

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 532/HYD/2018

Assessment Year: 2013-14

The Karimnagar District Co-Operative Central Bank Limited, Karimnagar [PAN: AABAT0905H]	Vs	Income Tax Officer, Ward-2, Karimnagar
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(Appellant)

(Respondent)

For Assessee : Shri P.Murali Mohana Rao, AR
For Revenue : Dr.Dipak. R. DR

Date of Hearing : 22-03-2021
Date of Pronouncement : 04-05-2021

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2013-14 arises from the CIT(A)-2, Hyderabad's order dated 31-05-2017 passed in appeal No.0124/2016-17, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The assessee has raised the following substantive grounds in the instant appeal:

“1. The Ld.CIT(A) erred on facts and law in upholding additions made by the AO towards the disallowance of appellant's claim of deductions u/s 80(P)(2)(d) and 36(1)(vii)(a) of the Income Tax Act, 1961.

2. The Ld.CIT(A) erred in upholding the decision of the AO in disallowing appellant's claim of deduction u/s 80(P)(2)(d) of the I.T. Act, 1961, without adjudicating the grounds of the appellant before him, without stating the reasons for upholding the decision of the AO and simply by stating that he is in total agreement with the AO.

3. The Ld.CIT (A) ought to have appreciated the fact that on the facts and circumstances of the case, the order of the AO is erroneous, perverse and unsustainable, based on no evidence and deserves to be set aside.

4. The Ld.CIT(A) ought to have appreciated the fact that the AO erred in denying appellant's claim of eligible deduction of Rs.9,78,44,820 out of Rs.42,98,32,900 u/s 80(P)(2)(d) of the LT. Act, 1961, without properly appreciating the facts and legal status.

5. The Ld.CIT(A) ought to have appreciated the fact that the appellant was originally formed as a credit co-operative society way back in the year 1921 and was reorganised in 1957 with amendments in its bye-laws.

6. The Ld.CIT(A) ought to have appreciated the fact that the appellant was allotted registration No.21520 under the Hyderabad Co-operative Society Act-XVI of 1952 and registration was accorded under the AP co-operative Societies Act, 7 of 1964 with the same registration Number and the same is applicable till date.

7. The Ld.CIT(A) ought to have appreciated the fact that the AO erred in disallowing appellant's claim of deduction u/s 80(P)(2)(d) of the I.T. Act, without understanding the fact that the appellant was primarily a co-operative society and had in that capacity made investments in other co-operative societies which could not be regarded as a banking activity and the claim of deduction u/s 80(P)(2)(d) of the I.T. Act is confined to the element of income from interest and dividends from above investments.

8. The Ld.CIT (A) ought to have appreciated the fact that the AO erred in denying deduction u/s 80(P)(2)(d) of the I.T. Act, 1961, which was claimed by the appellant in the capacity of CO-OPERATIVE SOCIETY, though it falls within the meaning of a co-operative bank under the Banking Regulation Act, 1961.

9. The Ld.CIT (A) ought to have appreciated the fact that the AO erred in denying deduction u/s 80(P)(2)(d) of the LT. Act, 1961, by applying

the provisions of 80P(4) of the LT. Act, 1961, without understanding the fact that the contention of the appellant is not based on classification, and it is based on deduction available to it as a co-operative society against its investments with the other co-operative societies.

10. The Ld.CIT(A) ought to have appreciated the fact that the AO erred in understanding the fact that co-operative societies cannot be barred from claiming deduction u/s 80(P)(2)(d) of the I.T.Act, 1961 and this section applies to co-operative societies in respect of income by way of interest or dividends derived by them from its investments with any other co-operative society.

11. The CIT(A) ought to have appreciated the fact that the AO erred understanding that the appellant is a CO-OPERATIVE SOCIETY by its nature of activities and it is eligible for deduction u/s 80(P)(2)(d) of the I.T. Act, 1961, to the extent of income earned by it by way of interest and dividends derived from its investments with other co-operative societies.

12. The CIT(A) ought to have appreciated the fact that the A.O erred in invoking provisions of section 80P(4) of the Act, which are applicable to co-operative Banks since the appellant as a co-operative society has claimed deduction u/s 80 (P)(2)(d) of the I.T. Act, to the extent of interest and dividends derived from the investments made in other co-operative societies and the above claim of deduction does not constitute any income from banking activities of the appellant.

13. The CIT(A) erred in upholding the decision of the A.O in disallowing deduction of Rs. 104,53,39,000/- claimed by the appellant u/s 36(1)(viiia) of the I.T.Act, 1961, without properly appreciating the facts and circumstances of the case.

14. The CIT(A) erred in upholding the decision of the A.O in disallowing deduction u/s 36(1)(viiia) of the I.T. Act, 1961 by stating that the appellant has not made any provision for bad and doubtful debts in its books of accounts.

15. The CIT(A) ought to have appreciated the fact that making provision for bad and doubtful debts in the books is not mandatory when the appellant is claiming deduction u/s 80P(2)(d) of the I.T. Act, 1961.

16. The CIT(A) ought to have considered the information and workings furnished by the appellant in support of its claim of deduction towards provision for bad and doubtful debts u/s 36(1)(viiia) of the I.T. Act, 1961.

17. The Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal”.

3. Coupled with this, the assessee has also filed its petition dt.11-03-2021 seeking to raise its additional substantive ground Nos.18 to 21. The Revenue strongly objected to the assessee's foregoing petition allegedly arguing altogether new argument regarding admissibility of Section 36(1)(viii) deduction. Learned departmental representative strongly argued that the assessee is estopped from raising the impugned additional substantive grounds not relevant to the issue before us.

4. We have given our thoughtful consideration to rival pleadings. Suffice to say, the hon'ble apex court's landmark decision in National Thermal Power Co. Ltd., Vs., CIT [229 ITR 383] (SC) as considered in tribunal's Special Bench's decision All Cargo Global Logistics Ltd., Vs. DCIT (2012) [137 ITD 217](SB) (Mumbai), holds that we can very well entertain a new ground going to root of the matter so as to determine correct tax liability of a taxpayer. We go by the very analogy and find that the assessee's foregoing petition seeks to raise its additional substantive ground that it is eligible for Section 36(1)(viii) deduction in respective amounts transferred to special reserve since covered within the definition of; a specified entity; as per the provisions of the Act.

5. Learned departmental representative fails to dispute that neither the Assessing Officer nor the CIT(A) has adjudicated the above clinching issue in their respective orders.

6. Faced with this situation, we deem it appropriate to restore the impugned issue of Section 80P(2) disallowance of Rs.9,78,44,820/- claim back to the Assessing Officer to be examined afresh in light of Section 36(1)(viii) of the Act; as applicable in case of the specified entity; as per law, within three effective opportunities of hearing. It is further made clear that it shall be assessee's responsibility only to file all the necessary details.

7. This assessee's appeal is treated as allowed for statistical purposes in above terms.

Order pronounced in the open court on 4th May, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 04-05-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.The Karimnagar District Co-Operative Central Bank Limited, C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad.

2.The Income Tax Officer, Ward-2, Karimnagar.

3.CIT(Appeals)-2, Hyderabad.

4.Pr.CIT-2, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.