

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE  
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1497/PUN/2018  
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Bhagwat Sahakari Nagari Pat. Ltd.,  
2625, Rui Oal, Barshi,  
Dist.-Solapur-4130401

..... अपीलार्थी /  
Appellant

PAN : AABAS0993A

बनाम v/s

The Income Tax Officer,  
Ward – 2(5), Solapur

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Pramod Shingte  
Revenue by : Shri Ajay Agarwal

सुनवाई की तारीख / Date of Hearing : 04.10.2019	घोषणा की तारीख / Date of Pronouncement: 07.10.2019
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by assessee is against the order of Commissioner of Income Tax (Appeals) – 7, Pune for the assessment year 2015-16.

2. The appeal is time barred by 130 days. The assessee has filed an application seeking condonation of delay supported by an affidavit. I have examined the application and the affidavit filed by the assessee. The Hon'ble Supreme Court of India in the case of Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and

Others reported as 2002 AIR 1201 has held that acceptance of explanation furnished seeking condonation of delay should be the rule and refusal an exception, more so when no negligence or inaction or want of bonafide can be imputed to the defaulting parties. Taking a pedantic and hyper technical view of the matter, the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction. The Hon'ble Apex Court in various other decisions has taken similar view in liberally accepting the explanation furnished by the assessee for condoning the delay in filing of appeal. Thus, in view of the law laid down by the Hon'ble Apex Court and the for reasons stated in the affidavit by the assessee/appellant, the delay of 130 days in filing of appeal is condoned. The appeal is admitted to be heard and disposed of on merits.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Society registered under Maharashtra Co-operative Society Act, 1960 and is engaged in providing credit facilities to the members of society and accepting deposits from the members of society. Assessee electronically filed its return of income for A.Y. 2015-16 on 09-02-2016 declaring total income as Nil after claiming deduction of Rs.25,28,414/- u/s. 80P(2)(a)(i) of the Act. The case was selected for scrutiny and thereafter assessment was framed u/s. 143(3) of the Act vide order

dated 30-06-2017 and the total income was determined at Rs.2,60,810/-. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who vide order dated 15-01-2018 (in appeal No. PN/CIT(A)-7/Wd.-2(5)/10066/2017-18) granted partial relief to the assessee. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal and has raised following grounds :

- “1. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in passing ex parte order without affording the sufficient opportunity to explain the case, matter may kindly be restored to the file of CIT(A) for fresh adjudication in the interest of natural justice.
2. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in denying the deduction u/s. 80P(2)(a)(i) of Rs.2,60,810/-, on the interest income earned by the appellate society by rejecting the appellants contention that earning interest on investment is integral part of the appellants business activity and it has been treated as business income since inception. Appellant society prays for the deduction as claimed.

*The appellant craves for to leave, add, alter, modify, delete above ground of appeal before or at the time hearing, in the interest of natural justice.”*

4. The ld. AR of the assessee has stated at the Bar that he is not pressing ground No. 1. Accordingly, the same is dismissed as not pressed.

5. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had received MSEB commission of Rs.2,35,052/- and interest on MSEB deposit of Rs.15,225/-. He also noticed that the assessee had received interest on fixed deposit from IDBI Bank amounting to Rs.10,027/- and UTI dividend Rs.551/-, thus, aggregating to Rs.10,578/-. The assessee was asked to show

cause as to why the deduction u/s. 80P(2)(a)(i) claimed by the assessee on aforesaid income not be denied. According to the Assessing Officer the interest from fixed deposit with IDBI Bank and UTI dividend was from non-co-operative banks and the commission from MSEB and interest on MSEB was not out of business income but was income from other sources. The submissions made by the assessee were not found acceptable to the Assessing Officer. He accordingly denied the claim of deduction on aforesaid income u/s. 80P of the Act. Aggrieved by the order of Assessing Officer, assessee carried the matter before the CIT(A), who upheld the order of Assessing Officer. Aggrieved by the order of CIT(A), the assessee is now in appeal.

6. Before me, the ld. AR submitted that an identical facts in assessment year 2012-13 in assessee's own case, the Assessing Officer had denied the claim of deduction on commission and interest received from MSEB of Rs.3,20,579/- and interest on deposit which were kept other than Co-operative society and banks of Rs.16,99,709/-. He submitted that against the order of Assessing Officer, the assessee had carried the matter before the CIT(A) who vide order dated 02-01-2017 had granted relief on MSEB commission and interest received holding it to be eligible for deduction u/s. 80P of the Act but had upheld the denial of claim of deduction on interest from banks. Against the order of CIT(A), assessee carried the matter before the Tribunal and the Tribunal vide order dated 25-05-2018 has granted relief on interest. He placed on record the copy of order. He further submitted that against the order of CIT(A) whereby he

granted relief on interest from deposit received from MSEB, Revenue has not preferred any appeal. He therefore, submitted that following the order of Tribunal and the order of CIT(A) in assessee's own case for earlier year, the matter be decided.

7. The ld. DR did not controvert the submissions made by the ld. AR but however supported the order of lower authorities.

8. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim on deduction u/s. 80P(2)(a)(i) on the interest received from other than Co-operative societies and commission and interest from MSEB. Before me, the ld. AR has pointed that on identical facts in assessee's own case for assessment year 2012-13 the CIT(A) had allowed the claim of deduction on interest from MSEB and commission income and Revenue has not preferred any appeal against the order of CIT(A). As far as interest earned from other than Co-operative Banks is concerned, I find that the Co-ordinate Bench of Tribunal in assessee's own case in assessment year 2012-13 after considering the various decisions, held that the assessee is eligible for deduction u/s. 80P(2)(a)(i) of the Act in respect of interest earned on fixed deposits kept with the Nationalized Banks and Scheduled Banks and the same constitute business income of the assessee. Before me, the Revenue has not pointed out any distinguishing features in the facts of the case in the year under consideration and that of assessment year 2012-13. I therefore, following the decision of Tribunal in assessee's own case and the order of CIT(A) for

assessment year 2012-13 hold that the assessee to be eligible for deduction on interest received from banks and commission and interest received from MSEB. Thus, the grounds raised by the assessee are allowed.

9. In the result, the appeal of assessee is partly allowed.

Order pronounced on the 07<sup>th</sup> day of October, 2019.

**Sd/-**

**(ANIL CHATURVEDI)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 07<sup>th</sup> October, 2019.

RK

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT (A)-7, Pune
4. The Pr.CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.