

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

I.T.A. No. 8070/Del/2018
Assessment Year: 2015-16

The Jeevan Sanchay Cooperative
Urban Thrift and Credit Society Ltd.,
B-66, BK Dutt Colony, New Delhi
(PAN:AADAT6757F)

(ASSEESSEE)

vs. Income Tax Officer,
Ward-53(1), New Delhi

(RESPONDENT)

Assessee by: Ms. Rano Jain, Adv, Sh. Pranshu
Singhal, CA & Ms. Mansi Jain, CA
Revenue by : Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal is filed by the assessee against the Order dated 25.10.2018 passed by the Ld. CIT(A)-18, Gurgaon relating to Assessment Year 2015-16 on the following revised grounds:-

- 1. That the order passed by the honourable Commissioner of Income Tax is not in sync with the judgements of the similar facts based adjudged case laws.*
- 2. That the order passed by the honourable Commissioner of Income Tax is not based on facts and circumstances of the case.*
- 3. That the order passed is against the principle of natural justice and thus proper opportunity of being heard was not provided.*
- 4. That on facts and circumstances of the case the Learned Assessing officer was not justified in addition of Rs 12,28,965/- on account of points mentioned in the assessment order.*
- 4. That addition of Rs 12,28,965/- on account of disallowance of deduction u/s 80P of the Income Tax Act 1961 is not correct and the source against which the same has been added is exempt as per definition u/s 80P (2) (i) of the income tax act as is claimed u/s 80P (2) (d) in the Income tax Return duly filed.*

5. That on the facts and the circumstances of the case the Learned Assessing officer has erred in initiating penalty proceedings u/s 271 (1) (c) read with section 274 of the Income tax act 1961.

6. That the assessee is a cooperative society providing credit facility to its members. It is not carrying on any other business. The society has more fixed deposits from the members than it has amount parked with banks, thus proving that parking funds with banks is not the source of income but maintaining liquidity of funds for the society in case of any emergent need by the members. The object of keeping or investing the surplus funds of cooperative society is intended to meet any unforeseen losses.

7. That the assessee is carrying on the business by providing credit facilities to its members, earns profit and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business attributable to the activity of carrying on the business of banking or providing credit facilities to its members and is liable to be deducted from the gross total income under section 80P of the Act.

8. That the assessee deposits in bank are from own funds of society so the interest on same is eligible for deduction U/s 80P(1) and if these deposits would have been in bank out of the funds available with society in the form of liability then the same would not have been eligible for deduction U/s 80P (2) of IT Act.

9. That the reliance on the case of Mantola co-operative thrift & credit Society Limited as taken by the honourable Commissioner of Income Tax is justified as per para number 7 of the ITA 128/2017,129/2017,130/2017,132/2017,133/2017 & 134/2017 order dated 07/03/2017 the Honourable High Court has stated " We notice at the outset that the ITAT had in the course of :s impugned order - in the immediately preceding paragraph i.e. para 7 applying the ratio in ITA 'Jo.839/2009 (CIT vs. National Agricultural Co-operative Marketing federation of India Ltd decided on 03.05.2011) held that the assessee was eligible to deduction under 80P(2)(d) in respect of the interest earned from investment made by the society in other co-operative banks.

10. That deduction under section 80 (P) shall be looked into broader sense with various supporting case laws so that direct relation with the deductions can be proved as it is established in our case.

11. That certificate of society registration of Vaish Co-operative Adarsh Bank Ltd. is enclosed for ready reference to establish the fact that the aforesaid

bank is registered as a Co-operative society as per definition u/s 2(19) of the Income tax act 1960.

12. Facts of such case are similar with adjudged case ITA's 2787 & 2788/Del/2018, The Veer Cooperative Group Housing Society Ltd. recently decided on 4th September 2018 where the appeal of assessee was allowed.

13. Facts of such case are similar with adjudged case ITA's 2900 & 2901/Del/2015, M/s Jawala Cooperative Urban Thrift & Credit Society Ltd. recently decided on 26th April 2018 where the appeal of assessee was allowed.

14. Facts of such case are similar with adjudged case ITA's 786 to 788/Bang/2016, M/s Malnadu Credit Cooperative Society Ltd. decided on 3rd March 2017 where the appeal of revenue was dismissed.

15. Facts of such case are similar with adjudged case ITA's 59/Pan/2016, M/s Akshaya Cooperative Credit Society Ltd. decided on 21st November 2016 where the appeal of revenue was dismissed.

16. Facts of such case are similar with adjudged case ITA's 29/2015, M/s Guttigedarara Credit Cooperative Society Ltd. decided on 19th September 2014 where the appeal of Assessee was allowed by Honourable High Court of Karnataka.

17. Facts of such case are similar with adjudged case ITA's 307/2014, M/s Tumkur Merchants Souhardha Credit Cooperative Society Ltd. decided on 28th October 2014 where the appeal of Assessee was allowed by Honourable High Court of Karnataka."

2. At the time of hearing, learned counsel for the assessee stated that the issue in dispute i.e. exemption / deduction under section 80P(2)(i) of the Income Tax Act, 1961 claimed by the assessee has already been allowed by the Assessing Officer for the A.Y. 2009-10 and 2013-14 under section 143(3) of the I.T. Act vide order dated 24th October, 2011 and 30th November, 2015 respectively. She further stated that this issue has already been adjudicated and decided by the ITAT Delhi Bench 'SMC' New Delhi in ITA No. 680/Del/2019 Assessment Year 2015-16 Maa Jhandewali Cooperative Urban Thrift & Credit Society Ltd., vs. ITO, Ward-63(5), New

Delhi and in ITA No. 1255/Del/2019 Assessment Year 2013-14 Mamurpur Cooperative Thrift and Credit Society Ltd., vs. ACIT, Circle 38(1), New Delhi. She further stated that Hon'ble Karnataka High Court has also decided similar issue in dispute in favour of the assessee in the case of The Pr. Commissioner of Income Tax vs. The Totagars Cooperative Sale Society. She requested that respectfully following the said orders, the addition in dispute may be deleted and the appeal filed by the assessee may be allowed.

3. The learned DR relied upon the order passed by the Revenue authorities.

4. I have heard both the parties and perused the records, the impugned order as well as the case laws relied by the Ld. Counsel for the assessee. I find that the ITAT, 'D' Bench, New Delhi vide its order dated 19.12.2014 passed in the case of ACIT, Circle 38(1), New Delhi vs. M/s Jawala Cooperative Thrift & Credit Society Ltd., New Delhi has adjudicated the similar and identical issue and decided the same in favour of the assessee by holding as under:-

9. We have heard rival parties and have gone through the material placed on record. We find that total income earned by the assessee included income on fixed deposits placed with Bombay Mercantile Bank, interest income from a scheduled bank and dividend income from Delhi Cooperative Bank. From the certificate as placed at page book page 30, we find that Bombay Mercantile Cooperative Bank is a cooperative society registered under Maharashtra Cooperative Societies Ltd. and we further find that the said society has been assessed u/s. 143(3) as a cooperative society and its income was allowed to the exempt u/s. 80P(2)(i) as held by Mumbai Tribunal in ITA No. 4128 and 4129 vide its order dated 30.11.2005, for assessment year 1990-91 and 1991-92 and further by Mumbai Tribunal vide order dated 07.9.2011 in ITA No. 5292 for assessment year 1997-98.

Therefore, it is held that fixed deposits placed with Bombay Mercantile Bank falls within the exemption granted by Section 80O(2)(d) of the Act. The assessee was also eligible under the provisions of Section 80O(2)a(i) as the funds placed by assessee in the form of fixed deposits can be said to be kept for the purpose of business of the assessee as the assessee had availed credit facilities also against such fixed deposits which were again used for the purpose of business of assessee. Moreover, under similar circumstances, Chandigarh Bench in ITA No. 996/2009 as noted by Ld. CIT(A) has decided in favour of assessee. The dividend income is exempt for all persons including assessee. The interest income from bank amounting to Rs. 18,190/- is though not exempt u/s. 80(p)(2)(d) but is exempt u/s. 80P(2)(i) of the Act. The case law of Totgar's Cooperative Society was rightly distinguished by Ld. CIT(A). Therefore, keeping in view all facts and circumstances, we do not find any infirmity in the order of the Ld. CIT(A).

10. In view of above, appeal filed by the Revenue is dismissed."

4.1 After perusing the aforesaid finding of the Tribunal, I am of the considered view that the issues in dispute are squarely covered by the aforesaid decision. Therefore, respectfully following the aforesaid precedent, the addition in dispute is hereby deleted and the appeal filed by the assessee is allowed.

5. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on 03/02/2020.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 03/02/2020

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Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches