

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC"
(Virtual Court Hearing), BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member

I.T.A. No.2485/Kol/2018
Assessment Year: 2015-16

Birkul Baidyanathpur SKUS Ltd.....Appellant
Chowringhee Lane, Baidyanathpur,
Kolkata – 711312.
[PAN:AABAB6020H]

vs.

ACIT, CIRCLE-46, KolkataRespondent

Appearances by:

Shri Soumitra Chowdhury, Advocate appeared on behalf of the appellant.
Shri Jayanta Khanra, JCIT, DR appeared on behalf of the Respondent.

Date of concluding the hearing : October 28, 2021

Date of pronouncing the order : October 28, 2021

ORDER

The present appeal has been preferred by the assessee for the assessment year 2015-16 against the order dated 09.10.2018 of the Commissioner of Income Tax(Appeals)-14, Kolkata (hereinafter referred to as the 'CIT(A)').

2. The assessee, in this appeal, has taken the following revised grounds of appeal:

"1. For that on the facts of the case, the appellate order passed by the Ld. CIT(A) on 09.10.2018 is completely arbitrary, unjustified and illegal.

2. For that the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and computing the total taxable income at Rs.878,270/- as against the total income shown at NIL after deduction of income under section 80P of the I.T. Act, 1961, which is confirmed by Ld. CIT(A), therefore, his finding is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, The Ld. CIT(A) was wrong in not considering the fact that the assessee being a registered co-operative society is carrying on business and providing credit facilities to its members. The investment made on schedule banks and income earned on accrual basis reflected in its account was purely a business income, therefore, interest earned from banks eligible for deduction under section 80P(2) of the Income Tax Act, as such his action is baseless and should be quashed.

4. For that on the facts of the case, the Ld. CIT(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs878,270/- on account of interest from Axis Bank &

IDBI Bank by ignoring rebate u/s 80P(2) under chapter VIA, as such his finding is completely arbitrary, unjustified and illegal.

5. For that the charging interest u/s. 234A at Rs.45,611/- and u/s. 234B at Rs.88,539/- are completely arbitrary, unjustified and illegal.

6. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

3. Ground No.1 is general in nature.

4. Ground Nos.2,3&4 – The assessee vide these grounds has contested the confirmation of addition made by the Assessing Officer of Rs.878,270/- after denying the deduction claimed by the assessee-society u/s 80P(2) of the Income Tax Act.

5. The assessee is a primary agricultural credit society registered under the West Bengal Cooperative Societies Act and carrying on business of banking and providing credit facilities to its members and also taking deposits from its farmer members. During the year, the assessee invested certain surplus amount with the scheduled banks thereby earned interest income of Rs. 878,270/- from Axis Bank & IDBI Bank. The Assessing Officer observed that the assessee-society was not entitled to the exemption u/s 80P(2) of the Income Tax Act in respect of the said interest income. He, therefore, made the addition of the aforesaid amount into the income of the assessee.

6. Being aggrieved by the said order of the Assessing Officer, the assessee filed appeal before the CIT(A). However, the Id. CIT(A) observed that the aforesaid amount since was not generated from the business activity of the assessee, therefore, the same was not allowable u/s 80P(2) of the Income Tax Act.

7. Being aggrieved by the said order of the Id. CIT(A), the assessee has come in appeal before this Tribunal.

8. I have heard the rival contentions and gone through the records. The relevant provision of section 80P(2) are reproduced hereunder:

“80P. (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, or*
- (ii) a cottage industry, or*
- (iii) the marketing of agricultural produce grown by its members, or*
- (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or*
- (v) the processing, without the aid of power, of the agricultural produce of its members, or*
- (vi) the collective disposal of the labour of its members, or*
- (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,*

the whole of the amount of profits and gains of business attributable to any one or more of such activities :

Provided *that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—*

- (1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;*
- (2) the co-operative credit societies which provide financial assistance to the society;*
- (3) the State Government;”*

9. As per the above reproduced provisions, in case of a cooperative society engaged in carrying on business of banking or providing credit facilities to its members, the whole of the amount of profits of business attributable to any or more of such activities as mentioned in section 80P(2), are exempt from taxation. Admittedly, as mentioned by the Assessing Officer in the assessment order itself, the assessee-society was carrying on business of banking and providing credit facilities to its members and also taking deposits from its farmer members. Therefore, accepting deposits on interest is one of the activities of the assessee-society. In the business of banking or credit facilities, not only accepting deposits but also investment of the deposits is also the part of the business

activity of such an entity. To invest the deposits accepted from the members or the surplus funds available with it, is part of the banking/credit business of the assessee-society. Therefore, the investment of the surplus amount in the banks by the assessee-society cannot be said to be not related to the business activity of the assessee-society. Therefore, the interest/dividend income earned by the assessee for such investment, in my view, will be eligible for deduction u/s 80P(2) of the Income Tax Act. In view of the above, the impugned order of the CIT(A) on this issue is set aside and the Assessing Officer is directed to allow the deduction on the income earned by the assessee from investment of surplus amount with the banks.

10. Ground no. 5 is consequential in nature. Hence, it is dismissed.

11. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 28.10.2021.

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 28.10.2021.

RS

Copy of the order forwarded to:

1. Birkul Baidyanathpur SKUS Ltd.
2. ACIT, CIRCLE-46, Kolkata
3. CIT(A)- (sent through e-mail)
4. CIT- ,
5. CIT(DR), (sent through e-mail)

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches