

**THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.3239/MUM/2019
(Assessment Year: 2014-15)**

Navsandesh Sahakari Patpedhi
Maryadit, Chawl No. 13/2,3,4,
N.M. Joshi Marg, Lower Parel,
Mumbai – 400 013

Income Tax Officer,
Vs. Ward-21(2)(4),
Room No. 109, First Floor,
Piramal Chambers, Parel,
Mumbai – 400 012

PAN No. AADFN6130H

(Assessee)

(Revenue)

Assessee by : Shri Ravindra Naik, A.R
Revenue by : Shri Tharian Oommen, D.R

Date of Hearing : 23/09/2021
Date of pronouncement : 01/10/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-33, Mumbai, dated 25.03.2019 which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 16.12.2016 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds before us:

- "1. The Id. CIT(Appeals) has erred in confirming the disallowance of provisions for expenses amounting to Rs.4,17,500/- and not considering the disallowances as a part of the business income and hence eligible for deduction u/s 80P(2)(a)(i) on enhanced income.
2. The Id. CIT(Appeals) has erred in confirming the disallowance of donations amounting to Rs.60,005/- and not considering the disallowances as part of

business income and hence eligible for deduction u/s 80P(2)(a)(i) on enhanced income.

4. The Id. CIT(Appeals) has erred in not considering deduction u/s 80P(2)(c) amounting to Rs.50,000/-.
5. Your appellant further reserve the rights to add, amend or alter the aforesaid grounds of appeal as they may think it fit by themselves or by their representatives.”

2. Briefly stated, the assessee which is a co-operative credit society had filed its return of income for A.Y. 2014-15 on 24.09.2014, declaring a total income of Rs.nil. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed deduction of Rs. 58,99,757/- under Sec. 80P of the Act. Observing, that the assessee was a co-operative Bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank, the A.O was of the view that the assessee society was not eligible for claim of deduction u/s 80P of the Act. Accordingly, the A.O declined the assessee’s claim for deduction u/s 80P(2)(a)(i) of the Act. Also, it was observed by the A.O that the assessee had made a provision of an amount of Rs.37,17,500/- against which it had considered provisions only to the extent of Rs.33,00,000/- in its computation of income. Accordingly, the difference of Rs.4,17,500/- on account of provisions claimed by the assessee was also disallowed by the A.O. Further, the assessee’s claim for deduction of donation of Rs.60,005/- was also declined by the A.O for the reason that the same was not eligible as a deduction u/s 37 of the Act. Backed by his aforesaid observations, the A.O vide his order passed u/s 143(3), dated 10.12.2016 assessed the income of the assessee society at Rs.63,77,260/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Although, the CIT(A) held that the assessee was entitled for claim of deduction

u/s 80P(2)(a)(i) of the Act, however, he upheld the disallowance of provisions of Rs.4,17,500/- and the disallowance of donation of Rs.60,005/-. Accordingly, the CIT(A) partly allowed the appeal of the assessee.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. Authorized Representative (for short 'A.R') for the assessee that the CIT(A) while upholding the disallowance of provision for expenses of Rs.4,17,500/- and disallowance of donation of Rs.60,005/-; had erred in declining its claim for re-computing the deduction u/s 80P(2)(a)(i) on the aforesaid amount of enhanced income. Also, it was submitted by the Id. A.R that the CIT(A) was in error in not considering the assessee's claim for deduction u/s 80P(2)(c) of Rs.50,000/-.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

7. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Id. A.R to drive home his aforesaid contentions. As is discernible from the records the assessee had during the year made provisions for expenses aggregating to Rs.4,17,500/- as under:

Provision for expenses	Amount
Government Audit Fee	1,25,000.00
Internal Audit Fee	75,000.00
Education Fund (As per MCS Act)	5,000.00
Tax Audit Fee	12,500.00
Election fund expenses	2,00,000.00
Total	4,17,500.00

Although, it was the claim of the assessee that the aforesaid provision for business expenses was in accordance with the mercantile system of accounting followed by it, however, the A.O had disallowed the same. On appeal, the aforesaid disallowance made by the A.O was upheld by the CIT(A). Before us, it

was the claim of the Id. A.R that as the disallowance of the aforesaid provision for expenses had enhanced the business income of the assessee, therefore, pursuant thereto the assessee's entitlement for claim of deduction u/s 80P(2)(a)(i) was accordingly required to be reworked out. In sum and substance, it was the claim of the Id. A.R that as the aforesaid disallowance had resulted to an enhancement of its business income, therefore, it was entitled for deduction u/s 80P(2)(a)(i) on the amount of the enhanced income. In support of his aforesaid contention the Id. A.R had relied on the CBDT Circular No. 37/2016, dated 02.11.2016. Also, support was drawn by him from the judgments of the Hon'ble High Court of Bombay in the case of CIT vs. Sheth Developer (P) Ltd. (2012) 254 CTR 127 (Bom) and CIT Vs Gem Plus Jewellery India Ltd. (2010) 330 ITR 175 (Bom). On a perusal of the CBDT Circular No. 37/2016, dated 02.11.2016, we find that the same reads as under:

“Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

2. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

- (i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:
 - Income-tax Officer - Ward 5(1) vs. Keval Construction, Tax Appeal No. 443 of 2012, December 10, 2012, Gujarat High Court.
 - Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, IT Appeal No, 2 of 2011, September 11, 2015, Bombay High Court.

(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:

- Principal CIT, Kanpur vs. Surya Merchants Ltd, I.T. Appeal No. 248 of 2015, May 03, 2016, Allahabad High Court.

The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.

3. In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

4. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/ Tribunals may be withdrawn/not pressed upon. The above may be brought to the notice of all concerned.”

In the backdrop of our aforesaid observations, we are of the considered view that the CBDT vide its aforesaid Circular No. 37/2016, dated 02.11.2016 had after taking cognizance of various judicial pronouncements, concluded, that in case a disallowance made u/s 32, 40(a)(ia), 40A(3), 43B etc. of the Act and other specific disallowances related to the business activity of the assessee against which Chapter VI-A deduction has been claimed results to an enhancement of its profits of the eligible business, then, deduction under Chapter VI-A would be admissible on the profits so enhanced pursuant to the said disallowance. Also, we are of the considered view that support for the aforesaid view can safely be drawn from the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Sheth Developers (P) Ltd. (2012) 254 CTR 127 (Bom). In the aforesaid case, the assessee who was engaged in the business of a builder was subjected to search proceedings u/s 132 of the Act. During the course of the search proceedings the assessee had come forth with a disclosure of undisclosed income of Rs.7 crores. However, in its return of income the assessee had reflected its undisclosed income at Rs.3.50 crores. On being queried, it was stated by the

assessee that at the time of making the disclosure qua the undisclosed income of Rs.7 crores it was unaware that deduction u/s 80IB would be available in respect of the said income as the same pertained to its housing projects. The A.O not finding favour with the aforesaid claim of the assessee rejected the same. On appeal, the CIT(A) concluded that the assessee was entitled for deduction u/s 80IB qua the aforesaid undisclosed income. On further appeal the order of the CIT(A) was upheld by the Tribunal. Aggrieved, the revenue assailed the order of the Tribunal before the Hon'ble High Court. It was observed by the Hon'ble High Court that now when the undisclosed cash found in the possession of the assessee during the course of the search proceedings was acquired by it while carrying on its business as a builder, therefore, there was no question of invoking the application of Sec. 68, 69 and 69A, 69B and 69C of the Act, as was done by the revenue. Backed by the aforesaid facts, it was further observed that now when the aforesaid undisclosed income was returned by the assessee as its income from profits and gains of business or profession and the same had been accepted by the department, therefore, no infirmity did emerge from the order of the Tribunal which had rightly concluded that qua such undisclosed income the assessee would be entitled for claim of deduction u/s 80IB(10) of the Act.

8. In the backdrop of the aforesaid judicial pronouncement, and the view taken by the CBDT vide its Circular No. 37/2016, dated 02.11.2016, we have no hesitation in observing that as the disallowance of the provision for expenses and the assessee's claim for donation had enhanced the resultant business income of the assessee, therefore, the consequential claim for deduction u/s 80P(2)(a)(i) would also have to be worked out on such enhanced income. We, thus, in terms of our aforesaid observations allow the aforesaid claim of the assessee and direct the A.O to recompute the assessee's claim for deduction u/s 80P(2)(a)(i) on the enhanced income. The **Grounds of appeal Nos. 1 & 2** are allowed in terms of our aforesaid observations.

9. We shall now take up the claim of the assessee that the CIT(A) had erred in not considering its claim for deduction u/s 80P(2)(c) of Rs.50,000/-. As the aforesaid claim for deduction does not emanate from the impugned order, therefore, we are afraid that the same cannot be raised before us. Accordingly, the **Ground of appeal No. 4** is dismissed in terms of our aforesaid observations.

10. The **Ground of appeal No. 5** being general in nature is dismissed as not pressed.

11. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 01.10.2021

Sd/-
(Pramod Kumar)
VICE PRESIDENT

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 01.10.2021
*PS: Rohit

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.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai