

IN THE INCOME TAX APPELLATE TRIBUNAL

"H" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.985/Mum./2022

(Assessment Year : 2018-19)

Income Tax Officer
Ward-28(3)(1), Mumbai

..... Appellant

v/s

Shri Kulswami Co-operative
Credit Society Ltd., F-3/1, APMC
Central Facility Building
Sector-19, APMC Market
Tribhe, Navi Mumbai 400 705
PAN - AAAAS2059L

.....Respondent

Assessee by : None

Revenue by : Shri Tejinder Pal Singh

Date of Hearing - 25/08/2022

Date of Order - 17/11/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 10/03/2022 passed under section 250 of the Income Tax Act, 1961 ('the Act') by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ('learned CIT(A)'), for the assessment year 2018-19.

2. When this appeal was called for hearing, neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed.

Therefore, we proceed to dispose off this appeal ex-parte qua the assessee after hearing the learned Departmental Representative ('learned DR') and on the basis of material available on record.

3. In this appeal, the Revenue has raised the following grounds:

""On the facts and in the circumstances of the case and in law, the Ld CIT(A) NFAC has erred in allowing relief to the assessee to the extent imaged in the grounds enumerated below:

(1) Whether on the facts and in the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O. to allow the deduction claimed by the assessee u/s 80P(2)(a) of the Income Tax Act, 1961 without appreciating the facts that the assessee fulfilled all the conditions of a Primary Co-operative Bank"?

(2) Whether on the facts and in the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O. to allow the amount of Rs. 1,73,465 disallowed u/s 40(a)(ii) of the Income Tax Act, 1961 without appreciating the facts that the assessee had debited an amount of Rs.1,73,465/- towards Income Tax Act, 1961 and had not added back the amount to its total income?

(2) Further, placed in the above factual and legal scenario, the impugned order of the Ld. CIT(A). NFAC is, the appellant prays, patently perverse and contrary to law and consequently merits to be set aside and that of the Assessing Officer be restored.

(3) The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

4. The issue arising in ground No. 1, raised in Revenue's appeal, is pertaining to the grant of deduction under section 80P(2)(a)(i) of the Act to the assessee.

5. The brief facts of the case as emanating from the record are: The assessee is a Co-operative Credit Society registered under Maharashtra Cooperative Societies Act, 1960. The assessee is engaged in providing credit facilities to its members. For the year under consideration, the assessee filed

its return of income on 01/10/2018 declaring total income of INR 5,64,980 after claiming a deduction of INR 3,54,46,623 under section 80P from the gross total income of INR 3,60,11,604. The Assessing Officer vide order dated 26/04/2021 passed under section 143(3) r/w section 144B of the Act held that the assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank and therefore falls within the ambit of provisions of section 80P(4) of the Act. Accordingly, the Assessing Officer denied the deduction claimed by the assessee under section 80P(2)(a)(i) of the Act.

6. In appeal, learned CIT(A) vide impugned order held that the assessee is a Co-operative Society as it is registered under the Co-operative Societies Act. The learned CIT(A) further held that deduction under section 80P(2)(a)(i) of the Act is available to the co-operative credit societies, which provide credit facilities to its members, and therefore, the assessee is entitled to benefit of deduction available under section 80P(2)(a)(i) of the Act. Being aggrieved, the Revenue is in appeal before us.

7. Having heard the learned DR and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee's own case in ITO vs M/s. Kulswami Coop. Credit Society Ltd., in ITA Nos. 3223/Mum/2011 & 505/Mum/2012, for the assessment years 2007-08 & 2008-09, vide order dated 28/03/2014 held that the assessee is a Co-operative Society and is entitled to deduction under section 80P of the Act. We further find that the Hon'ble Jurisdictional High Court in CIT vs

Shri Kulswami Coop. Credit Society Ltd., in ITA No. 1682 and 1873 of 2014, vide order dated 20/03/2017 dismissed the appeal filed by the Revenue against the aforesaid order for the assessment years 2007-08 & 2008-09. We further find that the claim of the assessee under section 80P(2)(a)(i) of the Act has been allowed by the coordinate bench of the Tribunal in other preceding assessment years as well.

8. Since this issue is recurring in nature and has been decided in favour of the assessee in preceding assessment years, therefore respectfully following the judicial precedents in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. Accordingly, ground No. 1 raised in Revenue's appeal is dismissed.

9. As regards ground No. 2, raised in Revenue's appeal, we find that the Assessing Officer vide order passed under section 143(3) r/w section 144B disallowed an amount of INR 1,73,465 and added the same to the total income of the assessee under section 40(a)(ii) of the Act. However, as is evident from para 2 of the impugned order, no ground of appeal was raised by the assessee challenging the aforesaid addition before the learned CIT(A). Accordingly, there is no finding on this issue in the impugned order. Therefore, it is evident from the record that this addition has been accepted by the assessee and thus the Revenue cannot be said to have any grievance against the same. Accordingly, ground No. 2 raised by the Revenue in the present appeal is dismissed as infructuous.

10. The other grounds raised in the present appeal are general in nature and in view of our aforesaid findings, the same are also dismissed.

11. In the result, the appeal by the Revenue is dismissed.
Order pronounced in the open Court on 17/11/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 17/11/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai