IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC - C" BENCH : BANGALORE

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.241/Bang/2023
Assessment Year : 2013-14

M/s. Shri Basaveswar Credit Co-op Society Ltd., Raichur Road, Hungund– 587 118. **PAN : AACAS5117 L**	Vs.	Income Tax Officer, Ward –1, Bagalkot.
APPELLANT		RESPONDENT

Assessee by	:	Shri.Ravishankar S. V, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel

Date of hearing	:	26.04.2023
Date of Pronouncement	:	18.05.2023

O R D E R

This is an appeal filed by the assessee against the order passed by the CIT(A), Hubballi dated 29.03.2019, with the following grounds of appeal :

1. *The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.*
2. *The appellant denies itself liable to be assessed to a total income of Rs. 10,02,282/- as against the total income of the appellant of Rs. NIL for the 2013-14 on the facts and circumstances of the case.*

3. ***8oP***
   a) *The learned CIT(A) was not justified in directing the assessing officer to disallow the claim of deduction of interest earned from*

associate members, of Rs. 1,48,606/-, which is contrary to the provisions of section 8oP of the Act, on the facts and circumstances of the case.

b) *The learned CIT(A) was not justified in holding that the business was not carried on, "on the principle of mutuality", thus the interest earned from other sources was not eligible, which is not the issue on hand, when the appellant has merely made a claim of deduction under section 8oP of the Act, on the facts and circumstances of the case.*

c) *The learned CIT(A) was not justified in holding that the interest income since taxable under the head of other sources, would not be attributable to the business of the appellant and thus not eligible for deduction under section 8o(P)(2)(a) of the act, on the facts and circumstances of the case.*

4. ***Other sources:***

a) *The authorities below failed to appreciate that the interest income of Rs. 2,35,527/- was attributable to the business of the appellant and was to be considered as a business receipt, on the facts and circumstances of the case.*

b) *Without prejudice, the assessing officer ought to have reduced the proportionate interest incurred to earn the interest income and the nett income alone could have been taxed under the head of other sources, on the facts and circumstances of the case.*

5. ***40(a)(ia)***

a) *The learned CIT(A) was not justified in holding that the appellant has not contested the disallowances of Rs. 6,68,149/-, when the entire additions of Rs. 23,77,260/- have been contested in the appeal.*

b) *The authorities below failed to appreciate that the commission paid to pigmy collectors of Rs. 5,68,149/- was to be treated as salary as per the circular of the DT and no disallowance ought to have been made under section 4o(a)(ia) of the act, on the facts and circumstances of the case.*

c) *The authorities below filed to appreciate that the audit fees of Rs. 1,00,000/-was paid in the following year and the recipient has already offered the same to tax and thus no*

disallowance ought to have been made in the hands of the appellant, on the facts and circumstances of the case.

6. *The appellant denies itself to pay interest under section 234A, 234B and section 234C in view of the fact there is no additional liability to additional tax as determined by the learned Assessing Officer.*

7. *The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.*

8. *For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered.*

2. The brief facts of the case are that the assessee filed return of income on 13.09.2013 declaring gross total income at Rs.17,08,112/-, after claiming deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter called 'the Act'), under chapter VIA of the Act and declared total income at Rs. Nil. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. The assessee is a Co-operative Society registered under Karnataka State Co-operative Societies Act. and the society derived income from providing credit facilities to the members and interest from investments. The assessee had maintained regular books of accounts and duly audited. Copy of the registration certificate and objectives of the society reflects providing credit facilities to members. During the course of assessment proceedings, the assessee submitted that the main objectives of the society is to accept the deposits and to provide financial accommodation to the members of the society. Therefore, the assessee is eligible to claim deduction under section 80P(2)(a)(i) of the Act. The AO examined the issue in detail and he observed that as per explanation to section 80P(4)

of the Act, the assessee is not eligible to claim deduction under section 80P(2)(a)(i) of the Act since the assessee society is running banking business. The AO also examined the primary objectives and aims of the society and relevant provisions of the Banking Regulation Act (Part V) and also relied on various judgments and he denied the claim of deduction under section 80P(2)(a)(i) of the Act by observing as under :

> *"27. As discussed above in detail and after careful analysis of Section 80P(4) read with section 2(24)(viia) of the Income-tax Act, 1961 and Part V of the Banking Regulation Act and the facts of the case, the assessee co-operative credit society is held to be a 'Primary Cooperative Bank' Hence, the assessee is not eligible for deduction under sec.80P in view of the provisions of section 80P(4)."*

3. The AO further observed that the assessee has debited Rs. 1.00/- lakh towards audit fee and pigmy commission of Rs.5,68,149/- to pigmy agents paid during the year and no tax had been deduction at source as per Chapter XVII – B. Accordingly, he disallowed as per the provisions of section 40(a)(ia) of the Act and added back to the total income of the assessee. Accordingly, the total income was assessed at Rs.23,77,263/-. Aggrieved from the above order, assessee filed an appeal before the CIT(A) and he filed detailed written submissions and relying of various case laws also, the CIT(A) after considering the submissions, he partly allowed for deduction claimed under section 80P(2)(a)(i) of the Act. Further, in respect of disallowance under section 40(a)(ia) of the Act for the pigmy commission and audit fee, he noted that the assessee has not submitted any detail or proof etc.. Accordingly, he confirmed the addition under section 40(a)(ia) of the Act. The CIT(A) has further observed that the assessee has 2643 regular members and have voting rights and 382 associate members who do not have voting rights and he also observed

that the assessee has received interest from loan given to associate members of Rs.7,71,905/- out of the total interest received from loan of Rs.1,13,51,557/- and the assessee is eligible to claim deduction under section 80P(2)(a)(i) of the Act on interest received only from members earned on the principal on mutuality wherein all members are having equal rights to vote and shares in the profit. He also observed that the assessee had earned interest income of Rs.2,35,527/- from FD in banks and interest income of Rs.52,048/- from its savings accounts with banks on which deduction has been claimed under section 80P(2)(a) of the Act and the assessee was also asked to furnish the cash flow statements showing the source of funds available as on the date of investment of such profit and gains but the assessee was unable to do so. The learned CIT(A) also examined in the light of section 80P(2)(d) of the Act and after relying on various judgments, he held that the interest income received by the assessee is not eligible for claiming of deduction and it is to be treated as income from other sources. Accordingly, he partly allowed the appeal of the assessee. The ld. CIT (A) also confirm the addition made u/s 40(a)(ia) of the Act.

4. Feeling aggrieved by the above order, the assessee filed appeal before the Tribunal.

5. The learned AR reiterated the submissions made before the lower authorities and he submitted that the CIT(A) has not considered the submissions made before him vide submissions dated 11.03.2019 which is placed at page Nos.4 to 12 of the Paper Book filed. The ld. AR also

submitted that the CIT(A) has gone on wrong footings which were never submitted before him. The CIT(A)'s findings are not co-related with the assessee's case. The learned AR strongly objected that the order of the CIT(A) is completely wrong. Therefore, he requested that the matter may be remanded back to the CIT(A) for fresh consideration in the light of the submissions made before him and actual issue raised before the CIT(A). Further, in respect of pigmy commission paid to the pigmy agents, he relied on the CBDT's Circular which is placed at Paper Book Page Nos.72 o 77 issued by the Government of India, Ministry of Finance (Department of Revenue, Central Board of Direct Taxes, New Delhi, dated 12.12.2007, 03.03.2008, 01.12.2011) and a copy of the letter of CIT BELGAUM dated 14.12.2011. As per the above Circular / Letter, pigmy commission is to be treated as salary and liable for TDS as per section 192 of the Income Tax Act, 1961. He also submitted that the payments made to the pigmy commission agents were not liable for TDS and requested that the matter may be sent back for the purpose of the verification whether it is liable for TDS or not and in respect of audit fee paid to auditor of Rs.1.00/- lakh submitted that the recipient has offered it as income and necessary certificates shall be submitted if the matter is remanded back to the CIT(A) for the verification.

6. On the other hand, the learned ld. DR relied on the order of lower authorities and he submitted that the assessee is running a co-operative bank and the AO has rightly examined in detail to all the issues and observed that the co-operative society involved in banking activities, accordingly not eligible for deduction u/s 80P(2)(a)(i). Therefore, as per

the amendment made in section 80P(4) of the Act r.w.s. 2(24)(viia) the assessee is not eligible for claim of deduction as per section 80P(2) of the Act.

7. After hearing both the parties and perusal of the orders of the authorities below, I have noted as pointed out by the ld. AR of the assessee that the CIT(A) has taken figures wrongly and in what manner he has collected the information is not clear. I found substance on the submission of the learned AR. & gone through the financial statements. I am unable to understand how the CIT(A) has considered the income from fixed deposits and bank interest income, the figures are not tallied from the financial statements as well as from the submission of the assesee. During the course of hearing, the learned AR stated that the assessee has not so much of the members as observed by the CIT(A) at para No.7. On going through the Paper Books of the learned AR of the assessee containing page Nos.1 to 77, the assessee has placed the submissions made before the CIT(A) which is placed at Paper Book Page Nos.4 to 12, the assessee has not contested for deduction under section 80P(2)(d) of theAct. He has contested only on section 80P(2)(a)(i) of the Act and other issues raised by the AO. Therefore, considering the totality of the facts, this issue is remitted back to the CIT(A) for fresh consideration. The assessee is given liberty to give necessary documents for substantiating its case and the CIT(A) is also directed to give reasonable opportunity of being heard.

8. The next issue raised by the assessee is regarding TDS on pigmy commission and audit fee expenditures. On going through the Paper Book

filed by the assessee which is placed at page Nos.72 to 77 issued by the Revenue department in which it has been clearly stated that the pigmy commission will be treated as a salary and subject to the TDS under section 192 of the Act. Accordingly, this issue is also sent back to the CIT(A) for the verification whether the payment made by the assessee towards pigmy commission is liable for TDS or not in above terms of the circular/letter/notification. Further, in respect of non-deduction of TDS on audit fee, in this respect, the learned AR has submitted that the concerned recipient has offered it as income. In this regard, he will submit the necessary certificates as required. Therefore, considering the submission of the assessee, this issue is also remitted back to the CIT(A) for the purpose of the verification and decide the issue as per law. Since I am sending all the three issues to the CIT(A), therefore the CIT(A) is directed to give reasonable opportunity of being heard to the assessee and assessee is also directed not to seek unnecessary adjournments for early disposal of the case.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated: 18.05.2023.
/NS/*

Copy to:

1.	Appellants	2.	Respondent
3.	CIT	4.	CIT(A)
5.	DR, ITAT, Bangalore.	6.	Guard file

By order

Assistant Registrar,
ITAT, Bangalore.