

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Mahavir Singh, Vice-President
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.636/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2021-22)

Asstt. Commissioner of Income Tax, Circle 9(1) Hyderabad	Vs.	The Advocates Mutually Aided Cooperative Society Ltd, Hyderabad PAN:AAAAT7853P
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by: Shri A Srinivas, CA		
राजस्व द्वारा / Revenue by: Shri Shiva Sewak, CIT(DR)		
सुनवाई की तारीख / Date of hearing: 15/05/2024		
घोषणा की तारीख / Pronouncement: 15/05/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 25.10.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2021-22.

2. The grounds raised by the assessee read as under:

- “(i) The Order of the Ld.CIT(A), NAFAC, Delhi, dtd.25/10/2023 in Appeal No. NFAC/2020- 21/10208531 is against the facts of the case.*
(ii) In the facts and circumstances of the case, whether the Ld.CIT(A) is correct in law in holding that the interest income generated by the Society by investing in other than Cooperative sector is eligible for deduction u/s 80P(2)(d).

(iii) Any other grounds that may urged at the time of hearing.”

3. Brief facts of the case are that the appellant is Mutual Aided Cooperative Society for the benefit of advocates. The appellant has filed its return of income for the A.Y 2021-22 admitting a total income of Rs.2,82,56,320/- after claiming deduction u/s 80P(2)(d) of the I.T. Act, 1961. The appellant has been receiving interest income from its members as well as interest income from banks including cooperative banks. The appellant has claimed deduction towards interest income earned from other cooperative banks u/s 80P(2)(d) of the I.T. Act, 1961. The return of income filed by the assessee has been processed u/s 143(1) of the I.T. Act on 12/12/2022 and determined the total income at Rs.13,10,63,810/- by denying the benefit u/s 80P(2)(d) of the I.T. Act towards interest income earned from other cooperative banks.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A) NFAC. Before the learned CIT (A) NFAC, the assessee submitted that the learned Assessing Officer is erred in denying deduction u/s 80P(2)(d) of the Act towards interest income earned amounting to Rs.10,28,07,484 from other Cooperative Society/Banks even though as per the provisions of section 80P(2)(d), any income derived by a Co-Operative Society from its investment with Any Other Co-Operative Society is exempt from tax.

5. The learned CIT (A) NFAC after considering the submission of the assessee and also by analysis of provisions of section 80P(2)(d) of the Act, deleted the addition made by the

Assessing Officer towards interest income earned from other cooperative societies on the ground that as per the provisions of section 80P(2)(d) of the Act any income derived by a cooperative society by way of interest or dividends from its investment in any other cooperative society is exempt from tax. The learned CIT (A) NFAC further held that since the law is not clear and there are certain ambiguity in allowing deduction towards interest income earned from other cooperative societies, as per the decision of the Hon'ble Supreme Court in the case of CIT vs. Raghuvir Synthetics Ltd (2017) 247 Taxmann.com 393 (S.C) wherein it was held that the issue involved is debatable, then the same cannot be adjusted by way of intimation u/s 143(1) of the I.T. Act. The relevant findings of the learned CIT (A) NFAC are as under:

4. Decision

4.1 The solitary issue contested by the Appellant is against the disentitlement of deduction u/s.80P(2)(d) in respect of the interest income derived by the Appellant Co-operative Society from other Co-operative Banks.

4.2 As per the provisions of S.80P(2)(d), any income derived by a co-operative Society by way of interest or dividends from its investments in any other co-operative society, the whole of such income is allowable as deduction. Whether a Co-operative Bank is excluded from the definition of Co-operative Society is still a matter of debate and has not attained finality. Many of the Co-op Banks are primarily co-operative societies at the time of its formation and based on the nature and characteristics of its operations, they transform themselves into co-operative banks. The provisions of the statute have not cleared the air of this ambiguity and hence, undisputedly, the eligibility of deduction is a matter of debate.

4.3 Even the provisions of S.80P(4) had only expressed that a co-op Bank is not eligible for deduction u/s.80P, but has never clarified that a Co-op Bank is not a Co-op Society.

4.4 It is a well settled principle of law rendered by the decisions of

various courts including the paramount decision of the Hon'ble Supreme Court in the case of CIT vs Raghuvir Synthetics Ltd (2017) 247 taxmann.com 393 (SC) wherein it was ruled that if the issue involved is debatable, then the same cannot be adjusted by way of intimation u/s.143(1) of the Act. Therefore, in the facts and circumstances of the case and in law, the Ld' Asst. Director of Income tax, CPC had erred in undertaking the adjustment and hence the corresponding addition to total income of Rs.10,28,07,484/- is deleted.

6. The learned CIT (DR) Shri Shiva Sewak, submitted that the learned CIT (A) NFAC is erred in deleting the addition made by the Assessing Officer towards disallowance of interest income u/s 80P(2)(d) of the Act towards interest income earned amounting to Rs.10,28,07,484/- from other Cooperative Society/Banks without appreciating the fact that a cooperative bank which is carrying on banking business is not entitled for any deduction towards interest income and consequently interest income earned by the cooperative society from other cooperative banks is not entitled for deduction u/s 80P(2)(d) of the I.T. Act, 1961.

7. The learned Counsel for the assessee, on the other hand, supporting the orders of the learned CIT (A) NFAC submitted that the issue is squarely covered in favour of the assessee by various decisions of Courts and Tribunals and as per the said decisions, interest income earned by the cooperative society from its investments from any other cooperative bank is entitled for deduction u/s 80P(2)(d) of the I.T. Act. The learned CIT (A) NFAC after considering the relevant submission has rightly deleted the addition made by the Assessing Officer and therefore, the order of the learned CIT (A) NFAC should be upheld.

8 We have heard the rival arguments made by both the sides and perused the materials on record and gone through the orders of the authorities below. The assessee being a cooperative society has made certain investment in other cooperative societies/banks and earned interest income. The appellant has claimed deduction towards interest income earned from other cooperative societies/banks u/s 80P(2)(d) of the I.T. Act, 1961. The Assessing Officer while processing the return of income u/s 143(1) of the Act has disallowed deduction claimed u/s 80P(2)(d) of the Act. The solitary issue contested by the Revenue is against deduction allowed u/s 80P(2)(d) of the Act in respect of interest income earned by the appellant cooperative society from other cooperative banks. As per the provisions of section 80P(2)(d) of the Act, any income derived by a cooperative society by way of interest or dividend from its investment with any other cooperative society, the whole of such income is allowable as deduction. The controversy while allowing deduction u/s 80P(2)d is whether such deduction can be allowed towards interest income earned from the cooperative society or the benefit can be extended to the interest income earned from cooperative bank. The said controversy has been resolved by various Courts/Tribunals and held that a cooperative bank is also a cooperative society for the purpose of I.T. Act and as such any interest income earned by a cooperative society from other cooperative society/bank is also entitled for deduction u/s 80P(2)(d) of the I.T Act, 1961. Therefore, a cooperative society is earned income from its investment from other cooperative bank/society, then such income is entitled for deduction u/s 80P(2)(d) of the Act. Thus, we are of the considered opinion that the learned CIT (A) NFAC has right in deleting the

addition made by the Assessing Officer towards interest income u/s 80P(2)(d) of the I.T. Act, 1961.

9. Having said so, let's examine whether the Assessing Officer is right in making adjustment towards disallowance of interest income while processing return of income u/s 143(1) of the Act. Admittedly, the law is not clear in respect of deduction towards interest income earned by a cooperative society from its investment with any other cooperative bank. Since there is an ambiguity in the law and there are divergent views on this issue, in our considered opinion, when the issue is debatable on the point of law, then the said issue cannot be considered while issuing intimation u/s 143(1) of the Act as held by the Hon'ble Supreme Court in the case of CIT vs. Raghuvir Synthetics Ltd (Supra). The learned CIT (A) NFAC after considering the relevant facts has rightly held that the Assessing Officer has erred in making adjustment towards disallowance of interest income while processing the return of income u/s 143(1) of the Act. Thus, we are inclined to uphold the findings of the learned CIT (A) NFAC and dismiss the appeal filed by the Revenue.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 15th May, 2024.

Sd/-

Sd/-

(MAHAVIR SINGH) VICE PRESIDENT	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 15th May, 2024

Vinodan/sps

Copy to:

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3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order