

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

SHRI R.S. SYAL, VICE PRESIDENT AND
PARTHA SARATHI CHAUDHURY, JM

ITA No. 534/PUN/2021 : Assessment Year : 2019-20

Shantinath Nagari Sahakari Pat
Sanstha Maryadit,
Near Masjid, Tal. Hatkanangale
Kabnoor, Dist. Kolhapur – 416 129
Vs.

:Appellant

The Asstt. Director of Income-tax
CPC, Bangalore.

: Respondent

Appellant by : Shri Pramod Shingte
Respondent by : Shri Arvind Desai

Date of Hearing : 11-07-2022
Date of Pronouncement : 17-08-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Id. CIT(A)-National Faceless Appeal Centre, Delhi dated 25-08-2021 for A.Y. 2019-20 as per the grounds of appeal on record.

2. The solitary grievance of the assessee before us is the denial of deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") even though the assessee qualifies for deduction being a registered co-operative society vis-à-vis in providing credit facilities to its members. There are several decisions of the co-ordinate Bench Pune, where deduction u/s 80P(2)(a)(i) has been allowed to a registered co-operative society engaged in providing credit facilities to its members. In ITA No. 826/PUN/2019 for A.Y. 2014-15, order dated 23-09-2020, it was held as follows:

"3. We have heard the rival submissions through virtual court and gone through the relevant material on record. The assessee is admittedly a credit co-operative society providing credit facility to its members. The assessee earned interest income, inter alia, on FDRs with State Bank of India and co-operative banks. The Assessing Officer (AO) examined this issue and came to hold that interest of Rs.1,39,695/- on FDRs made with State Bank of India was not eligible for deduction u/s 80P. The assessee accepted that aspect and did not dispute it

further. Now the Id. Pr. CIT has taken a view that interest income of Rs.22,34,270/- earned from investments made with co-operative banks also does not qualify for deduction. This evidences that the availability of deduction u/s 80P(2) on the remaining amount of interest earned from the members etc., has also been accepted by the Id. Pr.CIT.

4. The short point of view of the Id. Pr.CIT is that interest earned from co-operative banks cannot be covered under clause (d) of sub-clause (2) of section 80P. Section 80P(1) provides that: '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.' Sub-section (2) opening with: 'The sums referred to in sub-section (1) shall be the following', has clauses (a) to (f). Clause (d), which has been invoked by the Id. Pr. CIT reads: '(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income.' It is axiomatic that only interest derived by a co-operative society from its investments with any other co-operative society is eligible for deduction under clause (d). Conversely, if the payer of the interest is not a co-operative society, its payee, a co-operative society cannot claim deduction thereon under this clause. Admittedly, the assessee received interest from a co-operative bank and not a co-operative society. A fortiori, such an amount is not eligible for deduction u/s 80P(2)(d) of the Act.

5. However, the case of the assessee before the authorities below ab initio has been that it was eligible for deduction on such interest u/s.80P(2)(a)(i) of the Act inasmuch as the assessee was engaged in providing credit facility to its members. At this juncture, it may be apposite to consider the mandate of clause (a)(i) of section 80P(2), which provides that: '(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, the whole of the amount of profits and gains of business attributable to any one or more of such activities' shall be allowed as deduction. The assessee is admittedly a co-operative society engaged in carrying on the business of providing credit facilities to its members. In such a situation, the whole of the amount of profits and gains of business attributable to providing credit facilities to its members becomes deductible u/s 80P(2) of the Act.

6. The term "profits and gains of business attributable to" providing credit facilities has a wider connotation. It encompasses not only the income derived strictly from providing credit facilities to its members but also any other income which is attributable to such business. So long as there exists a live link, not necessarily direct, between the income and carrying on of the business of providing credit facilities, the resultant income qualifies for deduction. If a particular amount is received by a co-operative society from its members as deposits and a part of the same has been provided as a credit facility to its members, the unspent amount for the time being not required by the members as loan, if utilised elsewhere, will nonetheless lead to generation of profits and gains of business of providing credit facilities to its members. The thread of link between income and business of providing credit facilities to the members will be broken if despite there being the members wanting to avail credit facilities, the co-operative society chooses to prefer making deposits with banks etc. rather than advancing sums to its members.

7. Right now we are confronted with a situation in which the assessee co-operative society has made deposits with co-operative banks and earned interest income, which is exactly the bone of contention. The stand of the assessee is that these are short term deposits of the money not required for the time being. The Id. Pr. CIT has not returned any contrary finding. In such a scenario, the entire interest income - not only the one derived from its members by providing credit facilities but also that earned by utilizing the surplus available funds for the time being at some places like investment in FDR etc. - also falls within the ambit of "profits and gains of business attributable to" providing credit facilities to its members.

8. At this juncture, it is relevant to note that we are dealing with a case in which the Id. Pr. CIT has invoked his power u/s.263 of the Act. It is trite that the exercise of such a power is ousted in case of a debatable issue. An assessment order can be termed as erroneous and prejudicial to the interest of the Revenue if the AO has taken a view which is not legally sustainable. Per contra, if two views are available on a particular issue and the AO adopts one of such possible views, the case goes outside the purview of revisional power to be exercised by the Pr.CIT u/s.263 of the Act.

9. The Pune Benches of the Tribunal in Sureshdada Jain Nagari Sahakari Patsanstha Maryadit Vs. The Pr.CIT (ITA No.713/PUN/2016) decided the question of availability of deduction u/s 80P on interest income by noticing that the Pune Bench in an earlier case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO (ITA No.604/PN/2014) has allowed similar deduction. In the said case, the Tribunal discussed the contrary views expressed by the Hon'ble Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 Taxman 309 (Kar.) allowing deduction u/s. 80P on interest income and that of the Hon'ble Delhi High Court in Mantola Cooperative Thrift Credit Society Ltd. Vs. CIT (2014) 110 DTR 89 (Delhi) not allowing deduction u/s.80P on interest income earned from banks. Both the Hon'ble High Courts took into consideration the ratio laid down in the case of Totgar's Cooperative Sale Society Ltd. (2010) 322 ITR 283 (SC). There being no direct judgment from the Hon'ble jurisdictional High Court on the point, the Tribunal in Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit (supra) preferred to go with the view in favour of the assessee by the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra).

10. Insofar as the reliance of the Id. DR on the case of Pr. CIT and Another Vs. Totagars Cooperative Sales Society (2017) 395 ITR 611 (Kar.) is concerned, we find that the issue in that case was the eligibility of deduction u/s.80P(2)(d) of the Act on interest earned by the assessee co-operative society on investments made in co-operative banks. In that case, the assessee was engaged in the activity of marketing agricultural produce by its members; accepting deposits from its members and providing credit facility to its members; running stores, rice mills, live stocks, van section, medical shops, lodging, plying and hiring of goods and carriage etc. It was in that background of the facts that the Hon'ble High Court held that the assessee could not claim deduction u/s.80P(2)(d) of the Act. When we consider the impact of this decision, it turns out that the same is not germane to case under consideration in view of the position that the claim of the instant assessee is directly about the eligibility of deduction u/s.80P(2)(a)(i) of the Act and not u/s.80P(2)(d). Moreover, so many decisions relied on by the Id. AR amply go to prove that the view taken by the AO, cannot by any standard, be construed as not a possible view. We, therefore, hold that the Id. Pr. CIT was not justified in exercising the revisional power anent to interest income of Rs.22,34,270/- earned on investments made with co-operative banks.

11. Now we advert to the second issue espoused by the Id. Pr. CIT about the interest income of Rs.2,334/- received by the assessee on refunds u/s.244A of the Act. We find that this issue is fully and directly covered by the Special Bench order passed by the Mumbai benches of the Tribunal in the case of Maharashtra State Cooperative Bank Ltd. Vs. ACIT (2010) 129 TTJ 521 (SB) (Mumbai) holding that interest on income-tax refund u/s.244A is covered within the expression "profits and gains of business" occurring in section 80P(2)(a) and ergo eligible for deduction u/s.80P(2)(a)(i) of the Act. Albeit interest amounting to Rs.2,334/- received u/s.244A of the Act is chargeable to tax but at the same time the same is also deductible in full u/s.80P(2)(a)(i) of the Act. The assessment order in not adding such interest to the total income, cannot be construed as prejudicial to the interest of revenue because such interest income is tax-neutral in the context of the assessee due to the simultaneous availability of deduction u/s.80P(2)(a)(i) on such amount."

3. Respectfully following the aforestated decision of the co-ordinate Pune Tribunal we hold that the Id. CIT(A) was not justified in confirming the addition made by the Assessing Officer by way of adjustment u/s 143(1)(a) denying deduction u/s 80P(2)(a)(i) of the Act when the assessee qualifies for the deduction being a registered co-operative society engaged in providing credit facilities to its members.

4. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on this 17th August 2022.

Sd/-
(R.S. SYAL)
VICE PRESIDENT

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 17th day of August 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CCIT, Pune.
4. The CIT(A)- NFAC, Delhi
5. The D.R. ITAT 'B' Bench Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

ITA No. 534/PUN/2021
 Shantinath Nagri Sah. Pat Sanstha
 A.Y. 2019029

		Date	
1	Draft dictated on	26-07-2022	Sr.PS
2	Draft placed before author	26-07-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	17-08-2022	Sr.PS/PS
7	Date of uploading of order	17-08-2022	Sr.PS/PS
8	File sent to Bench Clerk	<i>17-08-2022</i>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		