

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. Nos.2478/Chny/2017, 2703/Chny/18,
558 & 559/Chny/2020

निर्धारण वर्ष/Assessment Years: 2014-15, 2015-16, 2011-12 & 2016-17

M/s. The Government
Telecommunications Employees
Cooperative Society Ltd., New No. 112,
Old No. 37A, Sembudoss Street,
Chennai 600 001.

[PAN:AABAT3072B]

The Income Tax Officer,
NCW – 12(3)/ACIT 12(1),
Chennai.
Vs.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri M. Karunakaran, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 07.02.2022
घोषणा की तारीख /Date of Pronouncement : 10.02.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These four appeals filed by the assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals) 13, Chennai dated 13.07.2017, 16.08.2018, 21.01.2020 and 27.01.2020 relevant to the assessment years 2014-15, 2015-16, 2011-12 and 2016-17. Since common grounds in identical facts involved in these appeals, heard together and are being disposed of by this common order for the sake of brevity.

2. Vide order in T.C.A. No. 306 of 2019 dated 06.06.2019 against the order of the Tribunal in I.T.A. No. 2478/Mds/2017 dated 19.09.2018 for the assessment year 2014-15 and vide order in T.C.A. No. 171 of 2021 dated 09.03.2021 against the order of the Tribunal in I.T.A. No. 2703/Mds/2018 dated 23.10.2019 for the assessment year 2015-16, the Hon'ble Jurisdictional High Court set aside the orders of the Tribunal and remitted the matter back to the Tribunal to be heard and decided afresh on the ground that the appeal order for the assessment year 2014-15 has been, by oversight, heard and adjudicated by Single Member Bench, despite the total income of the assessee exceeds ₹.50 lakhs, which was subsequently recalled by the Tribunal in M.P. No. 55/Chny/2018 dated 08.06.2018. Similarly, by following its own order for the assessment year 2014-15 [SMC order], the Tribunal dismissed the appeal for the assessment year 2015-16, thereby, both the matters were remitted back to the Tribunal for fresh hearing and adjudication by the Division Bench of the Tribunal.

3. The first common ground raised in all the appeals relates to confirmation of disallowance of interest income earned by staff advance claimed to be eligible for deduction under section 80P of the

Income Tax Act, 1961 [“Act” in short]. The Id. Counsel for the assessee has submitted that similar issue on an identical facts and circumstances, the Division Bench of the Tribunal has already been decided the issue against the assessee in assessee’s own case for the assessment years 2012-13 and 2013-14 in I.T.A. Nos. 2898 & 2899/Chny/2016 vide order dated 02.12.2020 and submitted that the same may be followed. The Id. DR relied on the decision of the Tribunal and fairly agreed the submissions of the Id. Counsel.

3.1 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In assessee’s own case for the assessment years 2012-13 and 2013-14 (supra), the Tribunal has observed and held as under:

“6. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below.

7. The Assessee is a Telecom Employees Co-operative Society established for the benefits of the members. The Assessee’s Society advanced certain loans to the staff of the Employees Society and received interest income. The Assessee’s Society has claimed an exemption u/s.80P of the Income Tax Act, 1961 in respect of the interest income received from the staff of the Assessee’s Society. The Assessing Officer has denied on the ground that the interest income from the staff is not qualified for exemption u/s.80P of the Income Tax Act, 1961. The same is confirmed by the learned Commissioner of Income Tax (Appeals).

8. We find that the Assessee’s Society has existed only for the members of the Telecom Employees Co-operative Society and not for the benefit of the staff of the Telecom Employees Co-operative Society. The Telecom Employees Co-operative Society is an altogether different from the staff of the Assessee. Therefore, the claim made by the Assessee u/s.80P of the Income Tax Act, 1961

is not an eligible claim and therefore the Assessing Officer as well as the learned Commissioner of Income Tax (Appeals) rightly denied the claim of the Assessee u/s.80P of the Income Tax Act, 1961.

In view of the above, in this appeal, the issue has been decided against the Assessee and in favour of the Revenue. Thus, the ground raised by the Assessee is dismissed. The appeal filed by the Assessee is dismissed.”

3.2 Respectfully following the decision of the Coordinate Benches of the Tribunal in assessee's own case for the assessment years 2012-13 and 2013-14 vide order dated 02.12.2020 (supra), this ground of appeal raised by the assessee stands dismissed for all the assessment years under appeal.

4. The next common ground raised in the appeals of the assessee relates to confirmation of disallowance of interest income earned from FDs and Trusts, which was treated as income from other sources. The Id. Counsel for the assessee has submitted that similar issue was subject matter in appeal before the Tribunal for the assessment years 2012-13 and 2013-14 and the Tribunal has remitted the matter back to the file of the Assessing Officer for *de novo* adjudication and thus, prayed that similar directions may also be given for the assessment years under appeal. The Id. Counsel further submitted that there is a direct nexus between the loans availed by the assessee and FDs and therefore, the entire expenditure has to be allowed.

4.1 On the other hand, the Id. DR strongly supported the order passed by the Id. CIT(A) as well as Assessing Officer.

4.2 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the assessment order, the Assessing Officer has noted that the interest from deposits with trusts and savings accounts has been charged under section 56 of the Act, which is not secured by loans. It was the earnings of the society from its appropriations from net profit. Section 57 of the Act provides for deductions of any other expenditure not being in the nature of capital expenditure laid out or expended wholly or exclusively for the purpose of making or earning “income from other sources” of Chapter IV-F of the Act. The primary objective of the society is to extend credit facilities to the members. The interest income from deposits with trusts and savings account interest was from such deposits only and was totally independent of the deposits collected by the assessee from its members or loans borrowed from banks. Hence proportionate interest and finance charges are not allowed as expenditure. Accordingly, the Id. CIT(A) confirmed the order of the Assessing Officer.

4.3 Similar issue on an identical facts and circumstances was subject matter in appeal before the Tribunal in assessee's own case for the assessment years 2012-13 and 2013-14 in I.T.A. Nos. 2898 & 2899/Chny/2016 vide order dated 02.12.2020, the Tribunal has observed and held as under:

“11. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below.

12. The only issue for consideration is the expenditure incurred by the Assessee to earn the interest income. The case of the Assessee is that the Assessing Officer has treated the interest income earned by the Assessee as income from other sources and estimated the expenditure only. In the Assessment Order, the Assessing Officer has not properly considered the expenditure incurred by the Assessee to earn the interest income and simply estimated the interest expenditure.

13. In our view, it is not correct. Thus we set aside the order passed by the learned Commissioner of Income Tax (Appeals) on this count and remit back the matter back to the Assessing Officer to adjudicate the issue afresh in accordance with law de novo.”

4.4 Respectfully following the decision of the Coordinate Benches of the Tribunal in assessee's own case for the assessment years 2012-13 and 2013-14 vide order dated 02.12.2020 (supra), we set aside the order passed by the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to adjudicate the issue afresh in accordance with law *de novo* after affording an opportunity of being heard to the assessee.

5. The next ground raised in the appeal of the assessee for the assessment year 2016-17 in I.T.A. No. 559/Chny/2020 relates to confirmation of disallowance of depreciation of ₹.2,98,195/-. In the assessment order, the Assessing Officer has noted that the assessee has claimed depreciation on certain items of additions made to the fixed assets like furniture and fittings and computers. However, since the assessee was not able to produce any evidence in respect of additions to the fixed assets, the Assessing Officer disallowed the claim of depreciation of ₹.2,98,195/- and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance on the ground that the assessee has not furnished any evidence even during the course of appellate proceedings.

5.1 Before us also, the assessee has not produced any evidence in respect of the items of additions made to the fixed assets like furniture and fittings and computers. In view of the above, the disallowance of depreciation confirmed by the Id. CIT(A) stands sustained. Thus, the ground raised by the assessee is dismissed.

6. The next ground raised in the appeal of the assessee for the assessment year 2016-17 in I.T.A. No. 559/Chny/2020 relates to

confirmation of disallowance of repair and maintenance. In the assessment order, the Assessing Officer has noted that the assessee has claimed repair and maintenance charges to the tune of ₹.1,31,046/-. However, the since the assessee was not able to produce any proof in respect of repair and maintenance expenses, the Assessing Officer disallowed the claim of repair and maintenance charges of ₹.1,31,046/- and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance on the ground that the assessee has not furnished any evidence during the course of appellate proceedings.

6.1 Before us also, the assessee has not produced any evidence in respect of the expenses towards repair and maintenance claimed to have incurred. In view of the above, the disallowance of repair and maintenance charges confirmed by the Id. CIT(A) stands sustained. Thus, the ground raised by the assessee is dismissed.

7. The next ground raised in the appeal of the assessee for the assessment year 2016-17 in I.T.A. No. 559/Chny/2020 relates to confirmation of disallowance made under section 40a(ia) of the Act. On perusal of the audit report and verification of details furnished by the assessee, the Assessing Officer has noted that the amount on which

tax was not deducted was mentioned in the audit report as ₹.9,05,930/- and the amount to be disallowed @ 30% on ₹.9,05,930 works out to ₹.2,71,779/-. Since the assessee has disallowed only a sum of ₹.86,781/- and not furnished any further explanation, the difference of ₹.1,84,998/- was brought to tax under section 40a(ia) of the Act. Similarly, with regard to payment made towards professional and technical services, though the assessee has stated before the Assessing Officer that tax was deducted at less than specified rate on payment made to the tune of ₹.9,65,000/- and lower deduction certificates are available for the same, it has not produced copy of such certificates. In the absence of documentary evidence, a sum of ₹.2,89,500/- being 30% of ₹.9,65,000/- was disallowed and brought tax under section 40a(ia) of the Act. On appeal, the Id. CIT(A) confirmed the disallowance made on the ground that the assessee has not furnished any documentary evidence during the course of appellate proceedings.

7.1 Before us also, the assessee has not produced any documentary evidence in respect of the TDS deduction made towards payment of

professional and technical services as well as payment to contractors. In view of the above, the disallowance made under section 40a(ia) of the Act and confirmed by the Id. CIT(A) stands sustained. Thus, the ground raised by the assessee is dismissed.

8. The next ground raised in the appeal of the assessee for the assessment year 2016-17 in I.T.A. No. 559/Chny/2020 relates to confirmation of disallowance of business expenses of ₹.86,430/-. On verification of the financials of the assessee, the Assessing Officer noted from the profit and loss account that a sum of ₹.86,430/- was debited towards land tax. Since such expenditure was found to have been towards other than business activities of the assessee, the same was disallowed and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance made by the Assessing Officer.

8.1 We have heard the rival contentions. The assessee has claimed business expenditure of ₹.86,430/-. The Assessing Officer noticed that the said sum was debited in the profit and loss account towards land tax. The Assessing Officer held that the above expenditure was found to have been towards other than business activities of the assessee

and accordingly disallowed. On appeal, the Id. CIT(A) observed that the amount of ₹.86,430/- debited towards land tax, which was stated to be towards the business activity of the assessee, being land tax related to the land belonging to the society and being capital in nature and not exactly in the business of either banking or providing credit facilities to its members, the Id. CIT(A) has held that the same expenses cannot be called as expenses wholly and exclusively for the purpose of business and accordingly dismissed the ground raised by the assessee. Before us, the Id. Counsel for the assessee was unable to establish that the expenses was incurred wholly and exclusively for the purpose of business of the assessee. In view of the above, we find no infirmity in the order passed by the Id. CIT(A).

8. In the result, all the appeals filed by the assessee are partly allowed.

Order pronounced on 10th February, 2022 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 10.02.2022
Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &
6. गार्ड फाईल/GF.