

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PANAJI
(AT e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA Nos.462 to 465/PAN/2018

निर्धारण वर्ष / Assessment Years : 2009-10 to 2012-13

Shri Anantnath Alpasankhyatar Vividh Uddeshagal Souhard Sahakari Niyamit, A/P. Konnur, Gokak Taluka, Belagavi District, Karnataka PAN : AAGTS1962B	Vs.	ITO, Ward-1, Gokak
Appellant		Respondent

Assessee by None
Revenue by Shri N. Srikanth, Sr. DR

Date of hearing 07-11-2022
Date of pronouncement 09-11-2022

आदेश / ORDER

PER R.S. SYAL, VP:

These four appeals by the assessee relate to the assessment years 2009-10 to 2012-13. Since a common issue is raised in these appeals, I am, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. There is a delay of 140 days in filing the appeals before the Tribunal. The assessee has filed an affidavit explaining the

reasons. I am satisfied with the reasons so stated. I, therefore, condone the delay and admit the appeals for hearing.

3. The facts for the assessment year 2009-10 are that the assessee is a Cooperative Society which declared income of Rs.10,15,647/- and claimed deduction u/s.80P(2)(a)(i) for the equal amount. The Assessing Officer (AO) held the assessee to be a primary Cooperative Society and hence, not eligible for deduction in terms of section 80P(4). The Id. CIT(A), however, partly reversed the order of the AO on this account by holding that a “Cooperative Society”, like the assessee, registered as Cooperative Society providing credit facilities to its members and not registered with the RBI, cannot, in principle, be denied deduction u/s.80P(2)(a)(i) of the Act. That is how, he directed the AO to allow deduction u/s.80P(2) in respect of business activity of running the credit facility to its members; deduction u/s.80P(2)(d) on the interest received from Cooperative societies; deduction u/s.80P(2)(a)(i) on interest received from any savings bank accounts of other banks/Schedule banks; and deduction u/s.80P(2)(a)(i) towards interest earned on short term investments/deposits of period less than one year by treating the same as “business income” of the society. He, however, rejected

the assessee's claim towards interest on long term investments/deposits held for a period more than one year, which was held to be 'Income from other sources' on which, the deduction u/s.80P(2)(a)(i) and u/s.80P(2)(d) was not eligible. However, the AO was directed to allow cost of the fund, if any and proportionate administrative expenses in respect of such income u/s. 57(iii) of the Act. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. I have heard the Id. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. As such, I am proceeding to dispose of the appeals *ex parte qua* the assessee.

5. It is seen that the Id. CIT(A) overturned the AO's view of treating the assessee as a Primary Cooperative bank and rightly held the assessee to be a "Cooperative Society". He has allowed deduction u/s.80P(2) on all the interest incomes except the interest earned on long term investments/deposits made for a period more than one year. Per contra, the interest income on short term deposits for a period less than one year has been held to be business income and hence, eligible for deduction u/s.80P(2)(a)(i). The Id. DR could not draw my attention towards any provision

drawing a distinction between deposits/investments held for a period of more than one year to be treated as 'Income from other sources' and for a period less than one year as 'Business income'. It is seen that the assessee falls under the jurisdiction of Hon'ble Karnataka High Court. In *Tumur Merchants Souharda Credit Cooperative Ltd., Vs. ITO (2015) 230 taxmann*, the Hon'ble High Court has held the amount of interest received from deposits kept with banks as eligible for deduction u/s.80P of the Act. In view of the fact that the relevant distinction between the short term deposits and long term deposits and the consequential eligibility and non-eligibility for deduction u/s.80P, is not borne out from the impugned order, I am of the considered opinion that it would be just and fair if the impugned order is set aside and the matter is restored to the file of the ld. CIT(A). I order accordingly and direct him to pass a speaking order and to make a mention of the relevant provision, if any, under which such a distinction has been drawn. He will also take into consideration the *ratio* of the above said judgment of the Hon'ble Karnataka High Court. Needless to say, the assessee will be allowed reasonable opportunity of hearing.

6. The ld. DR fairly submitted that the facts and circumstances of the other three appeals are *mutatis mutandis* similar. Following

the view taken hereinabove, the impugned orders for the next three years are also set aside with a direction to redo the same in the terms indicated above.

7. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 09th November, 2022.

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

पुणे Pune; दिनांक Dated : 09th November, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A) concerned
4. The Pr.CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
Panaji / DR, Panaji
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	07-11-2022	Sr.PS
2.	Draft placed before author	09-11-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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