

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 134/Jodh/2023
Assessment Year: 2018-19

Income Tax Officer, Ward-1,
Bhilwara, Shastri Nagar,
Bhilwara.

Vs. Bhilwara Zila Dugdh Utpadak
Sahkari Sang Ltd., Ajmer Road,
Bhilwara.

[PAN: AAAAB 0214A]

(Appellant)

(Respondent)

Appellant by : Smt. Raksha Birla, C.A. and
Sh. Rajendra Jain, Adv.
Respondent by : Ms. Nidhi Nair, JCIT-DR
Date of Hearing : 09.10.2023
Date of Pronouncement : 16.10.2023

ORDER

Per Dr. M. L. Meena, AM:

This captioned appeal has been filed by the Revenue against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 23.03.2023 in respect of Assessment Year 2018-19 challenging therein the decision of the Id. CIT(A) in deleting the disallowances of

deduction of Rs.2,49,72,207/- made by the AO u/s 80P(2)(d) of the Income Tax Act, 1961.

2. Brief facts as per the record are that the appellant assessee is a registered cooperative society under the Rajasthan Cooperative Societies Act and engaged in the business of trading in milk and other milk products. During the year under consideration, the assessee has claimed deduction u/s 80P(2)(d) of the Act, on interest income amounting to Rs. 2,31,59,253/- received from Baroda Rajasthan Gramin Bank Ltd, and interest amounting to Rs. 18,12,954/-from Central Cooperative Bank. The AO being not satisfied with the reply of the assessee hold that the condition laid down in section 80P(2)(d) has not been satisfied. The AO has stated that interest received from Baroda Gramin Bank Ltd. is not allowable deduction u/s 80P(2)(d) of the Act as this entity is not a cooperative society as provided u/s 80P(2)(d) of the Act. He further stated that the interpretation of section 22 of RRB (Regional Rural Bank) Act by the assessee, that the section only says so with reference to taxation of region rural bank under I.T. Act, 1961 and not taxation of assessee which is undisputedly not a Regional Rural Bank. Therefore, it is not the case of the RRB wherein vide CBDT Circular No. 61201(F. No. 273(3) 144/2009-IT(A-1) dated 20.09.2010, and the RRB

are not eligible for deduction u/s 80P from A.Y. 2007-08 onward and also the Circular No. 319 dated 11.01.1982 seeming any RRB to be co-operative society stands withdrawn from application w.e.f. assessment year 2007-08. Also as per clause 22.02 of Circular No. 141.2006 dated 28.12.2006 of the Finance Act, 2006 explanatory notes on provisions relating to Direct Taxes, it has been explained that the co-operative banks are functioning at par with other commercial banks, which do not enjoy the tax benefit. Therefore, section 80P has been amended and a new sub-clause (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative society agricultural land and rural development bank. Accordingly, the AO has disallowed exemption claimed u/s 80P (2)(d) of the Act.

3. In appeal, the Id. CIT (A) has deleted the addition vide para 5 of the impugned order as under:

“5.1.1 This ground relates to challenging the denial of deduction u/s.80P(2)(d) of I.T. Act on interest income received from Baroda Rajasthan Kshetriya Gramin Bank Ltd. and Central Co-op Bank Ltd.

*5.1.2 I have considered the submission of the appellant and gone through the AO's order. I find the issue is settled in favour of the appellant in its own case by the decision of **Hon'ble Rajasthan High Court, Jodhpur in D.B. income tax Appeal No.2/2019 dated***

13.08.2019, while adjudicating the issue, High Court in para onwards in its judgment asunder :

"The revenue cites a CBDT Circular (No.6/2010 dated 20.9.2010) and contends that the Board categorically stated that interest income derived from deposits, made with non-cooperative institutions and more specifically Regional Rural Banks do not qualify for the benefit under Section 80P(2) of the Act of 1961

Section 22 of the Regional Rural Banks Act, 1976 states as follows:

"22. Regional Rural Bank to be deemed to be a co operative society for purpose of the Income Tax Act, 1961- *For the purpose of the Income Tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits, or gains, a Regional Rural Bank shall be deemed to be a cooperative society."*

The CBDT reasoning appears to be that section 80P was amended w.e.f 1.4.2007 introducing specifically that the of exemption would not apply to any cooperative bank other than Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. The circular stated that in the light of the inclusion to Section 80P by way of introduction of Section 80P, exemption could not be availed by the banks invested in Regional Rural Banks.

This court is of the opinion that the revenue's contention is unsustainable. Section 80P in certain terms categorically deems Regional Rural Banks of which description Baroda Rajasthan Regional Rural Banks answer (c) as Cooperative Societies for purposes of Income Tax.

In the absence of non-obstante clause, the mere fact that a restrictive condition was imposed in relation to a Cooperative Bank for regulating the benefit of Section 80P does not in any manner alter the pre-existing situation.

By virtue of Section 22, Regional Rural Banks continue to be deemed Cooperative Societies and all the consequences that flow from it."

5.1.3 *Having considered the above facts and following the decision of Hon'ble High Court cited (supra), the addition so made is directed to be deleted. As a result, ground no. 1 is allowed."*

4. The Ld. DR supported the assessment order and contended that the appellant assessee is a registered cooperative society under the Rajasthan Cooperative Societies Act and engaged in the business of trading in milk and other milk products. The assessee has claimed deduction u/s 80P(2)(d) of the Act, on interest income amounting to Rs. 2,31,59,253/- received from Baroda Rajasthan Gramin Bank Ltd, and interest amounting to Rs. 18,12,954/- from Central Cooperative Bank in violation to the condition laid down in section 80P(2)(d) of the Act. Therefore, interest received by the appellant from Baroda Gramin Bank Ltd. is not allowable deduction u/s 80P(2)(d) of the Act as this entity is not a cooperative society as provided u/s 80P(2)(d) of the Act. He further stated that the interpretation of section 22 of RRB (Regional Rural Bank) Act by the assessee, that the section only says so with reference to taxation of region rural bank under I.T. Act, 1961 and not taxation of assessee which is undisputedly not a Regional Rural Bank is not correct interpretation. Therefore, it is not the case of the RRB wherein vide CBDT Circular No. 61201(F. No. 273(3) 144/2009-IT(A-1) dated 20.09.2010, and the RRB are not eligible for deduction u/s 80P from A.Y. 2007-08 onward and also the Circular No. 319 dated 11.01.1982 seeming any RRB to be co-operative society stands withdrawn from application w.e.f. assessment year 2007-08.

Also as per clause 22.02 of Circular No. 141.2006 dated 28.12.2006 of the Finance Act, 2006 explanatory notes on provisions relating to Direct Taxes, it has been explained that the co-operative banks are functioning at par with other commercial banks, which do not enjoy the tax benefit. Therefore, section 80P has been amended and a new sub-clause (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative society agricultural land and rural development bank. Accordingly, the AO has disallowed exemption claimed u/s 80P(2)(d) of the Act. In support, he relies on the latest judgment of Apex Court in the case of “Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer”, [2023] 154 taxmann.com 305 (SC),

5. The Id. counsel for the assessee vehemently relied upon the impugned order by reiterating the submissions made before the Id. CIT(A). In support, he has placed reliance on the decision of the ITAT, Jodhpur Bench in ITA No. 163/Jodh/2019 in respect of AY 2016-17, wherein the assessee has claimed that the Rural Banks are also co-operative. The relevant para of the decision is reproduced as under:

"7. We have also perused the various provisions of Regional Rural Bank Act 1976. Baroda Rajasthan Kshetriya Gramina Bank was set up under the provisions of under the provisions of Regional Rural Bank Act. Section 22 of the Regional Rural Bank Act provides that Regional Rural Bank to be deemed to be a co-operative society for purpose of the Income-tax Act, 1961. In our considered view the the Circular of CBDT cannot override the provisions of the Act of Parliament. Even the careful reading of the Circular No. 6 of CBDT make it clear that exemption is withdrawn with respect to Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards, and not the co-operative societies. The assessee before us is the cooperative society and not the Regional Rural Bank. Therefore, considering the provisions of section 22 of Regional Rural Bank Act, wherein the status of the banks established are of the co-operative society the assessee is entitled for the exemption on the interest earned on the deposits. In the result the ground No. 1 & 2 of the appeal are allowed."

As the facts of the A.Y. 2014-15 are similar to the facts of the assessment year under appeal (2016-17), therefore, following the decision of ITAT, Jodhpur referred above, the AO is directed to allow deduction of Rs. 2,23,46,187/- u/s 80P(2)(d).

In the result, the appeal is allowed."

As facts of the assessment year 2014-15 are similar of the facts of the assessment year 2016-17 under appeal, therefore, the following decision of ITAT Jodhpur referred above which is also confirmed by the Hon'ble High Court. Based on these observations, we do not find any infirmity in the order of the Id. CIT(A) and therefore, the appeal filed by the Revenue stands dismissed."

6. We have heard both the sides, perused record, written submission and impugned order. Admittedly, the assessee has claimed deduction u/s 80P(2)(d) of the Act, on interest amounting to Rs. 2,31,59,253/- received from Baroda Rajasthan Gramin Bank Ltd, a Regional Rural Bank and interest amounting to Rs. 18,12,954/- from Central Cooperative Bank in

violation to the condition laid down in section 80P(2)(d) of the Act. The Ld. DR contended, that the interest received by the appellant amounting to Rs. 2,31,59,253/- from Baroda Rajasthan Gramin Bank Ltd, a Regional Rural Bank is not allowable deduction u/s 80P(2)(d) of the Act as this entity is not a cooperative society as provided u/s 80P(2)(d) of the Act. He further stated that the interpretation of section 22 of RRB (Regional Rural Bank) Act by the assessee, that the section only says so with reference to taxation of region rural bank under I.T. Act, 1961 and not on taxation of assessee which is undisputedly not a Regional Rural Bank is of no help to the appellant. In our view, it is not the case of the RRB. The CBDT Circular No. 61201(F. No. 273(3) 144/2009-IT(A-1) dated 20.09.2010, clarified that the RRB are not eligible for deduction u/s 80P from A.Y. 2007-08 onward and also the Circular No. 319 dated 11.01.1982 says that any RRB to be co-operative society stands withdrawn from application w.e.f. assessment year 2007-08.

7. Also, it is noted that as per clause 22.02 of Circular No. 141.2006 dated 28.12.2006 of the Finance Act, 2006 explanatory notes on provisions relating to Direct Taxes, it has been explained that the co-operative banks are functioning at par with other commercial banks, which do not enjoy the

tax benefit. Therefore, section 80P(2) has been amended and a new sub-clause (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative society for agricultural land and rural development bank. Accordingly, the AO has been justified in disallowing exemption claimed u/s 80P(2)(d) of the Act.

8. In the latest judgment the Hon'ble Apex Court in the case of "Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer", [2023] 154 taxmann.com 305 (SC) has observed as under:

"15.13. Further, under the provisions of the State Act, 1984, 'agricultural and rural development bank' means the Kera/a Cooperative Central Land Mortgage Bank Limited, registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951, which shall be known as Kera/a State Co-operative Agricultural and Rural Development Bank Limited i.e. the appellant herein. Thus, from conjoint reading of all the relevant statutory as alluded to hereinabove, it is quite clear that the appellant is not a co-operative bank within the meaning of subsection (4) of Section 80P of the Act. The appellant is a co-operative credit society under Section 80P(2)(a)(i) of the Act whose primary object is to provide financial accommodation to its members who are all other cooperative societies and not member of the public.

15.14 Therefore, when the definition of "co-operative bank" in Section 56 of BR Act, 1949 is viewed in terms of Sections 2(u) of the NABARD Act, 1981, it is clear

that only a state co-operative bank would be within the scope and meaning of a banking company under Section 2(c) of the BR Act, 1949 on obtaining license under Section 22 of the said Act.

Conclusion: In the instant case, although the appellant society is an apex cooperative society within the meaning of the State Act, 1984, it is not a co-operative bank within the meaning of Section 5 (b) read with Section 56 of the BR Act, 1949. In the result, the appeals filed by the appellant are allowed and the order(s) of the Kerala High Court and other authorities to the contrary are set aside. Consequently, we hold that the appellant is entitled to the benefit of deduction under Section 80P of the Act. The questions for consideration are answered accordingly."

9. In the order of the coordinate bench relied by the appellant, the Tribunal has followed its earlier order in the assessee's own case without taking into consideration the latest judgment of the Apex Court (Supra). In the present case, the appellant is a co-operative society whose primary object is to provide financial accommodation to its members who are all other cooperative societies and not member of the public. Thus, the interest received by the appellant amounting to Rs. 2,31,59,253/- from Baroda Rajasthan Gramin Bank Ltd, a Regional Rural Bank and not a co-operative bank would not be allowable deduction u/s 80P(2)(d) of the Act as this entity is not a cooperative society as provided u/s 80P(2)(d) of the Act in the light of the latest judgment of the Apex Court in the case of "Kerala

State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer”, (Supra). However, addition of interest amounting to Rs. 18,12,954/- received by the appellant from Central Cooperative Bank is held to rightly deleted by the CIT(A). Thus, addition made in the assessment order in respect of the interest received by the appellant amounting to Rs. 2,31,59,253/- from Baroda Rajasthan Gramin Bank Ltd., a Regional Rural Bank which is not a cooperative bank would be liable to be sustained.

10. Respectfully, following the Hon'ble Apex Court (Supra), we accept the grievance of the revenue as genuine in respect of the addition on account of interest received by the appellant amounting to Rs. 2,31,59,253/- from Baroda Rajasthan Gramin Bank Ltd and as such, it is sustained.

11. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 16.10.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)

5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench