

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 1712, 1723 & 1724/Mum/2021
(Assessment Years: 2008-09, 2009-10 & 2010-11)

Sai Prerana Co-op. Credit Society Ltd. 317, Puran Aasha Building, Ground Floor, Narashi Nath Street, Katha Bazar, Masjid Bunder (W), Mumbai-400 009	Vs.	ITO-17(3)(2) Mumbai
PAN/GIR No. AADTS 5638 M		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Bharat Kumar
Respondent by	:	Shri Manoj Kumar Singh

Date of Hearing	:	05.09.2022
Date of Pronouncement	:	29.11.2022

ORDER

Per Kavitha Rajagopal, J. M.:

These appeals are filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2008-09, 2009-10 and 2010-11, respectively. The assessee is in second round of appeal challenging the order of the Id. CIT(A) in confirming the addition made by the Assessing Officer (A.O. for short).

2. As the facts in all these appeals are common, we proceed to pass a consolidated order for the impugned issue by taking A.Y. 2008-09 as the lead case.

3. The brief are that the assessee is a co-operative credit society whose primary function is to advance loans to the members. The assessee filed its return of income dated

10.09.2008, declaring the total income of Rs.Nil. The assessee's case was processed u/s.144 r.w.s. 254 of the Act and assessment order u/s.143(3) of the Act was passed on 29.12.2010 by assessing the total income at Rs.Nil, after granting deduction u/s.80P of the Act.

4. Subsequent to this, proceeding u/s.263 of the Act was initiated on the ground that the assessee has derived income from Maharashtra State Electricity Distribution Limited (MSEDCL), amounting to Rs.2,88,534/- and the same was reflected as 'other receipt' in profit and loss account of the assessee and that the deduction u/s.80P was to be erroneous and prejudicial to the interest of the Revenue. The Id. CIT-12, Mumbai passed an order u/s. 263 dated 18.04.2012 directing the A.O. to examine the facts of the deduction and thereby to pass the assessment order accordingly. The A.O. vide order dated 30.12.2019 passed the assessment order u/s. 143(3) r.w.s. 263 of the Act by making an addition of Rs.2,88,534/- as 'income from other sources'.

5. The assessee was in appeal before the Id. CIT(A) against the assessment order and the Id. CIT(A) vide order dated 04.12.2017 allowed 50% of the expenses against the impugned commission received by the assessee from MSEDCL and had directed to tax the balance receipt u/s. 56 of the Act.

6. Further aggrieved, the assessee was in appeal before the Tribunal and the Tribunal vide order dated 08.11.2018 set aside the order passed by the Id. CIT(A) and restored the matter to the A.O. for examining the issue afresh by following the Tribunal's decision in assessee's case in other years. It is observed that the assessee has failed to furnish the

relevant details before the A.O. despite several opportunities given and the A.O. completed the assessment u/s. 144 of the Act by allowing 50% of the expenses against a commission received from MSEDCL as per the order of the Id. CIT(A).

7. The assessee was in appeal before the Id. CIT(A) against the assessment order and the Id. CIT(A) confirmed the said addition after allowing 50% of the expenses against the impugned commission received on the ground that the assessee has failed to substantiate its claim before the Id. CIT(A) even in the second round of appeal.

8. Aggrieved by this, the assessee is in appeal before us.

9. During the appellate proceedings, the Id. Authorized Representative (AR for short) for the assessee represented that the ground no. 1 of appeal challenging the reopening u/s. 147 of the Act was not be pressed by the assessee and hence ground no. 1 in ITA No. 1712/Mum/2021 is not adjudicated and is, therefore, dismissed.

10. Ground nos. 2 & 3 pertains to the additions made by the A.O. as commission received from MSEDCL, after allowing 50% expenses against the impugned commission. It is observed that the assessee has derived income of Rs.2,88,534/- from MSEDCL which the assessee has included as 'other receipt' in its P & L account. In section 263 proceeding, it was held that the impugned income was not eligible for deduction u/s. 80P(2) of the Act and the same was added as 'income from other sources'.

11. The Id. CIT(A) has held that the impugned expenses, receipts are not allowable as commission as per section 80P(2)(a)(i) of the Act. It is also observed from the assessment

order that the assessee has failed to furnish the relevant details to substantiate its additional claim u/s. 80P of the Act and that the A.O. had to complete the assessment u/s. 144 of the Act, since the matter was getting time barred. The impugned income was in the nature of service charges received by the assessee from MSEDCL for collecting the electricity bills from the consumers on behalf of the MSEDCL for which the assessee has claimed expenditure which accounted for about 95% of the commission income received from MSEDCL.

12. The A.O. has disallowed the same on the ground that the expenses claimed by the assessee was on the higher side and that the assessee has failed to prove that the said expenses were actually expended wholly and exclusively for the purpose of earning commission expenditure. The A.O. in the original assessment has disallowed the entire claim of expenses and in the subsequent proceeding, the Id. CIT(A) has disallowed only 50% of the expenses claimed by the assessee. Though the Revenue has objected that the assessee is not entitled for deduction 80P of the Act, the Tribunal in the earlier year has allowed the claim of the assessee u/s. 80P of the Act and had remanded only to verify that the impugned expenses claimed by the assessee pertained to the earning of the commission income. It is evident that the actual dispute in these appeals does not pertain to the deduction u/s.80P of the Act rather, restricted only to the expenses whether it was incurred wholly and exclusively for earning exempt income.

13. The Id. AR for the assessee contended that the lower authorities have failed to consider the assessee's claim of 95% expenses against the amount of commission received which was to be allowed.

14. The Id. Departmental Representative (Id. DR for short), on the other hand, contended that the assessee has failed to furnish evidences to prove that the impugned expenses was incurred wholly for the purpose of earning the commission income and that the Id. CIT(A) has already given a relief of allowing 50% of the expenses claimed by the assessee.

15. Having heard the rival submissions and perused the material on record, we are of the considered opinion that the assessee even during the second round of litigation has failed to substantiate its claim for allowing 95% of the expenses alleged to be incurred in earning the commission income received by the assessee from MSEDCL. The assessee neither before us, nor before the lower authorities have filed any additional evidences pertaining to its claim. The case laws relied by the assessee are as under :

- *Pr. CIT vs. S-1308 Ammapet Primary Agriculture Co-operative Society Bank Limited* [2019] 108 taxmann.com 594 (Madras)
- *ITO vs. Jhalawar Sahkari Bhoomi Vikas Bank Ltd.* [2012] 25 taxmann.com 224 (JP)

These are distinguishable in facts of the present case in hand. We are of the considered view that the assessee has been given sufficient relief by the lower authorities in allowing 50% of the expenses claimed by the assessee in earning the impugned commission received from MSEDCL. The assessee has failed to prove that the said expenses were incurred wholly and exclusively for the purpose of earning the commission income.

16. From the above, we find no merit in the grounds raised by the assessee. Hence, ground nos. 2 & 3 are dismissed.

17. Ground nos. 1 & 3 in ITA Nos. 1723 and 1724/Mum/2021 are on identical facts except for variation in the quantum. Hence, the above finding applies *mutatis mutandis* for these grounds in ITA Nos. 1723 and 1724/Mum/2021. Hence, ground nos. 1 & 3 are dismissed.

18. Ground no. 2 in ITA Nos. 1723 & 1724/Mum/2021 pertains to the claim of expenses against the following heads:

- a) Sale of loan application form Rs.102679/-
- b) Interest on deposit on security from MSEDCL of Rs.35256/-
- c) The Miscellaneous Receipt of Rs.120688/-
- d) Recovery Expenses of Rs.924223/-
- e) Interest on loan to staff & interest on employees housing loan of Rs.575425/-

It is observed that the assessee has failed to furnish relevant details pertaining to the expenses claimed by the assessee for the above mentioned heads. Even during the second round of litigation, the assessee has not submitted any additional evidences pertaining to the said claim either before us or before the lower authorities.

19. Further in respect of item no. (b), i.e., interest on deposit on security from MSEDCL of Rs.35,256/-, the ld. AR before us stated that he is not pressing this issue.

20. With regard to the other four remaining receipts, the ld. AR submitted that similar receipts were derived by the assessee society in A.Y. 2008-09 and no addition was made for the same by the A.O. thereon. In view of this, we deem it fit and appropriate, as a last and final opportunity, to remand this issue to the file of the ld. A.O. with the following directions:

- 1) *If the aforesaid receipts contended in (a), (c), (d) and (e) supra were not added in the A.Y. 2008-09 and the assessee is able to produce sufficient evidences during the A.Ys. 2009-10, 2010-11 before the A.O. in the set aside proceedings, then the A.O. should grant deduction u/s. 80P of the Act for the said A.Ys. 2009-10 and 2010-11.*
- 2) *If, however, no evidences were furnished by the assessee to the satisfaction of the ld. A.O., then the ld. A.O. would be at liberty to deny deduction u/s.80P of the Act for the A.Ys. 2009-10 and 2010-11.*

21. With these directions, ground no. 2 in ITA Nos. 1723 & 1724/Mum/2021 for the A.Ys. 2009-10 and 2010-11 are disposed of and allowed for statistical purpose.

22. In the result, the appeal of the assessee for A.Y. 2008-09 is dismissed and the appeals for A.Ys. 2009-10 and 2010-11 are partly allowed for statistical purposes.

Order pronounced in the open court on 29.11.2022.

Sd/-

(M. Balaganesh)
Accountant Member

Mumbai; Dated : 29.11.2022
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai