

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1259/Mum./2023
(Assessment Year : 2018-19)

Income Tax Officer
Ward-22(1)(6), Mumbai

..... Appellant

v/s

Casa Grande Co-operative Housing Society
Senapati Bapat Marg, Lower Parel
Mumbai 400 013 pan - AABAC0080A

..... Respondent

Assessee by : None

Revenue by : Shri Ashok Kumar Ambartha

Date of Hearing - 04/07/2023

Date of Order - 14/07/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 14/02/2023, 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 the present appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. Therefore, in view of the above, we proceed to dispose off the present appeal

ex-parte qua the assessee, after hearing the learned Departmental Representative ("*learned D.R.*").

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

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s.80P (2) (d) of the IT Act, 1961 without appreciating legislative intent of the inserted provision of 80(P) which specifically provides that section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or primary cooperative agricultural and rural developer bank.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s 80P(2)(d) of the I.T. Act, 1961, without appreciating the facts that the assessee has erred interest income from investment of idle funds with cooperative bank.

3. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred allowing deduction u/s 80P(2)(d) of the I.T. Act, 1961, without considering the decision of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Vs. ACIT vide its order dated 08/08/2017(2017)84 taxmann.com 114[(SC)] which was further affirmed in its order dated 21/11/2017 in response to review petition [(2017)] 88 Taxmann.com 279 (SC)].

4. The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO restored.

5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

4. The brief facts of the case as emanating from the record are: The assessee is a registered Co-operative Housing Society duly registered under the Maharashtra Co-operative Societies Act, 1960. During the year under consideration, the assessee collected contributions from its members under various heads as per its bye-laws and as decided in the general body meetings from time to time and has spent the same on the maintenance of its building as spelt out in its bye-laws. For the year under consideration, the assessee filed its return of income on 26/09/2018, declaring a total income of

Rs.30,770. During the year, the assessee earned interest income of Rs. 1,62,98,358, on fixed deposits and saving bank accounts that are maintained in the Co-operative Banks. The same has been claimed as a deduction under section 80P(2)(d) of the Act. During the assessment proceedings, the assessee submitted that the interest has been received from investments made with The Mumbai District Central Co-operative Bank Ltd, The Saraswat Co-operative Bank Ltd, and The Shamrao Vithal Co-operative Bank Ltd. The assessee claimed that it is entitled to a 100% deduction in respect of interest earned/received from the Co-operative Banks under the provisions of section 80P(2)(d) of the Act.

5. The Assessing Officer ("AO") vide order dated 17/02/2021, passed under section 143(3) read with sections 143(3A) & 143(3B) of the Act did not agree with the submissions of the assessee and held that the deduction under section 80P(2)(d) of the Act cannot be extended to the interest earned from the investment in any Co-operative Bank as sub-section (4) to section 80P excludes Co-operative Banks from the applicability of section 80P of the Act. Therefore, it was held that even the interest earned by the assessee from the deposits with the Co-operative Bank would not be exempted or deductible under section 80P(2)(d) of the Act. Accordingly, the AO disallowed interest income of Rs. 1,62,98,358, claimed under section 80P(2)(d) of the Act, and added the same to the total income of the assessee.

6. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee following various decisions of the coordinate bench of the Tribunal,

including in the case of the assessee. Being aggrieved, the Revenue is in appeal before us.

7. We have considered the submissions of the learned DR and perused the material available on record. The only dispute raised by the Revenue in the present appeal is against the deletion of disallowance of deduction under section 80P(2)(d) of the Act in respect of interest income received from the Co-operative Banks. The assessee is a registered Co-operative Housing Society and during the year earned interest income of Rs. 1,62,98,358 on fixed deposits and saving bank accounts maintained with The Mumbai District Central Co-operative Bank Ltd, The Saraswat Co-operative Bank Ltd, and The Shamrao Vithal Co-operative Bank Ltd.

8. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a Co-operative Society. Further, section 80P(2)(d) of the Act, reads as under:

“80P. Deduction in respect of income of co-operative societies.

(1)

(2) The sums referred to in sub-section (1) shall be the following, namely:-

(a)

(b)

(c)

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;”

9. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of

interest or dividend is earned by the Co-operative Society from the investments, and (ii) such investments should be with any other Co-operative Society. Further, the term 'co-operative society' is defined under section 2(19) of the Act as under:

“(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;”

10. In the present case, there is no dispute that the assessee is a Co-Operative Housing Society. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Co-operative Bank. Accordingly, the assessee kept the deposits in Co-operative Banks registered under the Maharashtra Co-operative Societies Act and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The AO denied the deduction under section 80P(2)(d) of the Act on the basis that the Co-operative Bank is covered under the provisions of section 80P(4) of the Act. We find that the Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. vs CIT, Calicut, [2021] 431 ITR 1 (SC) while analysing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Co-operative Banks, which are Co-operative Societies and also possesses a licence

from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the assessee, who is a Co-operative Bank, claims a deduction under section 80P of the Act which are not the facts of the present case. Therefore, we find no merits in the aforesaid reasoning adopted by the AO in denying deduction under section 80P(2)(d) of the Act to the assessee.

11. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d) of the Act. Even in assessee's own case for the assessment year 2016-17, the coordinate bench of the Tribunal in ITO v/s M/s. Casa Grande Co-operative Housing Society Ltd. in ITA No.6009/Mum./ 2019, vide order dated 31/03/2021, allowed the deduction claimed by the assessee under section 80P(2)(d) of the Act, by following the decision rendered in assessee's own case for the assessment year 2015-16 in ITA No.1880/Mum./ 2019 vide order dated 29/10/2020.

12. Therefore, in view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) in allowing deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income derived from

investments with Co-operative Banks. As a result, grounds raised by the Revenue are dismissed.

13. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 14/07/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 14/07/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai