

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 5982/Mum/2018
(निर्धारण वर्ष / Assessment Years : 2014-15)

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| Maker Tower ‘L’ CHSL G.D. Somani Marg, Cufee Parade, Coloba, Mumbai. | बनाम/ Vs. | ITO 17(2)(3) Room No. 123-B/G, 1 st Floor, Aaykar Bhavan, MK Road Mumbai. |
| स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No. : AAAAM2965K | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से/ Appellant by : | M/s. Burzin R. Daruwalla, AR |
| प्रत्यर्थी की ओर से/Respondent by : | Shri Akthar H Ansari, DR |

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| सुनवाई की तारीख / Date of Hearing | 04/11/2019 |
| घोषणा की तारीख /Date of Pronouncement | 14 /11 /2019 |

आदेश / ORDER

PER R C SHARMA (AM):

This is an appeal by the assessee against the order of the Ld. CIT(A) for the A.Y 2014-15, in the matter of order passed u/s 143(3). Assessee has raised the following grounds of appeal.

“1: 0 Re: The learned ITO, Erred in disallowing deduction under Section 80P(2)d of Income Tax Act, 1961 in regards to interest earned by the appellant from investment in Fixed

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deposits and saving bank with Co-operative Banks amounting to Rs. 30,90,670/- and shown under "Income from Other Sources".

1.1 The assessing officer has added Rs. 30,90,670/- as additional income under the head "Income from Other Sources" besides the returned income of Rs. 18,160/- and has levied additional tax of Rs. 12,89,893/- while deriving total tax payable as per assessment order served U/s 143 (3). The additional income of Rs. 30,90,670/- added in computation of total taxable income is interest earned by the Appellant on saving's account and fixed deposits with Co-operative Banks which is considered by Appellant as non-taxable and had claimed deduction U/s. 80P(2)d of the Income Tax Act, 1961 considering income earned by one society from another Society, wherein the other society being a co-operative Bank.

1.2 The assessing officer has wrongly levied penal interest of Rs. 19,150/- U/s 234A and Rs. 3,15,975/- U/s 234B whereas actual penal interest applicable is Rs. NIL/- U/s 234A & B which needs to be considered and such penal interest levied to be waived.

1.3 Penalty proceedings initiated by assessing officer U/s. 271(1) (c) needs to be stayed aside until conclusion of appeal proceedings and subsequently waived if considered appropriate.

2 : 0 Re. : General

2.1 The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal".

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a Co-

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operative society registered under Maharashtra Co-operative Act and having registration No. BOM/W/A/HSG/TC/4380 of 1989-90 who E-filed original return of income for the A.Y 2014-15 on 28.09.2014 i.e before due date as applicable u/s 139(1) of the Act. The total returned income of Rs. 32,15,330/- contains income assessed under the head "Income From Other Sources" showing Rs. 60/- dividend earned and Rs. 18,100/- misc income as taxable income and claiming deduction / exemption of Rs. 31,97,170/- which comprises Rs. 25,500/- received towards Transfer fees, Rs. 81,000/- received towards renovation charges from members and Rs. 30,90,670/- interest earned from investment with co-operative banks.

3. The A.O while processing the return of income u/s 143(3) has accepted and assessed same income as shown in the return with addition of Rs. 30,90,670/- under head of income viz. "Income from other sources. The Ld. AO has considered interest earned by society by investment in a co-operative bank as investment with non-society by investment in a co-operative bank as investment with non-society and has considered as not fulfilling

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provisions/conditions of Sec. 80P(2)d for claiming deduction and has considered the same as taxable income in the hands of assessee under the head income from other sources though the assessee represented the receipt of Rs. 30,90,670/- as non-taxable under provisions of Sec. 80P(2)d of the Act. By the impugned order, the CIT(A) confirmed the action of AO and assessee is in further appeal before me.

4. I have considered rival contentions and gone through the orders of the authorities below. From the record, I found that the A.O during course of scrutiny hearing never informed the assessee or representative of the assessee that the A.O does not agree with the computation filed by the assessee particularly in respect of deduction claimed by the assessee u/s. 80P(2)d of the Act. Moreover, before finalizing/completing scrutiny assessment the Ld. AO did not issue show cause notice in support of disallowance of deduction claimed by the assessee u/s 80P(2)d of Act and simply disallowed deduction under the pretext that the cooperative banks with which investment in FDR were held by the assessee are not society and that it does not fulfill condition stipulated under the said section that deduction

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is permitted in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society.

5. From the record I found that for availing deduction u/s 80P(2)d, the A.O has declaimed the same in respect of interest and dividend income derived by from assessee society from another. A.O has simply inserted his own contention that between the two societies principles of mutualality must prevail while claiming deduction u/s 80P(2)d of the Act. The assessee is a member of one bank viz. the Mumbai District Co-operative Bank Ltd., Mumbai of which it holds share certificate.

6. Interest and dividend earned by co-op society on investments with other co-operative society is eligible for deduction. The question whether the Co-op society is engaged in the business of banking for providing credit facilities to its members and the head under which the income is assessable is not material. Since the AO has not correctly appreciated the facts of the case nor given proper opportunity to the assessee before disallowing assessee's claim. I restore the matter back to the file of the A.O for

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deciding afresh in terms of above discussion. I direct accordingly.

7. In the result the appeal of the assessee is allowed for statistical purposes.

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| This Order pronounced in Open Court on | 14/11/2019 |
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Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

Mumbai, Dated 14/11/2019

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai