

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A Nos.546 to 548/Kol/2022
Assessment years: 2015-16 to 2017-18

United Bank of India Employees Co-Operative Credit Society Ltd.....Appellant
14/4, Sovaram Bysak Street,
Kolkata-700007
[PAN:AAAAU1388A]

vs.

ITO, Ward-36(4), Kolkata.....Respondent

Appearances by:

Shri G. Banerjee, AR, appeared on behalf of the appellant.

Smt. Ranu Biswas, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 02, 2023

Date of pronouncing the order : June 27, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders all dated 28.07.2022 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). Since, the facts and issues involved in all the appeals are identical, hence these have been heard together and are being disposed of by this common order. The appeal in ITA No.546/Kol/2022 for assessment year 2015-16 is taken as lead case for the purpose of narration of facts.

2. **ITA 546/Kol/2022** – The assessee has taken the following grounds of appeal:

“1. For that on the facts and circumstances of the case and in law, the disallowance of claim of deduction u/s. 80P(2)(a)(i) by the assessee credit cooperative society is wrong, arbitrary, misconceived, erroneous, excessive and deserves to be allowed.

2. For that on the facts and circumstances of the case and in law, the assessment of interest income of Rs. 14156300 under Income from Other Sources instead of under Profits & Gains of Business or Profession as reported by assessee, is wrong, arbitrary, misconceived, erroneous, excessive and deserves to be reversed.

3. For that on the facts and circumstances of the case and in law, in any case and as an alternate claim, the interest income from investments earned by the assessee should be reduced by the cost of funds utilized for such investment and the allocable overhead expenses attributable to such income, whether the interest income is assessed under Income from Other Sources or under Profits & Gains of Business or Profession.

4. For that on the facts and circumstances of the case and in law, the assessment of holiday home rent of Rs. 1333553 under Income from House Property instead of under Profits & Gains of Business or Pro is wrong, arbitrary, misconceived, erroneous, excessive and deserves to be reversed.

5. For that on the facts and circumstances of the case and in law, the disallowance of expenses of Rs. 745174 incurred for and depreciation of Rs.154729 claimed on value of assets used for holiday homes are is wrong, arbitrary, misconceived, erroneous, excessive and deserves to be reversed.

6. For that on the facts and circumstances of the case and in law, the assessee has not been granted sufficient or adequate opportunity of personal hearing in the Appellate forum by NFAC authorities violating the principle of natural justice and equity.

7. For that the assessee craves leave to amend, alter, rescind, substitute and/or submit additional ground/grounds of appeal at the time of hearing of appeal.”

2. Ground No.1 to 3 – The brief facts of the case are that the assessee is an cooperative credit society and is a primarily engaged in providing credit facilities to its members. The assessee during the year claimed deduction u/s 80P of the Act not only from the interest income earned from the credits given to its members but also in respect of interest

income earned from the funds parked/invested in the commercial bank i.e United Bank of India. However, the Assessing Officer disallowed the deduction claimed u/s 80P of the Act in respect of the interest income earned from the funds invested in the United Bank of India stating that the said interest income was not earned by the assessee from the activity of providing credit facilities to its members but the same was an interest income from the funds deposited with commercial bank. The ld. CIT(A) confirmed the disallowance so made by the Assessing Officer.

3. Before us, the ld. Counsel for the assessee has submitted that to carry on the business of providing credit facilities to its members, the assessee-society gets deposits from its members which are used to provide credit facilities to other members at a higher interest rate. The surplus funds are deposited in the commercial bank so as to reduce the liability of payment of interest on the funds/deposits taken from members. That the said activity of investment in commercial bank was intrinsically linked to the business of providing credit facilities to its members. Apart from that, by operation of section 81 & section 82 of West Bengal Co-operative Societies Act, 2006 and clause 43 of the Bye-laws of the assessee-society, it is statutory for the assessee society to create bad debt fund and reserve fund from out of its profits. That these two funds are statutory funds and are required to be created, maintained and invested as per prescribed rules and regulations. The ld. counsel has contended that the interest income from investments made from these funds is attributable to the business of providing credits to members of the cooperative society only. The ld. Counsel therefore has submitted that the interest earned on account of aforesaid statutory deposits which were essential for running the business of the society of providing credit facilities to its members are therefore allowable as

deduction u/s 80P(2) of the Act. The ld. Counsel for the assessee has further submitted that even otherwise, the assessee may be allowed deduction of interest expenditure incurred on the funds which were deposited in the commercial bank.

4. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

5. We have considered the rival contentions. We find that so far as the issue of claiming of deduction u/s 80P of the Act on the interest income earned by parking the surplus funds in the commercial bank is concerned, the issue is squarely covered against the assessee by the decision of the hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. vs. ITO reported in [2010] 322 ITR 283 (SC), wherein, the Hon'ble Supreme Court has held that the interest on surplus funds deposited with the commercial bank does not fall within the meaning of expression "profit & gains of business". The hon'ble Supreme Court has further held that such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members. The hon'ble Supreme Court has observed that when the assessee-society provides credit facilities to its members, it earns interest income which is allowable as deduction u/s 80P(2)(a)(i) of the Act. However, the interest which accrues on funds not required immediately by the assessee for its business purposes and which have been invested as investment in commercial banks cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or in section 80P(2)(a)(iii) of the Act and that the said interest income is liable to be taxed u/s 56 of the Act. In view of this, the claim of the assessee that the said interest

income earned by the assessee from its funds deposited in commercial bank is eligible for deduction u/s 80P(2) of the Act, has rightly been rejected by the lower authorities.

The second contention that the said interest income be treated as business income of the assessee has also been rightly rejected by the lower authorities in the light of the aforesaid decision of the hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. vs. ITO (supra).

So far as the third contention of the ld. counsel for the assessee that the assessee u/s 81 & 82 of the West Bengal Co-operative Societies Act, 2006, is statutorily required to create and maintain bad debts fund and reserve fund out of the profits of the cooperative society and that the interest earned from the said statutory bad debts fund and reserve fund is intrinsically linked with the business activity of providing credit facilities to its members is concerned, we find that the said issue is squarely covered by the decision of the Jurisdictional Calcutta High Court in the case of CIT vs. South Eastern Railway Employees Co-operative Credit Society Ltd. reported in [2017] 390 ITR 523 (Cal), wherein, the Hon'ble High Court taking note of the identical provisions of the 'Multi-State Co-operative Societies Act', 2002, has held that such an interest income is attributable to the business income of the society and is eligible for deduction u/s 80P of the Act.

Further, the Hon'ble Calcutta High Court, in the identical facts and circumstances, has held that the expenditure incurred for earning of interest income from the funds parked in the commercial bank is liable to be set off/deducted from the said income, which is the amount of interest paid for that funds to the members. The Hon'ble High Court has

further held that such interest expenditure held to be deductible out of the interest income earned from deposits in the commercial bank, is further liable to be deducted from the business expenditure of the eligible business and after subtracting the said interest expenditure related to the deposits in the commercial bank, the business profits of the assessee would increase which would be accordingly eligible for deduction u/s 80P of the Act.

6. In view of the above discussion, the matter is remanded to Assessing Officer with a direction (a) to work out the interest earned on the bad debt fund and reserve fund maintained as per the provisions of section 81 & 82 of the West Bengal Co-operative Societies Act, 2006 and to allow benefit u/s 80P on that interest income and (b) to ascertain the interest paid to the members for the purpose of earning the interest on the funds deposited in the commercial bank and to allow deduction of such interest from the interest income earned by the assessee from investment in the commercial bank and (c) to subtract/deduct such interest from the expenses of eligible business and the consequent increased amount of profits of eligible business will be eligible as deduction u/s 80P of the Act. Thus, Ground Nos.1 to 3 are accordingly partly allowed in favour of the assessee.

7. Ground No.4 & 5 - The brief facts relevant to the issue are that the assessee apart from business of providing credit facilities to its members also maintained holiday homes. The assessee claimed the income earned from such holiday homes as business income. However, the Assessing Officer treated the income of the holiday homes as income from house property and disallowed the claim of business expenditure/depreciation etc. claimed by the assessee.

8. Before us, the ld. counsel for the assessee has submitted that the activities of letting out Holiday Home are complex commercial activities, continuously undertaken pre-designed, planned, organized and by exploitation of property commercially, which should be treated as Profits & Gains of Business or Profession only. The Holiday Home is let out on daily rental basis and there is restriction in continuous occupation by any one member for a prolonged period. Expenses are incurred for following services provided for guests using the Holiday Home.

i) Caretaker & Attendant Service.

ii) Cleaning charges.

iii) Provision of Water.

iv) Electricity charges.

v) AC, Geyser and other Electrical equipments and maintenance thereof.

vi) Cooking facilities with Kitchen equipments.

vii) Bed linen, towels, soaps & other toiletries.

viii) Furniture like bed, sofa, table, Wardrobe, dressing table, mirror etc.

ix) Security service

He therefore has submitted that the holiday homes facility was created for the members which was run on commercial lines and therefore, the income from the same was rightly claimed as business income of the assessee.

9. We find force in the above contention of the assessee. In this case, the holiday homes maintained and run by the assessee are not in course

of normal letting out of the buildings, rather, the same were run on commercial lines and the assessee has incurred daily business expenses and charges on business lines as detailed above. Therefore, the income from holiday homes is to be treated as business income of the assessee and consequential deduction of business expenditure and admissible claim of depreciation etc. is required to be given. However, so far as the claim of the assessee that the building of holiday homes has been purchased out of eligible income of the assessee after claiming deduction u/s 80P of the Act, therefore, the income of the holiday homes should also be allowed as deduction u/s 80P of the Act, we do not find force in the above contention of the assessee. Whatever the income earned by the assessee from the activity of providing of credit facilities to its members, is eligible for deduction u/s 80P of the Act. However, if such income is further invested for any other activity, the income generated from such an activity cannot be said to be attributable to the activity of providing credit facilities to its members. Therefore, this contention of the ld. counsel is not tenable. In view of this, it is held that the income from holiday homes is to be treated as business income of the assessee but the same will not be eligible for deduction u/s 80P of the Act. However, the assessee will be entitled to claim the deduction of admissible expenditure/depreciation etc. on such business income from holiday homes.

10. In the result, the appeal of the assessee is partly allowed.

11. Since, the facts and issues involved in all the appeals are identical, hence, our findings given above will mutatis mutandis apply to all the captioned appeal and all the captioned appeals are partly allowed in the terms as noted above.

12. In the result, the captioned appeals of the assessee stand partly allowed.

Kolkata, the 27th June, 2023.

Sd/-
[डॉक्टर मनीष बोराड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 27.06.2023.

RS

Copy of the order forwarded to:

1. United Bank of India Employees Co-Operative Credit Society Ltd
2. ITO, Ward-36(4), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches