

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 2681/Mum/2019 (Assessment Year 2015-16)

New Ideal Cooperative Housing Society Limited 87, Milan Building Tardeo Road Mumbai-400 034. PAN : AAAAN1563G (Appellant)	Vs.	ITO Ward 19(2)(4) 2 nd Floor Matru Mandir Mumbai. (Respondent)
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Assessee by	Shri Rashmikant Modi
Department by	Ms. Smita Verma
Date of Hearing	01.12.2020
Date of Pronouncement	03.02.2021

ORDER

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 5.3.2019 pertains to A.Y. 2015-16.

2. The grounds of appeal read as under :-

1. On the facts and in the circumstances of the case, the Appellant submits that the Honorable Commissioner of Income Tax (Appeal) erred in upholding the adjustments by way of making disallowance of deduction u/s 80P by Centralized Processing Centre, Bengaluru to the returned income without giving any intimation for making any adjustments of disallowing the deduction claimed by the Appellant u/s 80P of Rs. 2,91,169/-.

The Appellant submits that the adjustments made to the Returned Income be deleted and deduction claimed u/s 80P be allowed.

2. On the facts and in the circumstances of the case, the Appellant submits that the Honorable Commissioner of Income Tax (Appeal) erred in upholding the action of Centralized Processing Centre, Bengaluru of disallowing the interest income of Rs. 2,41,169/- earned on Fixed Deposits held with Co-operative banks claimed by the Appellant u/s 80P(2)(d) of the Income Tax Act, 1961.

The Appellant submits that the deduction of Rs. 2,47,769/- claimed u/s 80P(2)(d) of The Income Tax Act, 1961 be allowed.

3. On the facts and in the circumstances of the case, the Appellant submits that the Honorable Commissioner of Income Tax (Appeal) erred in not giving a decision on the ground of appeal raised for allowing the statutory deduction of Rs. 50,000/- available to and claimed by the Appellant claimed u/s 80P(2)(c)(ii) of The Income Tax Act, 1961.

The Appellant submits that the Honorable Commissioner of Income Tax (Appeal) be directed to pass corrigendum for giving decision on the ground of appeal raised for allowing statutory deduction of Rs. 50,000/- claimed by the Appellant u/s 80P(2)(c)(ii) of The Income Tax Act, 1961.

3. Brief facts of the case are as under :-

The assessee is a cooperative housing society, filed its return of income on 28-12-2016. The assessee claimed deduction of Rs. 2,47,769/- u/s. 80P(2)(d) and Rs. 50,000/- u/s. 80P(2)(c)(ii). The return of income was processed u/s. 143(1) of the Act by the CPC, Bengaluru, wherein these deductions were not granted. The total income was computed u/s. 143(1) at Rs. 15,50,090/- and it resulted into demand of Rs. 1,34,864/-. The total income as per intimation u/s. 143(1) is Rs. 15,50,090/- and the tax payable computed thereon at Rs. 4,75,888/-.

4. Upon assessee's appeal learned CIT(A) only referred to disallowance of deduction u/s. 80P(2)(d). He has noted that this is an adjustment done to the returned income filed by the appellant without giving any intimation for making any adjustments either in writing or in electronic mode as per the provisions of Section 143(1)(a) of the Act. Learned CIT(A) rejected the contention regarding disallowance made u/s. 80P(2)(d) for Rs. 2,47,769/- being interest receipt from cooperative bank. In this regard he referred to the provisions of the Act and referred to several other decisions. He finally held as under :-

"In view of the above discussions and respectfully following the decision of the Hon'ble Karnataka High Court in the above referred case of PCIT vs. Totagars Co-operative Sale Society, I am of the considered opinion that the interest income earned by the appellant from Co-operative Bank is not eligible for deduction u/s 80P(2)(d) of the Act.

In view of above discussions, it is held that the interest income earned from investment of surplus funds with the Co-operative Banks are not eligible for deduction u/s 80P(2)(d) of the Act. Hence, the deduction u/s. 80P(2)(d) of the Act, of Rs. 2,47,769/- claimed by the assessee is not allowed and disallowance made by the Assessing Officer is confirmed. Accordingly, the Ground No's. 1 & 2 raised in appeal are dismissed.”

5. The learned CIT(A) did not adjudicate the ground of denial of deduction u/s. 80P(2)(c)(ii) for an amount of Rs. 50,000/-.
6. Against this order assessee is in appeal before the ITAT.
7. I have heard both the parties and perused the records. I find that in this case assessee has been denied the claim of deduction under section 80P(2)(d) & 80P(c)(ii) in an order u/s. 143(1)(a) of the Act.

“Section 80P(2)(d) provides deduction to a Cooperative Society

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

Section 80P(2)(c) provides deduction to a Cooperative Society as under :-

(c) in the case of a co- operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed.

(ii) in any other case, twenty thousand rupees. Explanation- In this clause, ‘consumers co-operative society’ means a society for the benefit of the consumers;]”

8. First of all it is noted that the adjustment has been done by the CPC Bengaluru under section 143(1)(a) of the Act. Section 143(1)(a) provides for processing of return where the total income is computed after making certain adjustment. It reads as under :-

“143.(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return; [***]

- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
- [(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
- (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
- (v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or
- (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:]

[Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;]"

9. In my considered opinion the adjustment done by denial of deduction u/s. 80P(2)(d) and 80P(2)(c)(ii) in this case does not fall in any of the above. That a cooperative society will not get exemption on the interest earned on deposits in cooperative bank is not something which is a subject matter of adjustment under section 143(1)(a) of the Act. I find that despite noting that there are tribunal decisions in favour of assessee, the learned CIT(A) has chosen not to follow the same by referring to some other decisions. I further find that learned CIT(A) has completely erred in treating the assessee as cooperative bank and invoking the provisions of section 80P(4). Section 80P(4) provides that :-

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

10. Honourable Supreme Court in the case of Citizen Cooperative Society Ltd. (Civil Appeal No. 10245 of 2017 vide order dated 8.8.2017) has settled the law that for being considered as a cooperative bank licence from RBI in this regard is a sine qua non. In absence of the RBI licence as such the assessee cannot be treated as cooperative bank. Hence disallowing the deduction by referring to the provisions of section 80P(4) is completely unsustainable. Moreover section 80P(2)(d) provides exemption to interest earned on fixed deposit in cooperative societies. It is nobody's case that cooperative bank are not cooperative societies.

11. Moreover similar issue was elaborately dealt by a larger bench of honourable Supreme Court in the case of The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors. (Civil Appeal Nos. 7343-7350 of 2019 dated 12.1.2021 and the issue was decided in favour of the assessee. We may gainfully refer to the Hon'ble Apex Court observation in para 21 as under, wherein the Hon'ble Apex Court referred to its earlier decision of Citizen Cooperative Society Ltd. (supra) :-

“The following propositions may be culled out from the judgment:

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4).”

12. Hence on merits also the order of learned CIT(A) denying the deduction u/s. 80P(2)(d) is not sustainable.

13. As regards the statutory deduction u/s. 80P(2)(c)(ii) of the Act, there is no reason why the same should be denied. Moreover, the said adjustment is not falling in any of the adjustment permitted by 143(1)(a) of the Act. Hence, assessee’s claim of deduction u/s. 80P(2)(c)(ii) has also been wrongly denied in the processing done u/s. 143(1)(a) of the Act. The learned CIT(A) has failed to decide the same despite assessee’s ground in this regard. The same is directed to be allowed.

13. Hence, in the background of the aforesaid discussion, respectfully following the precedent as above I set aside order of learned CIT appeals decide the issues in favour of assessee.

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

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 3.2.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/02/2021

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.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai