

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5285/MUM/2018
Assessment Year: 2012-13
&
ITA No. 7527/MUM/2018
Assessment Year: 2013-14**

Ordnance Factories Employees Coop Consumers Stores Ltd., Ordnance Estate, Ambarnath – 421502. PAN No. AAAA02704L Appellant	Vs.	ACIT, Cir-2, Kalyan. Respondent
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Assessee by : Ms. Deepa Khare, AR
Revenue by : Mr. Bhera Ram, DR

Date of Hearing : 18/11/2019
Date of pronouncement: 25/11/2019

ORDER

PER N.K. PRADHAN, A.M.

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)] and arise out of the assessment completed u/s 143 of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience.

ITA No. 5285/MUM/2018
Assessment Year: 2012-13

2. The grounds of appeal filed by the assessee read as under:
 1. The Ld. CIT(A) erred in law and on facts in confirming the action of the AO in denying that the appellant is a mutual concern and thereby denying exemption in respect of the income on the ground of mutuality.
 2. The Ld. CIT(A) erred in law and on facts in not appreciating that the appellant has acted without any profit motive purely for the benefit of members.
3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2012-13 on 28.09.2012 disclosing total income of Rs. Nil. It is a Co-operative Consumers Stores incorporated under the Co-operative Societies Act, 1960. The Society has been formed/incorporated on 25.05.1967. The members of the society are the employees of the Ordnance Factories (Ordnance Factory, Machine Tool Prototype Factory and Allied Establishment) Ambarnath only. The appellant filed the above return in which business income of Rs.7,35,384/- was claimed as exempt u/s 44A. However subsequently, the appellant has stated that the claim of exemption u/s 44A was wrongly made. Thereby it claimed exemption on 'principle of mutuality' and claimed deduction of interest income earned from Co-operative Bank amounting to Rs.8,01,667/- u/s 80P(2)(d) of the Act. In the assessment order dated 20.03.2015 passed u/s 143(3), the Assessing Officer (AO) did not accept the principles of mutuality and subjected the business income to tax.
4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). We find that *vide* order dated 25.06.2018, the Ld. CIT(A) held that the AO has rightly allowed deduction of Rs.1,00,000/- u/s 80P(2)(c)(i) of the Act.

5. Before us, the Ld. counsel for the assessee submits that the activities are carried out by the appellant on no profit no loss basis; the main objective of carrying out the activities is to get quality grocery, clothes, stationery and durable items at a very reasonable rate to the employees of Ordnance Factory, which is a Governing entity. Making reference to clause 4(a) to (f) of its Bye-laws, it is stated that the appellant does not have any intention to earn profit. Further, making reference to clause 13 of Bye-laws, it is stated that only employees of Ordnance Factory can become its members. Thus it is argued that on the basis of the above facts, the income earned by trading with its members should not be treated as business income.

Finally, the Ld. counsel submits that the proportionate/prorata deduction which has been given by the AO u/s 80P(2)(d) for interest received/accrued on investments made in Thane District Co-operative Bank for various funds is not based on any sound reasoning.

6. On the other hand, the Ld. Departmental Representative (DR) submits that the Ld. CIT(A) has rightly denied the exemption to the appellant in respect of income on the ground of mutuality.

7. We have heard the rival submissions and perused the relevant materials on record. Let us examine the Bye-laws of the appellant. As per clause 4 of the Bye-laws the object of the appellant-stores are:-

- “a. To encourage thrift, self held and co-operation amongst members.
- b. To raise funds to be invested for the benefit of the employees of the Defence Factories, Ambarnath and its Allied Establishment already functioning and to be installed.

- c. To purchase the necessities of life for retail sales to the members, carry on in common for the benefit of the members of the Stores of trade of General Dealers and the Establishment and conduct of co-operative principles of such other lines of work and departments of such business as may be from time to time be resolved upon by the General Body of the members.
- d. To carry out all such other things as are incidental or conducive to the attainment of the objects.
- e. Flour Mills, Transportation, Canteen, Laundry, Diary etc.
- f. To run fair price ration shops on the basis of the licenses granted by the Government of Maharashtra or by the controller of Rationing, Bombay.

We further find that the members of the society are employees of the Ordnance Factory, Ambarnath and they become members by subscribing to the share capital of the Society; the Managing Committee of the Stores effects purchases of various goods from the manufacturers/wholesellers at competitive price and sales are effected to members only, either on cash or on credit basis ; credit sales proceeds are recovered from members through their employer i.e. Ordnance Factory and its allied establishment, Ambarnath from salaries.

Thus it is observed by us that the object is not to earn profit but to provide best possible consumer goods at best price to its members only. It is a case of mutual entity running on principles of mutuality. The essence of mutuality lies in the return for what one has contributed to a common fund.

The fund should fulfill the essential requirements that all the contributors to the common fund must be entitled to participate in the surplus and that all the participators in the surplus should be contributors to the common fund. There must be complete identity between the contributors to the fund and the participators in the surplus.

In the facts and circumstances of the case, we hold that the essence of mutuality has been established by the appellant. Therefore, we are inclined to set aside the order of the Ld. CIT(A).

8. In the result, the appeal filed by the assessee is allowed.

ITA No. 7527/MUM/2018
Assessment Year: 2013-14

9. The grounds of appeal filed by the assessee read as under:

1. The learned CIT(A) erred in law and on facts in allowing the deduction u/s 80P(2)(d) of Rs.3,85,392/- being net interest income after deducting proportionate expenses @ 50%, as against Rs.7,70,784/- being the gross interest income claimed by the appellant.
2. The learned CIT(A) failed to appreciate that no nexus has been established between the interest income and the expenditure so as to fall within the scope of deduction u/s 57 and consider as proportionate deduction from interest income.
3. The action of lower authorities is apportioning the expenditure to the interest income is factually and legally unjustified and the entire interest of Rs.7,70,784/- may kindly be allowed deduction u/s 80P(2)(d).

10. In a nutshell, the facts are that the assessee filed its return of income for the AY 2013-14 on 28.09.2013 declaring Nil income, considering income of Rs.1,80,580/- arising from trading between members of Co-operative Society

as exempt on principles of mutuality and claiming deduction of interest earned from Co-operative Bank amounting to Rs.7,70,784/- u/s 80P(2)(d) of the Act. The AO allowed deduction u/s 80P(2)(d) in respect of interest earned on fixed deposits amounting to Rs.7,70,784/- with other Co-operative Society after deduction of expenses on percentage basis. The AO allowed net interest deduction of Rs.96,040/- after deducting proportionate expenses for earning such interest income received from another Co-operative Bank. The AO calculated the proportionate expenses @ 87.54%.

In appeal, the Ld. CIT(A) agreed with the action of the AO in respect of deduction of proportionate expenses from interest received from non-Co-operative Bank, as to earn such income, expenses are incurred and in most of the cases, where interest is received from other non-Co-operative Banks, they claim proportionate expenses. However, the Ld. CIT(A) held that the disallowance @ 87.54% is excessive and thus he restricted the disallowance to 50% considering it just and fair.

11. Before us, the Ld. counsel for the assessee submits that section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the Co-operative Society from its investment with any Co-operative Society and this provision does not make any distinction in regard to source of the investment because it envisages deduction in respect of any income derived by the Co-operative Society from any investment with a Co-operative Society.

On the other hand, the Ld. DR supports the order passed by the CIT(A).

12. We have heard the rival submissions and perused the relevant materials on record. Facts being same, our decision on mutuality for the AY 2012-13 applies *mutatis mutandis* to AY 2013-14.

Also we find that the appellant is carrying out only one activity and that is running "Co-operative Consumer Stores" for the benefit of its members only. Funds generated from this activity are utilized for statutory investments against various funds as per rules and regulations of the Co-operative Societies Act. As evident from the accounts, the appellant is not enjoying any credit facilities from any financial institution. In order to develop the habit of savings, the appellant is collecting thrift deposit from salaries on monthly basis since its inception and these funds are utilized for the business purpose of the appellant. During the year under consideration, the appellant invested Rs.11,05,000/- out of interest income and surplus in the fixed deposits against various funds.

In view of the above facts, there is no merit in the action of the AO to disallow the expenses @ 87.54%. Also there is no merit in the order of the CIT(A) in restricting it to 50%. It is well settled that section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the Co-operative Societies from its investment with any other Co-operative Society. Having regard to the above provisions, we are of the considered view that there is no basis to restrict the disallowance to 50% as held by the Ld. CIT(A). The apportioning of the expenditure to the interest income is not justified and the appellant is entitled to deduction u/s 80P(2)(d) of the entire interest of Rs.7,70,784/-. The order of the Ld. CIT(A) therefore reserves to be set aside.

13. In the result, the appeals for the AY 2012-13 and 2013-14 filed by the assessee are allowed.

Order pronounced in the open Court on 25/11/2019.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
Mumbai;

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Dated: 25/11/2019
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai