

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: 592, 593 & 594/Chny/2023

&

CO Nos: 23, 24 & 25/Chny/2023

निर्धारण वर्ष / Assessment Years: 2012-13, 2014-15 & 2017-18

Deputy Commissioner of
Income Tax,
Non Corporate Circle -
22(1),
No.7, Ramakrishna Street,
West Tambaram,
Chennai - 45.

(अपीलार्थी/Appellant)

M/s. DAE Employees Coop Thrift
& Credit Society Ltd,
First Floor, Main Shopping
Centre, DAE Township,
Kalpakkam - 603 102.
[PAN: AAAAD-4689-H]

(Cross Objector)

अपीलार्थी की ओर से/Appellant by
Respondent/Cross Objector by

: Shri. AR V Sreenivasan, Addl. CIT
: Shri. R. Kumar, Advocate

सुनवाई की तारीख/Date of Hearing : 26.06.2023
घोषणा की तारीख/Date of Pronouncement : 28.06.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These three appeals filed by the revenue and cross objections filed by the assessee are directed against, separate but identical orders of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 23.12.2022 and pertains to assessment years 2012-13,

2014-15 & 2017-18. Since, facts are identical and issues are common, for the sake of convenience, the appeals filed by the revenue and the cross objections filed by the assessee are being heard together and are being disposed off, by this consolidated order.

2. At the outset, we find that there is a delay of 56 days in appeals filed by the revenue for assessment years 2014-15 & 2017-18, for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The DR further submitted that the Department could not file appeals within the time allowed under the Act, due to assessment records could not be traced in time and the circumstances beyond the control of the Assessing Officer, therefore, delay may be condoned in the interest of advancement of substantial justice.

3. The learned AR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

4. Having heard both sides and considered the petitions filed by the revenue for condonation of delay, we are of the considered view that reasons given by the revenue for not

filing the appeals within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of appeals is condoned and appeals filed by the revenue are admitted for adjudication.

5. The brief facts of the case are that, the assessee is a cooperative society engaged in the business of providing credit facility to its members. The assessee has not filed its return of income for the assessment years 2012-13, 2014-15 & 2017-18 u/s. 139 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Therefore, the assessment has been re-opened u/s. 147 of the Act and notice u/s. 148 of the Act, dated 13.03.2019 was issued and served on the assessee. In response to 148 notice, the assessee has filed its return of income for the assessment years 2012-13, 2014-15 & 2017-18 on 26.03.2019 and declared Nil total income, after claiming deduction u/s. 80P(2)(a)(i) of the Act. The assessment has been completed u/s. 143(3) r.w.s. 147 of the Act on 09.12.2019 where, the Assessing Officer has disallowed deduction claimed u/s. 80P(2)(a)(i) of the Act, on the ground that the assessee did not satisfied the conditions of filing

return of income on or before due date prescribed u/s. 139(1) or u/s. 139(4) of the Act. The Assessing Officer had also made additions towards interest earned on fixed deposits with other cooperative banks on the ground that the assessee is not entitled for deduction toward interest income earned from deposits with other cooperative banks. However, since the deduction claimed towards total income has been disallowed, no separate addition has been made towards disallowance of interest income.

6. The assessee challenged the assessment order before the CIT(A) and argued that the issue is covered in favour of the assessee by the decision of the ITAT, Chennai Benches in assessee's own case for assessment year 2013-14. The CIT(A), after considering relevant submissions of the assessee and also by following the decision of ITAT Chennai Benches in assessee's own case, directed the Assessing Officer to delete additions made towards disallowance of deduction claimed u/s. 80P(2)(a)(i) of the Act.

7. The Id. Senior AR, AR V Sreenivasan, submits that the Id. CIT(A) failed to appreciate the fact that the assessee society

has not earned any interest income from other cooperative society, but has earned interest from cooperative bank, where it has been parked some of its funds and hence, interest earned from surplus fund is not eligible for deduction u/s. 80P(2)(d) of the Act. The Id. DR, further relied on the decision of Hon'ble Supreme Court in the case of CIT vs Sun Engineering Works Pvt Ltd [1992] 198 ITR 297, submits that in reassessment proceedings, the assessee cannot claim any new benefits or fresh claims, because the reopening of assessment is in the benefits of the revenue. Therefore, he submitted that the CIT(A) erred in allowing relief to the assessee and their order should be reversed.

8. The Ld. Counsel for the assessee, on the other hand submits that the assessee's case is fully covered in favour of the assessee by the decision of ITAT, Chennai Benches in assessee's own case in ITA No. 3047/Chny/2019 for assessment year 2013-14, where the Tribunal has considered an identical issue and held that the assessee is entitled for deduction u/s. 80P of the Act, in respect of interest income earned from fixed deposits with other cooperative banks.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in appellant's own case for assessment year 2013-14 in ITA No 3047/Chny/2019 dated 10.11.2020, where under identical set of facts, the Tribunal held that the assessee is entitled for deduction u/s. 80P of the Act, towards income derived from its business activities including interest income earned from fixed deposits with other cooperative banks. The relevant findings of the tribunal are as under:

"8. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below along with various case laws cited by both the parties. There is no dispute with regard to the fact that the assessee is a credit co-operative society registered under the TamilNadu Co-operative Societies Act, 1983. It is also not in dispute that the assessee is engaged in the business of providing credit facilities to its members. The AO has disallowed deduction claimed u/s.80P(2)(a)(i) of the Act primarily on two grounds. The first objection of the AO is with regard to claim of deduction in the light of provisions of Section 80A(5) of the Act which restricts the deduction unless such deduction is claimed in the return of income. We have gone through the provisions of Section 80P read with Section 80A(5) of the Act and found that nowhere in Section 80P or in Section 80A(5) of the Act it is mentioned that the assessee is required to file its return of income within the prescribed time provided u/s.139(1) or 139(4) of the Act. But, what is required to be seen is whether

the assessee has made a claim in the return of income filed for the relevant year or not, even though such return is not filed within due date. In this case, the assessee although not filed its return of income for the impugned assessment year u/s.139 of the Act but such return of income has been filed in response to the notice issued u/s.148 of the Act and in the said return of income the assessee has made a claim for deduction u/s.80P(2)(a)(i) of the Act. Therefore, we are of the considered view there is no merit in the arguments taken by the Id.DR that the assessee is not entitled for deduction u/s.80P unless such deduction is claimed by filing return of income within the prescribed time allowed u/s.139(1) or 139(4) of the Act. This view is fortified by the decision of the Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Ltd., vs. CIT (2016) 384 ITR 490 (Ker), where the Hon'ble Kerala High Court held that "a return filed by the assessee beyond the period stipulated u/s.139(1) or 139(4) or 142(1) or 148 of the Act can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est in law and invalid for the purpose of deciding exemption under Section 80P of the Act."

9. *Coming back to the issue of interest income earned from fixed deposits and claimed deduction u/s.80P(2)(d) of the Act. The AO has denied deduction claimed u/s.80P(2)(d) of the Act in respect of interest income earned from a co-operative bank on the ground that as per the said provisions, interest earned from any other co-operative society is only eligible for deduction u/s.80P(2)(a)(i) of the Act. The AO has taken support from the decision of the Hon'ble Supreme Court in the case of M/s. Totagars Co-operative Sales Society Ltd., supra.*

We have gone through the findings recorded by the AO in the light of the decision of the Hon'ble Supreme Court in the said case and find that the fact of the case before the Hon'ble Supreme Court is entirely different from the facts of the present case. In the case before the Hon'ble Supreme Court, the assessee was a co-operative sales society which is engaged in the business of trading in agricultural produce for its members and during the course of its business it has parked surplus funds in other co-operative banks / nationalized banks and earned interest. In those facts, the Hon'ble Supreme Court came to the conclusion that the assessee is not entitled for deduction towards interest income u/s.80P(2)(d) of the Act, because such interest is not earned from its business activity. In this case, the assessee is primarily engaged in the business of providing credit facilities to its members and in the course of its business it has parked funds collected from its members in other co-operative banks / nationalized banks as per the statutory requirements of the co-operative societies Act. The assessee has treated interest earned from other co-operative banks as part of its business activity. Once the assessee has earned interest income as part of its business activity and such interest income is earned out of the funds belonging to its members, then the assessee is entitled for deduction u/s.80P(2)(d) of the Act in respect of such interest income. Therefore, we are of the considered view that the case laws relied upon by the Id.AO in the case of Totogars Co-operative Sales Society Ltd., is not applicable to the present facts. We further noted that an identical issue was considered by the Hon'ble Madras High Court in the case of CIT vs. Veerakeralam Primary Agricultural Co-operative Credit Society (2016) 388 ITR 492 (Mad), where the Hon'ble High Court after referring to the decision of the Hon'ble Supreme Court in the case of Totogars Co-operative Sales Society Ltd., held that the benefit of deduction u/s.80P of the Act is excluded for co-operative

banks but credit co-operative societies are entitled to claim deduction u/s.80P of the Act in respect of interest income earned from deposits kept in other co-operative banks.

10. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the Id.CIT(A) was right in allowing the benefit of deduction claimed u/s.80P of the Act in respect of income derived from the activity including interest income earned from fixed deposits. We do not find any error or infirmity in the order of the CIT(A). Hence, we are inclined to uphold the order of the CIT(A) and dismiss the appeal filed by the Revenue.”

10. In this view of the matter and consistent with view taken by the coordinate bench in appellant's own case, we are of the considered view that the assessee is entitled for deduction u/s. 80P(2)(a)(i) of the Act, in respect of income derived from its business activity including interest income earned from fixed deposits with other cooperative banks/societies. The Id. CIT(A), after considering relevant facts has rightly directed the Assessing Officer to delete additions made towards disallowance of deduction claimed u/s. 80P(2)(a)(i) of the Act and thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeals filed by the revenue for assessment years 2012-13, 2014-15 & 2017-18.

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11. The assessee has filed cross objections in support of order of the Id. CIT(A). Since, the appeals filed by the revenue has been dismissed, the cross objections filed by the assessee in support of findings of the Id. CIT(A) becomes infructuous and thus, cross objections filed by the assessee for assessment years 2012-13, 2014-15 & 2017-18 are dismissed.

12. In the result, appeals filed by the revenue for assessment years 2012-13, 2014-15 & 2017-18 and cross objections filed by the assessee for assessment years 2012-13, 2014-15 & 2017-18 are dismissed.

Order pronounced in the court on 28th June, 2023 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 28th June, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF