

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

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

I.T.A. No.5113/Mum/2019
(Assessment year : 2012-13)

Sai Prerana Co-op Credit Society Ltd 317, PuranAashaBldg, Gr.Fl. NarashiNatha Street, Katha Bazar, Masjid Bunder (W), Mumbai-400 009 PAN : AADTS5638M	vs	ITO, Wd.17(3)(2), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Bharat Kumar, AR
Respondent by	Shri Sanjay J Sethi, DR

Date of hearing	24-02-2021
Date of pronouncement	11-03-2021

ORDER

Per Saktijit Dey (JM) –

This is an appeal by the assessee against order dated 12-04-2019 of learned Commissioner of Income-tax (Appeals)-28, Mumbai for the assessment year 2012-13.

2. The effective grounds raised by the assessee are as under:-

"1. On the facts and in the circumstances of the case and in law, theLd.CIT(A) erred in confirming the income towers receipt of service

charges of Rs.1,25,017/-. In fact the amount is of gross receipt and subject to deduction of expenses of this activity.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in confirming the receipt of Rs.13,333/- on account of interest received from M.S.E.B.LTD. In fact the amount is arranged out of deposit received from member. This deposit is subject matter of interest payment. Hence interest paid to members against deposit should be reduced from interest received from M.S.E.B.LTD.

3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in confirming disallowing gross receipt from our 80P deduction income instead of disallowing net income under the head receipt of service charges and interest received from M.S.E.B.LTD.”

3. Briefly the facts are, the assessee is a co-operative society registered under the Maharashtra Co-operative Societies' Act, 1960. As stated by the assessing officer, the assessee provides credit facilities to its members. For the assessment year under dispute, assessee filed its return of income on 08-09-2012 declaring income at Nil. In course of assessment proceedings, the assessing officer, after verifying the details accepted that the income derived from the members would be covered under the principle of mutuality; hence, not taxable. However, he found that certain other income was earned by the assessee from non-members. The details are, as under:-

i)	Interest received	Rs. 1,84,528/-
ii)	MSEDCL service charges received	Rs. 1,25,017/-
iii)	MSEDCL Deposit interest	<u>Rs. 13,333/-</u>
	Total	<u>Rs.3,22,878/-</u>

4. Holding that the aforesaid income received from non-members will not qualify for deduction under section 80P of the Income-tax Act, 1961, he added back to the income of the assessee. The aforesaid addition was also confirmed by learned first appellate authority.

5. Learned Authorised Representative of the assessee submitted, while dealing with identical issue in assessee's own case for assessment year 2008-09, the Tribunal, in ITA No.2160/Mum/2018 dated 08-11-2018 has restored it back to the assessing officer for fresh adjudication. Therefore, he submitted, the issue may be restored back to the assessing officer.

6. The learned Departmental Representative also agreed for restoration of the issue to the assessing officer in view of the decision of the Tribunal.

7. We have considered rival submissions and perused materials on record. We find, while deciding similar issue in assessee's own case in assessment year 2008-09 (supra), the Tribunal has restored the issue to the assessing officer with the following observations :-

“5. I heard both the parties and perused the record. As rightly pointed out by the learned AR, the issue under consideration relates to quantum of expenses allowable against commission income earned by the assessee. While the expenses claimed by the assessee has worked out to 95% of the commission income, the learned CIT(A) has restricted allowance to 50% of the expenses claimed by the assessee. There is also no dispute between the parties i.e.deduction u/s. 80P of the Act is not allowable against net commission income. Hence, I find merit in the contention of learned DR that there is no requirement to give any direction for deduction u/s 80P of the Act. There should not be any dispute that expenses incurred wholly and exclusively for earning the commission income is allowable as deduction. Then, it is the responsibility of the assessee to show that the impugned expenses were actually incurred wholly and exclusively for earning commission income. I notice that the co-ordinate bench has restored an identical issue in the assessee's own case in other years. Following the same, I

set aside the order passed by the learned CIT(A) on this issue and restore the matter to the file of the Assessing Officer for examining this issue afresh. The assessee is directed to co-operate with the Assessing Officer by furnishing necessary informations that may be called for by the Assessing Officer. After hearing the assessee, the Assessing Officer may take appropriate decision in accordance with the law.”

8. Facts being identical, following the aforesaid decision of the Tribunal in assessee's own case, we restore the issue to the assessing officer for deciding afresh keeping in view the directions of the Tribunal, reproduced above. Grounds are allowed for statistical purpose.

6. In the result, appeal is allowed for statistical purpose.

Order pronounced on 11 /03/2021.

Sd/-

sd/-

(N.K. PRADHAN)	(SAKTIJIT DEY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 11/03/2021

Pavanan

Copy to :

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

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai