

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.1245/PUN/2023
Assessment Year : 2020-21

The Income Tax Officer,
Ward-5, Sangli

... Appellant

Vs.

Ashokrao Anna Yashwant Gram
Bigar Sheti Sah Patsanstha Ltd.
At Post Borgaon, Tal Walwa,
Dist. Sangli – 415413

PAN: AAAAY0053E

... Respondent

Assessee by : None

Respondent by : Shri R.Y. Balawade, Addl. CIT

Date of Hearing : 12-03-2024

Date of Pronouncement : 19-03-2024

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue emanates from the order of the National Faceless Appeal Centre (NFAC), Delhi dated 10-10-2023 for the Assessment Year 2020-21 as per the grounds of appeal appearing hereinafter.

The grounds of appeal are as follows:

- 1. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in allowing claim of deduction of Rs.2,18,03,089/- u/s 80P(2)(d) of the Act without appreciating the fact. During the course of assessment proceedings the assessee Pat Sanstha failed to produce any evidence to establish that it had expended any expenditure wholly and exclusively to earn interest income from co operative bank, commercial banks and other financial institutions. The Ld. CIT(A) erred in deletion of quantum addition of Rs.2,18,03,089/- made by the Assessing Officer.*
- 2. The appellant prays that the order of the Ld. CIT(A) be vacated and that order of the Assessing Officer be restored.*

2. In the grounds of appeal, the Revenue is aggrieved with the relief given to the assessee by the CIT(A) on the issue of deduction u/s 80P(2)(d) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. We find that this issue is covered by the decision of Pune Tribunal in ITA No.1249/PUN/2018 for assessment year 2013-14, order dated 07.01.2022 wherein on the same issue on identical facts, it was held as follows:

"7. We have heard the Id. authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether or not the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order. In our considered view, the issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with the co-operative bank, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not cooperative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.

8. After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr. CIT. Before proceeding any further, we may herein cull out the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us.

*"80P(2)(d) (1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee. (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 cooperative society from its investments with any other co-operative society, the whole of such income;"*

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any

other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) to Sec. 80P of the Act, vide the Finance Act, 2006 with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardize the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term „co-operative society” had been defined under Sec. 2(19) of the Act, as under:-

“(19) “Co-operative society” means a cooperative 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;”

We are of the considered view, that though the co-operative banks pursuant to the insertion of sub-section (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a cooperative bank continues to be 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, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.”

4. The learned CIT(A) has relied on various decisions of the Tribunal while providing relief to the assessee holding as follows:

“5.8 Respectfully following the decision of the various judicial authorities as referred by the appellant as well as decision given by the Hon'ble Jurisdictional ITAT i.e. ITAT, 'SMC' Bench, Mumbai in the case of Kaliandas Udyog Bhavan Premises vs. ITO, decision in the case of ITO, Wd- 17(2)(1), Mumbai vs. Mittal Court Premises Co. Op. Society Ltd. in ITA Nos. 1535 to 1537/Mum/2022 dated 31.10.2022, decision of the Hon'ble ITAT, 'A' Bench, Mumbai in the case Bhag Cooperative Housing Society Ltd. vs. ACIT, CPC, the decision in the case of Palm Court M Premises Cooperative Society Ltd. vs. Pr. CIT and decisions given by the Hon'ble ITAT, 'SMC' Bench, Mumbai in the case of Amore Commercial Premises Co-Op Society Ltd. vs. CPC and in the case of Gautam Dhan Co-op Housing Society Ltd. vs. ITO, the Ld. AO is directed to allow deduction u/s 80P(2)(d) of the I.T. Act, 1961 being the amount of interest and/or dividend derived by the Cooperative society from its investments with any other co-operative society including cooperative bank(s). Therefore, all the substantial grounds taken by the appellant are allowed.”

5. In the above stated order of the Tribunal (supra), the view taken was that the interest received by the co-operative society from co-operative bank is eligible for deduction u/s 80P(2)(d) of the Act. The learned DR before us could not bring any evidences/documents supporting Revenue contrary to the facts existing on record. Therefore, on the same parity of reasoning, the relief granted already to the assessee on this issue is sustained. Grounds of appeal of Revenue are dismissed.

6. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open Court on this 19th day of March, 2024.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 19th March, 2024
GCVSR

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The concerned CIT, Pune
4. D.R. ITAT 'A' Bench
5. Guard File

//True Copy//

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

1	Draft dictated on	12-03-2024	Sr.PS/PS
2	Draft placed before author	18-03-2024	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
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11	Date of dispatch of order		