

-आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ- अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI PRADIPKUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./ **ITA No.101 and 102/Ahd/2017**
[Asstt.Year: 2009-10 and 2012-13]

ITA No.1991/Ahd/2017
Asstt.Year : 2014-15

Anand Urban Cooperative Bank Ltd. Urban Chamber Urban Bank Road Anand 388 001 PAN : AADFA 3041 J	Vs.	ITO, Ward-1 Anand.
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(Applicant)		(Respondent)
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Assessee by :	Smt.Arti N. Shah, AR
Revenue by :	Shri S.K. Dev, Sr.DR

*सुनवाई की तारीख/*Date of Hearing : 05/08/2019

*घोषणा की तारीख/*Date of Pronouncement: 7 /08/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present three appeals are directed at the instance of the assessee against separate orders of the Id.CIT(A) dated 23.9.2016, 23.9.2016, 25.6.2017 passed for the Asstt.Year 2009-10, 2012-13 and 2014-15.

2. Common issues are involved in all these appeals, therefore, we heard them together and deem it appropriate to dispose of all these appeals by this common order. We take grounds of appeal

raised by the assessee in all these three years in seriatim as under:

ITA No.101/Ahd/2017: [Asstt.Year 2009-10]

"1. *The Learned Commissioner of Income Tax (Appeals)-1, Vadodara has erred in law and on facts of the case in not granting deduction u/s.80P(2)(a)(i) of the I.T. Act, 1961.*

2. *The Learned Commissioner of Income Tax (Appeals)-4, Vadodara has erred in law and on facts of the case in treating interest receipt of Rs.68,02,038/- as income from other sources and not allowing set off of earned forward loss u/s.72(1) of the I.T. Act, 1961 and carried forward depreciation.*

3. *The Learned Commissioner of Income Tax (Appeals)-4, Vadodara has erred in law and on facts of the case in confirming the addition made by the Assessing Officer in respect of DICGC interest payable of Rs. 14,95,276/-.*

4. *The Learned Commissioner of Income Tax (Appeals)-4, Vadodara has erred in law and on facts of the case in confirming the addition of Rs.12,65,852/- being profit on sale of Lockers and Vault as income from other sources though the same is business income u/s.50 of the I.T. Act, 1961."*

ITA No.102/Ahd/2017 [Asstt.Year 2012-13]

"1. *The Learned Commissioner of Income Tax, (Appeals)-4, Vadodara has erred in law and on facts of the case in treating gross income of interest of Rs. 1,37,00,110/- as income from other sources.*

2. *The Learned Commissioner of Income Tax, (Appeals)-4, Vadodara has erred in law and on facts of the case hi not allowing brought forward losses against the income.*

3. *The Learned Commissioner of Income Tax, (Appeals)-4, Vadodara has erred in law and on facts of the case in allowing deduction u/s.80P(2)(a)(i) of the I.T. Act, 1961."*

ITA No.1991/Ahd/2017 : [Asstt.Year 2014-15]

"1. *The Learned Commissioner of Income Tax, (Appeals)-4, Vadodara has erred in law and on facts of the case in reopening the assessment u/s. 148 of the I.T. Act, 1961 though the original assessment was made u/s. 143(3) duly considering the facts of the case.*

2. *The Learned Commissioner of Income Tax, (Appeals)-4, Vadodara has erred in law and on facts of the case in treating gross income of interest of Rs.19,19,493/- as income from other sources.*

3. *The Learned Commissioner of Income Tax, (Appeals)-4, Vadodara has erred in law and on facts of the case in not allowing brought forward losses against the income.*

4. *The Learned Commissioner of Income Tax, (Appeals)-4, Vadodara has erred in law and on facts of the case in allowing deduction u/s.80P(2)(a)(i) of the I.T. Act, 1961."*

3. In the Asstt.Year 2009-10, under ground no.1, the assessee has challenged reopening of the assessment. Brief facts of the case are that the assessee has filed its return of income on 12.9.2011 declaring negative income of Rs.5,169/-. An assessment order was passed under section 143(3) on 12.9.2011 whereby the Id.AO has accepted the return declared by the assessee. Subsequently, it came to the notice of the AO that the assessee was engaged in banking business, but its licence to carry on business was cancelled and it was under liquidation. Therefore, no banking activities have been carried out by the

assessee, and the income could not be assessed as income from business. The AO found that no such details were placed on record by the assessee nor has been examined by the AO in the scrutiny assessment, therefore, he proposed to reopen the assessment of the assessee. He issued notice under section 148 on 21.3.2014. In response to the notice, the assessee has stated that the return filed originally be treated as return filed in response to the notice under section 148. Copy of the reasons was supplied to the assessee. It has filed an objection on such notice. Copy of the objection has been filed on page no.25 to 28 of the paper book. The Id.AO has considered this objection, but rejected them vide his order dated 21.5.2014. Copy of such order is filed on page no.29 of the paper book. Thereafter, the Id.AO has passed an assessment order on 10.3.2015 under section 143(3) r.w.s. 1247. Against this assessment, assessee carried the matter in appeal before the Id.CIT(A) and took one of the grounds challenging reopening of the assessment. The Id.CIT(A) has gone through the reasons as well as the order of the AO, vide which objection of the assessee has been rejected. The Id.CIT(A) has upheld the reopening of the assessment.

4. With the assistance of the Id.representatives, we have gone through the record carefully. Before us, though the copy of reasons have not been placed on record, but with help of objections filed by the assessee vis-à-vis order of the AO vide which its objection against the reopening has been rejected. It was contended that assessment has been reopened merely on the basis of change of opinion. The Id.counsel for the assessee submitted that whether income of the assessee is to be assessed as business income or income from other sources, was the

primary issue in the original assessment proceedings also. The AO has accepted that its income deserved to be assessed as business income. There was no new information with the AO, and therefore, assessment ought not to have been reopened.

5. On the other hand, the Id.DR relied upon the order of AO and contended that all these aspects have been considered by the AO in the order dated 21.5.2014. On due consideration of the above facts, we find that original assessment order is totally silent whether any inquiry was conducted by the AO or not. The assessee failed to place on record questionnaire if any issued under section 142(1) whereby it was brought to the notice of the AO that it has ceased to carry out business of banking. The Id.counsel for the assessee, though pointed out that specific questionnaire may not have been asked, but this fact was in the knowledge of the AO, because he has noticed that the bank is under liquidation. For this purpose, she brought to our notice the assessment order dated 12.9.2011. However, no details have been placed before us pointing out the fact that the AO has called for specific details and applied his mind. Therefore, the allegation against the AO that he has reopened the assessment on the basis of change of opinion is not sustainable. The Id.Revenue authorities have considered this aspect elaborately. We do not find any merit in this ground of appeal. It is rejected.

6. Ground No.2 is inter-connected with ground no.1 in the Asstt.year 2012-13 and ground no.2 and 3 in the Asstt.Year 2014-15.

7. The core issue in all these grounds is whether the assessee is entitled for exemption under section 80P(2)(a)(i) of the Act on interest income earned from the deposits with the bank. The Id.counsel for the assessee contended that though initially the assessee was working as cooperative bank, but its licence to carry out banking business has been cancelled by the RBI. Thereafter, its status remained as cooperative credit society, which provides credits to its members. Hence, even if it ceased to carry on banking business, it is still entitled to exemption under section 80P(2)(a)(i) of the Act being a cooperative society. She pointed out that any surplus from its activities as a cooperative society, if deposited in the nationalized banks, then interest income require to be considered eligible for exemption under section 80P(2)(a)(i). In her alternative contentions, she submitted that in case it is not admissible on gross basis, then only net interest income be excluded from the grant of exemption under section 80P(2)(a)(i).

8. On the other hand, the Id.DR relied upon the order of the Revenue authorities. He pointed out that the assessee has stopped banking business due to liquidation, and therefore, whatever interest income it has earned, it is to be treated as income from other sources.

9. We have duly considered rival submissions and gone through the record carefully. No doubt the status of the assessee as a cooperative credit society is intact. It has been prohibited to carry out the banking business. In such situation, inherently, it is entitled for exemption under section 80P(2)(a)(i) being a cooperative credit society. But such exemption will be only on the activities confined to a cooperative credit society viz. if an

assessee has earned interest income from its members, it may qualify for grant of exemption under section 80P(2)(a)(i). If it has earned any other income from its activities as a cooperative society, for which it existed, then the income on such activity would also qualify. In the present years, the assessee has only interest income from the deposits made with nationalized bank. Such interest income does not qualify for grant of exemption under section 80P(2)(a)(i) as held by the Hon'ble jurisdictional High Court in the case of SBI Employees Co-op. Credit & Supply Society Vs. CIT, 389 ITR 0578 that it is the only interest derived from the credit provided to its members, which is deduction under section 80P(2)(a)(i), and the interest derived by depositing surplus with nationalized banks not being attributable to the business carrying on by the assessee, could not be deducted under section(2)(a) of the Act. In view of the decisions of Hon'ble jurisdictional High Court, we do not find any merit in this ground of appeal, but we accept alternative contention that only net interest income be excluded from the computation of 80P(2)(a)(i). Any expenditure incurred by the assessee in relation to earning of such interest income be set off against the interest income, and thereafter it is excluded from the computation.

10. In the Asstt.Year 2009-10, the assessee has shown gross interest income of Rs.19,19,493/-. No other interest income has been shown. Therefore, only net interest income be excluded from computation of exemption under section 80P(2)(a)(i).

11. In the Asstt.Year 2012-13, it has gross interest income of Rs.1,37,00,110/-. Again here, net interest is to be excluded.

12. In the Asstt.Year 2014-15, the assessee has interest receipt of Rs.68,02,038/- from the banks. Similarly, it has interest receipt of Rs.14,95,276/- alleged to have been accrued from the Canara Bank. The Id.AO shall verify these amounts and determine whether this interest income from deposits covered by the decision of Hon'ble jurisdictional High Court in the case of SBI Employees Co-op. Credit & Supply Society Vs. CIT (supra) If not, then he shall re-adjudicate this issue afresh, whether it qualify for grant of exemption under section 80P(2)(a)(i).

13. Next issue is, whether the assessee is entitled for carry forward of unabsorbed loss. With regard to this aspect, we find that the assessee has already discontinued its banking business in which it has suffered loss. Therefore, it is not entitled for carry forward of such business loss. The authorities have rightly rejected its claim.

14. In the Asstt.Year 2014-15 under ground no.4, the assessee has pleaded that the Id.CIT(A) has erred in confirming the addition of Rs.12,65,852/-.

15. Brief facts of the case are that the assessee has shown the above amount as profit on sale of locker and vault income. According to the assessee it is a business income and not to be assessed as income from other sources. Being a credit society, its activity ought to be confined to its members. If any activity carried out beyond the scope of society, the income from that activity will not qualify for exemption under section 80P(2)(a)(i). Even if this profit on sale of locker and vault is to be treated as business income under section 50 of the Act, then also nothing

would change. It will not qualify for exemption under section 80P(2)(a)(i) of the Act. It is to be assessed as a separate income. The assessee failed to demonstrate that it was carrying on an organized activity in the nature of business, and therefore, the Revenue authorities have rightly treated the income from other activities as income from other sources. In view of the above, we do not find any error in this order on this issue. It is upheld.

16. In the result, the appeals of the assessee are partly allowed for statistical purpose.

Order pronounced in the Court on 7th August, 2019.

Sd/-
(PRADIPKUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER