

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI
BEFORE SHRI PAWAN SINGH JUDICIAL MEMBER AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No. 5289/Mum/2018 (Assessment Year 2014-15)

ITA No. 5288/Mum/2018 (Assessment Year 2015-16)

Navbharat Urban Co-operative Credit Society Ltd., Gr. Floor, Siddhivinayak Darsha Apartment, Phadnis Marg, Parnaka, Vasai, Dist. Palghar-401201. PAN: AAAAN5201B	Vs.	ITO Ward-(4)(3) A Wing, 6 th Floor, Ashar I.T. park, Road No.16Z, Waghale Ind. Estate, Thane-4000064.
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Appellant

Respondent

Appellant by

: None

Respondent by

: Shri Akhtar H. Ansari (Sr. AR)

Date of Hearing

: 30.09.2019

Date of Pronouncement

: 01.11.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two appeals by assessee are directed against separate orders of Id. CIT(A)-3, Thane dated 12.04.2018 & 18.07.2018 for Assessment Year 2014-14 & 2015-16 respectively. In both the appeals, the assessee has raised identical grounds of appeal except variation of figure. Facts for both the Assessment Years are identical. Therefore, both the appeals were clubbed, heard together and are decided by common order. For appreciation of facts, the appeal for Assessment Year 2015-16 in ITA No. 5288/Mum/2018 was treated as lead case. The assessee has raised the following grounds of appeal:

1. In the facts and circumstances of the case and in law, the learned A.O. erred in disallowing deduction claimed of Rs.28,78,868/- U/s 80P(2)(a)(i) of the Act by disregarding the fact that the interest was received on term deposit from SBI.
2. In the facts and circumstances of the case and in law, the learned A.O. erred in disallowing deduction claimed of Rs. 6,84,482/- u/s 80P(2)(a)(i) of the Act by disregarding the fact that the commission was received from MSEB.
3. In the facts and circumstances of the case and in law, the learned A.O. erred in initiating penalty u/s 271(1)(c) and interest u/s 234A, B, C & D.
4. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming the contentions raised by the Assessing Officer.

[BJ Relief Prayed:

The appellant therefore prays as follows,

1. To delete the disallowance of deduction claimed of Rs. 28,78,868/- u/s 80P(2)(a) (i) of the Act.
2. To delete the disallowance of deduction claimed of Rs. 6,84,482/- u/s 80P(2)(a)(i) of the Act.
3. To delete penalty levied u/s 271(1)(c) and interest charged u/s 234 A, B, C & D.

[C] General: -

- The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.
- This appeal is filed late and petition for condonation of delay is filed and the same may be considered.
- A Detailed paper book along with case laws will be submitted at the time of hearing.

2. Brief facts of the case are that the assessee is a co-operative society and engaged in the business of providing credit facility to its members, filed its return of income on 24.09.2010 for Assessment Year 2010-11 declaring total income of Nil. The case was selected for scrutiny. During

the assessment, the Assessing Officer noted that during the year the assessee earned interest income of Rs. 28,78,868/- on Fixed Deposits with State Bank of India. The assessee has also received commission income from MSEB of Rs. 7,34,482/-. The Assessing Officer took his view that the assessee has earned income from non-members and the aforesaid interest income should be assessed under the head 'Income from Other Sources'. The Assessing Officer issued show-cause notice dated 11.09.2017 to the assessee. The assessee filed its reply and relied upon the case law in CIT vs. Ramanathapuram District Co-operative Central Bank Ltd, civil Appeal No. 4477 to 4479 of 1998(S), Shri Renukadevi Urban Credit Co-operative Society Ltd. vs. CIT ITS No. 5008/2009 (Karnataka High Court), CIT vs. Solapur Nagari Audyogic Sahakai Bank Limited in IT Appeal No. 46 of 2008 (Bombay High Court & Rajmata Urban Co-operative Bank Ltd. vs. No. 479/PN/10 (A.Y. 2013-14 ITAT Pune. The Assessing Officer note accepted the reply of assessee. The Assessing Officer concluded that the case laws relied by assessee are in case of co-operative bank and not of co-operative societies. The assessee is not authorized to carry out the activities of banking institution as permitted to co-operative banks. The provision of section 80P(2)(d) is inapplicable as the interest income earned on Fixed Deposit with the nationalized bank is not exempted. The Assessing Officer treated the interest income on Fixed Deposit in

State Bank of India as income from other sources. Similarly, the income derived from commission from MSEB i.e. income from non-members and the same does not fall under concept of mutuality and this receipt was also treated as taxable under the head "Income from Other Sources" and treated the said interest income. The Assessing Officer after allowing basic exemption of Rs. 50,000/- treated the remaining amount of Rs. 6,84,482/- (7,34,882 – 50,000) as "Income from Other Sources". On appeal before the Id. CIT(A), the action of Assessing Officer was affirmed. Thus, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before this Tribunal.

3. None appeared on behalf of assessee despite the service of notice of hearing of appeal through registered post. The notice sent through registered post returned back with the remark of postal authorities "unclaimed" Therefore, we left no option except to hear the Id. DR for the revenue and to decide the appeal on the basis of material available on record.
4. We have heard the submission of Id. Departmental Representative (DR) for the revenue and perused the material available on record. The Id. Departmental Representative (DR) for the revenue supported the order of lower authorities. The Id. DR further submits that the assessee is not entitled for deduction of interest income or commission income as it does not fulfil the conditions stipulated under section 80P(2)(d). The

assessee has earned interest income. The assessee has earned interest income from a Nationalized Bank and not from the Co-operative Society. The case law relied by assessee before the lower authority were not applicable on the facts of the case of assessee, which have been duly differentiated by lower authorities. Further, there is no mutuality on the commission earned from MSEB. The ld. DR for the revenue prayed for dismissal of appeal.

5. We have considered the submissions of ld. DR for the revenue and perused the record. There is no disputed that assessee earned interest income of Rs. 28,78,868/- on deposit made with State Bank of India. Admittedly, the State Bank of India is not a co-operative society rather a Nationalized Bank. Therefore, in our considered view the assessee is not entitled for any deduction under section 80P(2)(d). Similarly, for commission income, the assessee has not brought any fact on record that on commission income there is any element of mutuality. No documentary evidence or written submission is placed by assessee to take any other view. In our view, the lower authorities have rightly treated the interest income and commission earned by assessee as Income from Other Sources, which we affirm.
6. In the result, appeal of the assessee is dismissed.

ITA No. 5289/Mum/2018 for A.Y. 2014-15

7. The assessee has raised the identical grounds of appeal as raised in appeal for A.Y. 2015-16. The facts of the appeal for this year are also identical. Considering the fact that we have dismissed the appeal for A.Y. 2015-16, therefore, following the principle of consistency, appeal of this year is also dismissed with similar direction.
8. In the result, appeal of the assessee for A.Y. 2014-15 is also dismissed.

Order pronounced in the open court on 01/11/2019.

Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 01.11.2019

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Copy of the Order forwarded to :

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai