

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH VC 'SMC', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 767/JP/2019
निर्धारण वर्ष/Assessment Year : 2015-16.

Shahpura Gram Seva Sahakari Samiti Ltd., Shahpura, Jaipur-303103.	बनाम Vs.	The Income Tax Officer, Ward 4(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAAJS 1281 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by :
राजस्व की ओर से / Revenue by :

Shri Brijesh Agarwal
Smt. Chanchal Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 14.10.2020.
घोषणा की तारीख / Date of Pronouncement : 15/10/2020.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 25th March, 2019 of Id. CIT (A)-2, Jaipur for the assessment year 2015-16. The assessee has raised the following grounds :-

- " 1. That the Appellate order dated 25.03.2019 of the Id. CIT (A)-2, Jaipur is unjustified, arbitrary, prejudged against the weight of evidence on record and bad in law.
2. That the Id.CIT (A) has grossly erred in confirming the order of the Assessing Officer disallowing deduction u/s 80P(2)(i) on account of interest received from Co-operative Bank and has made the addition of Rs. 2,51,866/- and instead allowing a deduction of Rs. 50000.00 u/s 80P(2)(C)(ii). Assessee being the

primary Agricultural Credit Co-operative Society and whole of the income of the assessee is exempt u/s 80P(2)(a)(i).

3. That the order of the Id. CIT (A) is bad in law and deserves to be quashed.
4. That the appellant reserves the right to add, amend, withdraw or alter any grounds of appeal before the finalization of said appeal."

The hearing of the appeal is concluded through Video Conference due to prevailing condition of COVID 19 pandemic.

2. The Id. A/R of the assessee has submitted that the Id. CIT (A) has confirmed the disallowance of deduction under section 80P(2)(a)(i) on the ground that the interest received by the assessee from Jaipur Central Cooperative Bank is not covered under section 80P(2)(d) of the IT Act as the assessee has not produced any document to prove that Jaipur Central Cooperative Bank is a Cooperative Society. He has produced a Certificate issued by the Registrar of Cooperative Societies in respect of Jaipur Central Cooperative Bank and submitted that the said Cooperative Bank is a Cooperative Society registered under the Cooperative Societies Act. Thus the Id. A/R has contended that the interest received by the assessee from Jaipur Central Cooperative Bank is eligible for deduction under section 80P(2)(d) of the IT Act. In support of his contention, he has relied upon various decisions of this Tribunal as relied upon before the Id. CIT (A).

3. On the other hand, the Id. D/R has submitted that the Certificate issued by the Registrar, Cooperative Societies, Jaipur now filed by the assessee is an additional evidence which cannot be considered at this stage when it was not produced by the

assessee before the authorities below. Thus the Id. D/R has objected to the filing of the Registration Certificate issued by the Registrar, Cooperative Societies to the Jaipur Central Cooperative Bank. She has relied upon the orders of the authorities below.

4. Having considered the rival submissions and careful perusal of the orders of the AO as well as the impugned order of the Id. CIT (A), it is noted that the Id. CIT (A) has not disputed the claim of the assessee in respect of the interest received from Jaipur Central Cooperative Bank as allowable in view of section 80P(2)(d) if the said cooperative bank is a Cooperative Society. The claim of the assessee was denied by the Id. CIT (A) in para 2.3 and 2.3.1 as under :-

" 2.3. I have perused the facts of the case, the assessment order and the submissions of the appellant. On perusal of overall facts, it is seen that the Assessing Officer disallowed deduction under section 80P in respect of interest received from M/s. Jaipur Central Co-operative Bank by holding that the same is not allowable in view of the section 80P(2)(d).

2.3.1. Ld. Authorized Representative argued that this interest is allowable under section 80P(2)(a)(i). I find that under section 80P(2)(a)(i) only interest received from credit facility to its members is allowed. Interest received is on FDR with Co-operative Bank. The appellant has not provided any documents which prove that M/s. Jaipur Central Cooperative Bank is a Co-operative Society and therefore, in view of section 80P(2)(d) disallowance of Rs. 2,51,866/- made by the Assessing Officer under section 80P is confirmed. This ground of appeal is dismissed."

Thus the Id. CIT (A) has allowed the claim of the assessee under section 80P(2)(a)(i) in respect of the interest received from the credit facility to its members but the claim of deduction under section 80P(2)(d) is denied only on the ground that the assessee has not produced any document to prove that Jaipur Central Cooperative Bank is a Cooperative Society. Now the assessee has produced the Certificate issued by the Registrar of Cooperative Societies whereby Jaipur Central Cooperative Bank was registered as a Cooperative Society. As regards the objection of the Id. D/R regarding production of this Certificate at this stage as an additional evidence, it is to be noted that the Certificate produced by the assessee is not the assessee's own document but it is a document otherwise available in public domain and issued by the Registrar of Cooperative Societies. Therefore, this fact cannot be disputed or the Certificate issued by the Registrar of Cooperative Societies cannot be doubted. Accordingly, I do not find any substance in the objection made by the Id. D/R against the production of the Certificate issued by the Registrar of Cooperative Societies. Once Jaipur Central Cooperative Bank is found to be a Cooperative Society, the interest received from the said Cooperative Bank/Society is eligible for deduction under section 80P(2)(d). The Coordinate Bench of this Tribunal in case of ITO vs. Shree Keshorai Patan Sahakari Sugar Mill, Bundi dated 31.01.2018 in ITA No. 418 & 419/JP/2017 has considered this issue and held in para 6.1 to 6.4 as under :-

"6.1 As regards the claim u/s 80P(2)(d), we find that the only condition for availing the deduction under this provision is any income by way of interest or dividend derived by the Cooperative society from its investment with any other cooperative

society, the whole of such income is allowable for deduction u/s 80P(1). Therefore, there is no condition for the assessee society to engaged in the activity of provide credits to the Members or banking business for availing the deduction u/s 80P(2)(d) read with Section 80P(1) of the Act. As regards the cooperative bank shall be treated as cooperative societies for the purpose of the interest income on investment in such cooperative bank u/s 80P(2)(d) the Mumbai Bench of this Tribunal in case of Lands End Co-operative Housing Society Ltd. vs. ITO (Supra), after considering the decision of the Hon'ble Supreme Court in case of Totagar's Co-operative Sale Society Ltd. Vs. ITO (Supra) has considered and decided this issue in para 8.3 as under:-

"8.3 We have heard the rival submissions and perused the material on record. We find that the CIT(A) enhanced the income of the assessee by rejecting the deduction u/s 80P(2)(d) of the Act of Rs.14,88,107/- being interest on investment with other Coop. banks by following the decision in the case of Bandra Samruddihi Co-operative Housing Society Ltd.(Supra) which was passed on the basis of the decision passed by the Hon'ble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd. In the case of Totagar's Co-operative Sale Society Ltd v/s ITAT (supra) the Hon'ble Supreme Court while interpreting the section 80P(2)(a)(i) of the Act held that surplus funds not immediately required in the business and invested in the short term deposit would be assessable under the head "income from other sources" where the Co-operative society is engaged in carrying on business of banking or providing credit facilities to its members and consequently no deduction is allowable u/s 80P(2)(a)(i) of the Act. Whereas in the case before us the issue is whether a co-operative society which has derived income on investment with cooperative banks is entitled to deduction u/s 80P(2)(d). The provisions of Section 80P(2)(d) of the Act provide deduction in respect of income by way of interest or dividend on investments made with other Cooperative society. For the purposes of better proper understanding of these two provisions the relevant extract of the section are reproduced below:

80P: Deduction in respect of income of co-operative Societies.

1. Where, in the case of an assessee being a co-operative society, the gross total income, includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.
2. The sums referred to in sub-section (1) shall be the following, namely:-
 - (a) In the case of a co-operative society engaged in-
 - (i) Carrying on the business of banking or providing credit facilities to its members.

The whole of the amount of profits and gains of business attributable to any one or more of such attributes.

(d) In respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income."

From the close perusal of the provisions of u/s 80P(2)(a)(i) and 80P(2)(d) it is clear that the former deals with deduction in respect of profits and gain of business in case of the co-operative society carrying on business of banking or providing credit facilities to its members if the said income is assessable as income from business whereas latter provides for deduction in respect of income by way interest and dividend derived by assessee from its investments with other cooperative society. Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(d)(i) in respect of its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. Now will evaluate the assessee's case in the light of the decision of the Hon'ble Supreme court. The Honble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd.(Supra) held that a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit

facilities to its members in that case the said income from short term deposits shall be treated and assessed as income from other sources and deduction u/s 80(P)(2)(a)(i) would not be available meaning thereby that deduction u/s 80(P)(2)(a)(i) is available only in respect of income which is assessable as business income and not as income from other sources. Whereas in distinction to this , the provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop. society if such income is included in the gross total income of the such coop society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/-in respect of interest received/derived by it on deposits with coop. banks and therefore the appeal of the assessee is allowed by reversing the order of the CIT(A). The AO is directly accordingly.”

6.2 We further note that the Hon’ble Jurisdictional High Court in the case of CIT vs. Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd. (Supra) by following the decision of Hon’ble Gujarat High Court in the case of Surat Vankar Sahakari Sangh Ltd. vs. ACIT, 72 taxmann.com 169 has held in as under:

“8. We have considered the decisions cited by learned advocate for the assessee as well as the revenue. We feel that the decisions cited by the learned advocate for the assessee shall be applicable on the facts of the present case. In the case of K. Nandakumar v. ITO [1993] 204 ITR 856/[1994] 72 Taxman 223 (Ker.), the Kerala High Court has held as under:

'4. The effect of Section 80AB is that, for the purpose of computing the deduction under Section 80L, the amount of income of that nature as computed in accordance with the provisions of the Act shall alone be deemed to be the amount of income of that nature. What the section means is that the net income by way of interest computed in the manner provided by the provisions of the Act shall alone be taken into account for computing the benefit. But it must be noted that payment of interest under a loan transaction incurred for the purpose of deriving income from business is not an item which arises in the computation of interest income "in accordance with the provisions" of the Act. The said amount has to be paid irrespective of whether any interest income is otherwise received or not. Though the interest is payable to the same bank, the fact remains that the amount of income by-way of interest is not calculated under the provisions of the Act with reference to such outgoings which fall under different heads. The assessee is entitled

to deduction under Section 37 of all expenditure incurred for the purpose of deriving the business income, and it is under that head that the interest paid on the loan taken from the bank is deducted. The net amount of interest contemplated by Section 80AB should take in the net amount arrived at after meeting the expenses deductible from that item under the provisions of the Act as explained above. That is not the case here. Therefore, Section 80AB has no application to the facts of these cases. The interest paid on the loan transactions has to be deducted from the business income, and not from the interest received from the bank on the fixed deposits. The assessee was therefore right in the submissions which they made before the Commissioner of Income-tax in the revision petitions which they filed. This aspect of the matter has been overlooked by the Commissioner in passing the order, exhibit P-5.'

8.1 Similarly, in the case of Doaba Co-operative Sugar Mills Ltd (supra), the Punjab & Haryana High Court has held as under:

'5. The contention of Mr. Gupta, learned counsel appearing for the Revenue, is that the Tribunal was wrong in allowing deduction under Section 80P(2) (d) of the Act because it is not established that the assessee had derived the interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that the assessee has paid interest to Jalandhar Central Co-operative Bank and has also received interest from the said co-operative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under Section 80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of Section 80P(2)(d) of the Act, For facility of reference, it is reproduced as under :

"80P. (2)(d) 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, the whole of such income."

6. So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by-now classic words of Rowlatt J., in *Cape Brandy Syndicate v. IRC* [1921] 1 KB 64, 71 :

"...In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,"

7. The principle laid down by Rowlatt J., has also been time and again approved and applied by the Supreme Court in different cases

including the one, *Hansraj Gordhandas v. H. H. Dave*, Assistant Collector of Central Excise and Customs, AIR 1970 SC 755, 759.

8. 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 other co-operative society. This provision does not make any distinction in regard to source of the investment because this Section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by learned counsel for the Revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by learned counsel for the Revenue. In our opinion, the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Income-tax Act, 1961. in respect of interest of RS. 4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting the interest paid to the bank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee.'

8.2 Moreover, the Bombay High Court in the case of *Bai Bhuriben Lallubhai (supra)* has held that the purpose for which the assessee borrowed money had no connection whether direct or indirect with the income which she earned from the fixed deposit and that she was not entitled to the deduction claimed under Section 12(2). The High Court held that if an assessee had no option except to incur an expenditure in order to make the earning of an income possible, then undoubtedly the exercise of that option is compulsory and any expenditure incurred by reason of the exercise of that option would come within the ambit of section 12(2) of the Indian Income-Tax Act but where the option has no connection with the carrying on of the business or the earning of the income and the option depends upon personal considerations or upon motives of the assessee, that expenditure cannot possibly come within the ambit of Section 12(2). In the present case, the loan was taken for business purpose more particularly purchase of yarn and not for fixed deposits.

9. In view of the above, the questions raised in the present appeals are answered in favour of the assessee and against the revenue. The order passed by the Tribunal is accordingly quashed and set aside.”

6.3. Further the Hon'ble Karnataka High Court in case of PCIT and Another vs. Totgars Co-operative Sale Society 392 ITR 0074 as relied upon by the Ld. AR of the assessee as held in para 7 to 11 as under:-

"7. However, the contention being taken by the learned counsel is untenable. For the issue that was before the ITAT, was a limited one, namely whether for the purpose of Section 80P(2)(d) of the Act, a Co-operative Bank should be considered as a Co-operative Society or not? For, if a Co-operative Bank is considered to be a Co-operative Society, then any interest earned by the Cooperative Society from a Co-operative Bank would necessarily be deductible under Section 80P(1) of the Act.

8. The issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res integra. For the said issue has been decided by the ITAT itself in different cases. Moreover the word "Co-operative Society" are the words of a large extent, and denotes a genus, whereas the word "Cooperative Bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus Co-operative Societies. Co-operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a variety of the Cooperative Societies. Thus the Co-operative Bank which is a species of the genus would necessarily be covered by the word "Co-operative Society".

9. Furthermore, even according to Section 56(i)(ccv) of the Banking Regulations Act, 1949, defines a primary Co-operative Society bank as the meaning of Co-operative Society. Therefore, a Co-operative Society Bank would be included in the words 'Co-operative Society'.

10. Admittedly, the interest which the assessee respondent had earned was from a Co-operative Society Bank. Therefore, according to Sec. 80P(2)(d) of the I.T. Act, the said amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee respondent.

11. The learned counsel has relied on the case of The Totgars Co-operative Sale Society Ltd. Vs. Income Tax. Officer,(supra). However, the said case dealt with the interpretation, and the deduction, which would be applicable under Section 80P(2)(a)(i) of the I.T. Act. For, in the present case the interpretation that is required is of Section 80P(2)(d) of the I.T. Act and not Section 80P(2)(a)(i) of the I.T. Act. Therefore, the said judgment is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case."

6.4 Thus, the Hon'ble High Court has held that the Co-operative Bank is considered to a cooperative society for the purpose of section 80P(2)(d). Accordingly, in view of the decisions as cited (supra), we do not find any error or illegality in the orders of the Ld. CIT(A) to the extent of the allowing the claim of the assessee u/s 80P(2)(d) in respect of interest income from deposits/FDRs with the Co-operative Banks."

The Coordinate Bench of this Tribunal after considering the decision of Hon'ble Jurisdictional High Court in case of CIT vs. Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd. dated 1st September, 2016 in DB IT Appeal Nos. 139/2002, 20, 24 & 27/2004 has held that the Cooperative Bank would be considered as a Cooperative Society for the purposes of section 80P(2)(d). Accordingly, in view of the fact that Jaipur Central Cooperative Bank is a Cooperative Society registered under Cooperative Societies Act, the interest received by the assessee from the said Cooperative Bank is eligible for deduction under section 80P(2)(d) of the Act. The disallowance/addition made by the AO and confirmed by the Id. CIT (A) is deleted.

5. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 15/10/2020.

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 15/10/2020.

Das/

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

1. The Appellant- Shahpura Gram Seva Sahakari Samiti Ltd., Shahpura, Jaipur.
2. The Respondent – The ITO Ward 4(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 767/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar