCO & UP Cooperative Bank Ltd. cannot be treated as exempt on the basis of concept of mutuality, hence Grounds No.1 & 3 of AY 2012-13 & Ground No.1 of AY 2013-14 are determined against the assessee.

GROUND NO.2 OF AY 2012-13

9. Assessee claimed dividend of Rs.1,000/- received from Industrial Finance Corporation of India Ltd. (IFCI) as exempt u/s 10(345) of the Act. Since IFCI is a listed company and not rendering services to the cooperative societies, dividend received

from the same is exempted u/s 10 (34) of the Act. So, AO is directed to allow the same after due verification and this ground is determined in favour of the assessee.

10. To sum up, ITA No.158/Del/2017 for AY 2012-13 filed by the assessee is partly allowed and ITA No.159/Del/2017 for AY 2013-14 filed by the assessee is dismissed.

Order pronounced in open court on this 11th day of July, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 11th day of July, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Moradabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**