

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री जी मंजूनाथा, लेखा सदस्य के समक्ष, श्री अनिकेश बनर्जी, न्यायिक सदस्य एवं
**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A No.:859/Chny/2020
निर्धारण वर्ष /Assessment Year: 2016 - 2017

Income Tax Officer,
Non-Corporate Ward – 22(1),
No.7, Ramakrishna Street,
West Tambaram – 600 045
Tamil Nadu.

M/s. Irula Snake Catchers
Industrial Co-operative Society
Limited,
Vs. Vadanemili East Coast Road,
Perur Post, Vadanemili,
Kancheepuram – 603 104.
PAN : AAAAI 7894M
(प्रत्यर्थी/Respondent)

(अपीलार्थी/Appellant)

Department by : Mr. G. Johnson, Addl. CIT
Assessee by : Mr. G. Baskar & Shri I. Dinesh,
Advocates

सुनवाई की तारीख/Date of Hearing : 25.05.2022
घोषणा की तारीख/Date of Pronouncement : 27.05.2022

आदेश /ORDER

PER ANIKESH BANERJEE, JM:

The instant appeal was filed by the Revenue against the order of the learned Commissioner of Income Tax (Appeals)-10, {in brevity "the CIT(A)"} bearing No.ITA No.66/CIT(A)-10/2018-19/A.Y.2016-17, Order dated 25.02.2020 passed u/s.250(6) of the Income Tax Act, 1961 (in brevity "the Act") for the Assessment Year 2016 – 2017. The instant appeal was generated by the order of the learned

Income Tax Officer, Non-Corporate Ward – 22(2), Tambaram by order No. ITBA/AST/S/143(3)/2018-19/1014509508(1), Order dated 22.12.2018 passed u/s.143(3) of the Act.

2. At the outset, it is noticed that the appeal of the Revenue is time barred by 175 days. However, an application under Section 5 of the Limitation Act along with the Affidavit was filed by the Income Tax Officer mentioning the reason for delay in filing the appeal before the Hon'ble Tribunal. The delay was due to 'Covid-19' pandemic. The learned ITO requested the Hon'ble Bench to take into cognizance the Order of the Hon'ble Supreme Court the "Suo Moto WP 03/2020 dated 20.03.2020 while considering the condonation of delay.

3. On going through the affidavit filed by the Income Tax Officer, it is a fact that 'Covid-19' pandemic was prevalent and in term of the directions issued by the Hon'ble Supreme Court in Miscellaneous Application No.21/2022 in Suo Motu Writ Petition No.3 of 2020, we condone the delay of 175 days and admit the appeal for adjudication on merits.

4. Brief facts of the case are that the Assessee is a Co-operative Society. The main activity is that to promote the interest of "IRULA" Community who come under the Scheduled Tribe [ST]. The main activity of the Society is snake catching, extraction of venom,

storage of venom, price fixing, selling of venom. The Society also receives service charges for catching of snakes for different corporate clients and local bodies and collect fees for public viewing and other income by way of admission charges for the video / still camera photography for observing the snake catching process. During the assessment proceedings, the Assessee claimed deduction u/s.80P(2) of the Act. The learned Assessing Officer added back the interest as income from other sources received against the investment of the Assessee from different co-operative banks and also added back the video / still photography charges from different parties. The total addition was made to the tune of Rs.1,53,34,423/- which is the net profit admitted by the Assessee in the profit and loss account. So, the entire deduction was disallowed and added back with the total income of the Assessee. Aggrieved, the Assessee filed an appeal before the learned CIT(A). The learned CIT(A) allowed two issues, i.e. one related to the deduction u/s.80P(2) and the other related to video / still photography charges. Being aggrieved, the Revenue filed an appeal before the Tribunal.

5. During the hearing, the learned DR vehemently argued and mentioned that the learned CIT(A) did not adjudicate the issues in a proper manner. He prayed that the bank interest earned by the Assessee is liable to be taxed under the head "income from other sources". The learned DR further mentioned that the video / still

photography charge is not a collective labour. So, this would come under perview of tax. He further prayed that the interest from the co-operative bank should not be treated as interest from co-operative society. So, the amount should come under the perview of Income Tax.

6. The learned Counsel for the Assessee, Mr. G. Baskar relied on the order of the learned CIT(A) which is extracted, as under:

"The Appellant has received a sum of Rs.28,02,144/- as interest from the above investment for the Financial Year 2015 - 2016. The AR also argued that it is not a case where surplus funds have been invested in the banks and interest is earned on the same. The above amounts are mainly earmarked for the welfare of the Irula members and they don't have separate PF Account or Gratuity Account with either the PF Office or with LIC. The income received from the above investments are attributable for the carrying the business of collective disposal of labour of its members and hence the same is eligible for deduction u/s.80P(2)(a)(vi). The AR has also relied on the order u/s.264 of the CIT-VII, Chennai vide C.No.7032(6)/13-14/CIT-VII; dated 16.04.2013 in the case of M/s. Tamil Nadu Handlooms Weaver Co-operative Society for Assessment Year 2010-2011, wherein the interest income was allowed as deduction. The CIT-VII further held that the Income Tax Act had used the Phrase "attributable to" u/s.80P(2)(a)(ii) of the Income Tax Act, 1961 and this word is of wide import and intended to cover all such receipts from sources other than the actual conduct of business as decided by the Apex Court in the case of Cambay Electric Supply Company Limited Vs. Commissioner of Income Tax [113 ITR 84].

(v) As regards, the video / still camera charges and interest income, the applicability of the same is discussed in the earlier paras. As decided by the CIT-VII, Chennai in order u/s.264 of the Income Tax Act in the case of M/s. Tamil Nadu Handloom Weavers Co-operative Society for the Assessment Year 2010-2011, it is held that the deduction u/s.80P(2)(a)(vi) is also eligible for video / still camera charges and interest income for the case under consideration."

6.1. He further pointed out that the issue related to the interest from the co-operative banks has already been decided in different judicial forums. Accordingly, he relied on the judgment of the Hon'ble Madras High Court in the case of Commissioner of Income Tax, Salem Vs. The Salem Agricultural Producers Co-operative Marketing Society Limited, Salem [Tax Case Appeal No.5 of 2015, Date 10/08/2016]. In the order of the Co-ordinate Bench of this Tribunal in the case of Subramania Siva Co-operative Sugar Mills Limited, Dharmapuri Vs. Income Tax Officer, Chennai, ITA No. 1378/Chny/2019, Order pronounced on 20.02.2020 has taken same view & allowed the deduction U/s 80P(2) of the Act.

6.2. The Assessee is a Co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1961. As per the Co-operative Societies Act, every Co-operative Society is allowed to have their financial transactions with the co-operative society only. As per Id Counsel all Cooperative bank is primarily Cooperative society. The learned Counsel of the Assessee further pointed out that as per the norms, the Assessee invested in TAICO Bank "Tamil Nadu Industrial Co-operative Bank Limited" and the interest amount earned is liable to be allowed u/s.80P of the Act.

7. We heard the rival submissions and considered the documents available on records. Here, we are adjudicating two issues; one

relating to deduction u/s.80P(2) of the Act and the applicability of the video / still photography charges within the ambit of the income of the co-operative society. The Assessee received the interest from the co-operative bank "TAICO". The co-operative banks are first co-operative society and thereafter they are converted into banks. The Hon'ble jurisdictional High Court is also in favour of the Assessee. Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited Vs. Commissioner of Income Tax, Calicut [2021] 123 Taxmann.com 161 (SC) observed that whether the Assessee is registered as a primary agricultural credit society, it is entitled for the benefit of deduction u/s.80P(2) of the Act, notwithstanding that it was also giving loans to its members which is not related to agriculture. Respectfully considering the judicial observations, it is clear that, in the case of the interest earned from the co-operative bank, it does not come under the consideration of the income from other sources. The said interest is eligible for deduction u/s.80P(2) of the Act.

8. As regards to the charges received from the video and still photography, it is a settled issue as stated by the learned Counsel. The learned Counsel of the Assessee, Mr Bhaskar mentioned that in the assessment years 2012 – 2013 and 2014 – 2015, the learned CIT(A) had allowed the charges received from different parties related to this assessee. Gate collection fee or viewing or the

camera charges is the income by way of admission charges are either direct income by way of collective disposal of the labour or attributable to the activities of the society. Though, it is not a disposal of labour but the said income is entering into the income of the co-operative society and ploughs back the amount in the activities of the society. So, the income generated from the camera charges is liable for deduction u/s.80P(2) of the Act. From the above mentioned discussion both the issues are settled down accordingly.

9. In the result, the appeal of the Revenue in I.T.A No.:859/Chny/2020 is dismissed.

Order pronounced in the court on 27th May, 2022 at Chennai.

Sd/-

(जी मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(अनिकेश बनर्जी)

(ANIKESH BANERJEE)

न्यायिक सदस्य एवं / JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 27th May, 2022

IA, Sr. PS

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