

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 1633/Mum/2021
(Assessment Year 2018-19)

The Maharashtra State Co-op. Banks Association 19-21 Shilpin Centre, 40 G.D.Ambedkar Road Mumbai-400 031 PAN : AADAM5886A (Appellant)	Vs.	AO CPC Banglore-560 500 (Respondent)
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Assessee by	Shri Ashok Sharma
Department by	Shri Airiju Jaikiran
Date of Hearing	28.03.2022
Date of Pronouncement	30 .03.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-32 dated 16.08.2021 and pertains to assessment year 2018-19.

2. Grounds of appeal read as under:-

1. A] The learned CIT (Appeal) erred in rejecting the petition for condonation of delay in filing the appeal. There was a delay of 238 days in filing the appeal.
- B] The learned CIT (Appeal) erred in rejecting the reasons for delay in filing appeal not appreciating the fact that the offices were closed due to Covid-19 pandemic as a result of which the notices remain to be viewed by the accountant.
- C] The appellant submits that the delay in filing appeal should have been condoned by the CIT (Appeal)
2. A] The learned CIT (Appeal) erred in confirming the addition of Rs. 50,000 u/s 80P(2)(c) of IT Act, 1961 as per order u/s 143(1) of IT Act, 1961, not appreciating the fact that appellant is a association of Co-op. Banks registered under Maharashtra

Co-op. Society Act, 1960 and is entitled to claim deduction u/s 80P(2)(c) of IT Act, 1961

B] The learned CIT (Appeal) erred in stating that the appellant did not submit complete intimation order showing the reasons of disallowance and that the appellant did not furnish the complete claim of deduction under chapter VIA not appreciating the fact that the appellant filed the complete order that was received from CPC Bangalore.

C] The appellant submits that deduction u/s 80P(2)(c) should be allowed.

3. In this case, there was delay in filing of appeal before the National Faceless Appeal Centre (NFAC). NFAC rejected the appeal on this ground by holding as under:-

“The appeal was filed belatedly and the reasons shown by the appellant stated that the intimation u/s. 143(1) of the Act could not be viewed on email in time and thereafter due to Covid-19, there was national lockdown. Thus resulted into belatedly filing of appeal. The appellants submission is general in nature especially in a situation where almost every person is using social media and email for pursuing its business activities / promotion. In respect the other part of the reason stated viz Covid-19 scenario, it is very cogent I elucidate that the appellant had an ample time to submit the appeal we before the Covid-19 outbreak, when it first started. In view of the above, I am not satisfied with the reason for not presenting the appeal in time. Hence, the condonation of delay sought is hereby rejected u/s 249(3) of the Act.”

4. Thereafter, without prejudice, the NFAC took up the appeal on merits and held as under:-

“I have carefully considered the facts on record, the intimation order, grounds of appeal and the Statement of facts of the appellant. The sole issue relates to disallowance of deduction u/s 80P(2)(c) of the Act. However, the appellant failed to submit complete copy of intimation order wherein the reason for disallowance must have been mentioned. Also, the appellant submit only general argument and did not even furnished the complete claim of deduction under chapter VIA of the Act including deduction u/s 80P(2)(c) of the Act. Further the appellant also failed to respond notices for granting opportunity of being heard. This shows that the appellant does not want to pursue its own appeal. In view of these facts & circumstance the grounds are dismissed.”

5. Against the above order, assessee is in appeal before the ITAT.

6. I have heard both the parties and perused the records. I note that as regards the delay in filing the appeal before NFAC, it is noted that assessee's plea before the

NFAC was that due to lockdown in covid period, there was delay in filing the appeal. The NFAC without giving detail whatsoever observed that there was sufficient delay in non covid period and hence , rejected the assessee's appeal on the ground of limitation. In this regard, I note that order of AO's order dated 17.10.2019. Hence, by no stretch of imagination it can be said that period other than covid pandemic where material warranting non condonation of delay. Hence, I hold that NFAC erred in holding that delay was not to be condoned. As regards the merits of the case, the order of NFACs as regards legality of the adjustment done by the CPC under 143(1), the NFAC basically held that since, nobody appeared, it was dismissing the appeal. It is settled law that Id.CIT(A) has no power to dismiss the appeal for non prosecution. Moreover, the issue stands covered in favour of the assessee by the decision of ITAT on similar issue in the case of New Ideal Cooperative Housing Society Limited in ITA No. 2681/Mum/2019 for AY 2015-16 vide order dated 03.02.2021. The ITAT has held as under:-

7. I have heard both the parties and perused the records. I find that in this case assessee has been denied the claim of deduction under section 80P(2)(d) & 80P(c)(ii) in an order u/s. 143(1)(a) of the Act.

"Section 80P(2)(d) provides deduction to a Cooperative Society in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other cooperative society, the whole of such income.

Section 80P(2)(c) provides deduction to a Cooperative Society as under :-

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed.

(ii) in any other case, twenty thousand rupees. Explanation- In this clause, 'consumers co-operative society' means a society for the benefit of the consumers;]"

8. First of all it is noted that the adjustment has been done by the CPC Bengaluru under section 143(1)(a) of the Act. Section 143(1)(a) provides for processing of return where the total income is computed after making certain adjustment. It reads as under :-

"143.(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:--

(a) the total income or loss shall be computed after making the following adjustments, namely:--

- (i) any arithmetical error in the return; [***]
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
- [(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of [section 139](#);
- (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
- (v) disallowance of deduction claimed under [sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID](#) or [section 80-IE](#), if the return is furnished beyond the due date specified under sub-section (1) of [section 139](#); or
- (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:] [Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;]"

9. In my considered opinion the adjustment done by denial of deduction u/s. 80P(2)(d) and 80P(2)(c)(ii) in this case does not fall in any of the above. That a cooperative society will not get exemption on the interest earned on deposits in cooperative bank is not something which is a subject matter of adjustment under section 143(1)(a) of the Act. I find that despite noting that there are tribunal decisions in favour of assessee, the learned CIT(A) has chosen not to follow the same by referring to some other decisions. I further find that learned CIT(A) has completely erred in treating the assessee as cooperative bank and invoking the provisions of section 80P(4). Section 80P(4) provides that :-

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.--For the purposes of this sub-section,--

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

10. Honourable Supreme Court in the case of Citizen Cooperative Society Ltd. (Civil Appeal No. 10245 of 2017 vide order dated 8.8.2017) has settled the law that for being considered as a cooperative bank licence from RBI in this regard is a sine qua non. In absence of the RBI licence as such the assessee cannot be treated as cooperative bank. Hence disallowing the deduction by referring to the provisions of

section 80P(4) is completely unsustainable. Moreover section 80P(2)(d) provides exemption to interest earned on fixed deposit in cooperative societies. It is nobody's case that cooperative bank are not cooperative societies.

11. Moreover similar issue was elaborately dealt by a larger bench of honourable Supreme Court in the case of The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors. (Civil Appeal Nos. 7343-7350 of 2019 dated 12.1.2021 and the issue was decided in favour of the assessee. We may gainfully refer to the Hon'ble Apex Court observation in para 21 as under, wherein the Hon'ble Apex Court referred to its earlier decision of Citizen Cooperative Society Ltd. (supra) :-

"The following propositions may be culled out from the judgment:

(I) That [section 80P](#) of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of [section 80P](#) must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. (supra) has construed [section 80P](#) widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from [section 80P\(2\)\(b\)](#) qua milk co-operative societies, the legislature expressly says so - which is not the case with [section 80P\(2\)\(a\)\(i\)](#);

(V) That [section 80P\(4\)](#) is in the nature of a proviso to the main provision contained in [section 80P\(1\)](#) and (2). This proviso specifically excludes only co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of [section 80P\(4\)](#)."

12. Hence on merits also the order of learned CIT(A) denying the deduction u/s. 80P(2)(d) is not sustainable.

13. As regards the statutory deduction u/s. 80P(2)(c)(ii) of the Act, there is no reason why the same should be denied. Moreover, the said adjustment is not falling in any of the adjustment permitted by 143(1)(a) of the Act. Hence, assessee's claim of deduction u/s. 80P(2)(c)(ii) has also been wrongly denied in the processing done u/s. 143(1)(a) of the Act. The learned CIT(A) has failed to decide the same despite assessee's ground in this regard. The same is directed to be allowed.

13. Hence, in the background of the aforesaid discussion, respectfully following the precedent as above I set aside order of learned CIT appeals decide the issues in favour of assessee.

14. In the result, appeal filed by the assessee is allowed.

7. I find that the aforesaid adjudication squarely applies to the facts of the case. The Ld. DR could not controvert the same. Hence, following the aforesaid precedents, I set aside the order of NFAC and decide the issue in favor the assessee.

8. In the result, assessee's appeal stands allowed.

Pronounced in the open court on 30 .03.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 30 .03.2022

Thirumalesh, Sr.PS

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai