

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **102/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2020-21

M/s. The Indcoserve,
No.35, Church Road, Coonoor,
The Nilgiris – 643 101.

The Income Tax Officer,
Vs. Ward 1,
Ootacamund – 643 001.

PAN: AABAT 0789M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Ms. N.V. Lakshmi, Advocate
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 03.06.2024
घोषणा की तारीख/Date of Pronouncement : 03.06.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1057267873 (1) dated 20.10.2023. The assessment was framed by the Assessing Officer, Assessment Unit, Income Tax Department for the assessment year 2020-21 u/s.143(3) r.w.s.144B of the

Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 19.09.2022.

2. At the outset, it is noticed that the appeal of assessee is time barred by 28 days. It is noticed that the order of CIT(A) is dated 20.10.2023 and as per Form 36, the assessee has noted the date of communication of the order as 20.10.2023. The assessee in its affidavit also admitted to have received the order of CIT(A) on 20.10.2023 vide email. Therefore, the last date of filing of appeal expired on 19.12.2023 but assessee filed appeal before Tribunal on 16.01.2024. Thereby, there is a delay of 28 days. The assessee has stated the following reason for delay in para 4 of the affidavit:-

“4. The Petitioner states that on 25.11.2023, the copies of impugned orders for AY 2018-19 and 2020-21 were sent to our Counsel’s office for filing of appeal before this Hon’ble Tribunal. The appeal papers were sent through two different emails to the office our counsel. It is submitted that our counsel inadvertently missed our mail dated 25.11.2023 which comprised of the appeal papers relating to AY 2020-21. The Petitioner states that during the first week of January 2023, we contacted our counsel to enquire about the status of the appeals relating to AY 2018-19 and 2020-21. Only at the juncture we realized that the appeal relating to AY 2018-19 was filed within the time limit specified under the Act and appeals for AY 2020-21 for the reasons stated above.”

When this was confronted to Id. Senior DR, he could not controvert the above fact situation. But to smallness of delay and the reasons stated in the assessee’s affidavit para 4 (reproduced above), we are

of the view that reason stated is reasonable and there is sufficient cause by virtue of which, delay happened. Hence, we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing the claim of deduction made by assessee u/s.80P(2)(d) of the Act in regard to interest on deposits made with co-operative banks.

4. Brief facts are that the assessee is a co-operative society involved in selling of tea produced by its members and providing warehousing facilities to its members. During the course of assessment proceedings, the AO noted that the assessee has received interest from deposits made with Tamil Nadu Industrial Co-operative Bank (TAICO) amounting to Rs.22,81,452/- during the financial year 2019-20 relevant to assessment year 2020-21 and also earned interest on deposits made with Canara Bank amounting to Rs.13,36,070/-, thereby the total interest received from TAICO and Canara Bank in aggregate amounting to Rs.36,17,522/-. The assessee claimed deduction u/s.80P(2)(d) of the Act on the entire amount. The AO disallowed the claim of deduction by holding that TAICO is a bank and not a co-operative society and hence, interest

earned on FDs maintained with TAICO is not eligible for claim of deduction u/s.80P(2)(d) of the Act. Similarly, the AO also disallowed the claim of deduction u/s.80P(2)(d) of the Act, in regard to interest from Canara Bank amounting to RS.13,36,070/-. Thereby, the AO disallowed the claim of total deduction u/s.80P(2)(d) of the Act at Rs.36,17,522/- Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A)-NFAC after considering the submissions of the assessee noted that the assessee has earned income from FDs made out of the funds invested in TAICO, which is not a co-operative society and it is a bank. According to him, the same does not qualify for the claim of deduction u/s.80P(2)(d) or 80P(2)(i) of the Act. Thereby, he confirmed the action of the AO. Similarly, the CIT(A)-NFAC noted that the interest earned from deposits made with Canara Bank amounting to Rs.13,36,070/- is also not eligible for claim of deduction u/s.80P(2)(d) of the Act. Therefore, he confirmed the disallowance. Aggrieved, now assessee is in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee is a co-operative society and the assessee has made deposits with Tamil

Nadu Industrial Co-operative Bank (TAICO) but it is registered as a co-operative society under the Tamil Nadu Co-operative Societies Act. The ld.counsel for the assessee before us relied on the order of this Tribunal in assessee's own case in ITA No.1468/CHNY/2023, order dated 21.02.2024, wherein the Tribunal has considered this issue considering the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd., reported in 123 Taxmann.com (SC) and the Hon'ble Madras High Court in the case of S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd., in T.C.A Nos.882 and 891 of 2018 allowed the claim of deduction by observing in para 5 as under:-

5. I have heard rival contentions and gone through the facts and circumstances of the case. I noted that assessee before the ld. Assessing Officer and also before ld. CIT(A) claimed interest income earned from Tamil Nadu Industrial Co-Operative Bank on FDs maintained with the same and claimed exempt u/s.80P(2)(i) of the Act as Tamil Nadu Industrial Co-Operative Bank is a Co-operative Society registered under Tamil Nadu Cooperative Societies Act, since, it is not governed by Banking Regulation Act 1949 nor holding license from Reserve Bank of India under its control. Ld. Counsel for the assessee submitted that Tamil Nadu Industrial Co-Operative Bank is a Co-operative Society and it is eligible to claim deduction in respect of interest earned on deposits kept in Tamil Nadu Industrial Co-Operative Bank to the extent of Rs.5,82,164/-. This was not confronted by the ld. Senior Departmental Representative. Hence, this issue was squarely covered by the judgment of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, 123 Taxmann.com 161 (SC). Similar view has been taken by the Tribunal in the case of Tamilnadu Co-operative State Agriculture and Rural Development Bank Limited in ITA Nos.31 to 33/CHNY/2021 vide order dated 29.04.2022 following the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd., (supra) and the Hon'ble Madras High Court in the case S-1308, Ammapet Primary Agricultural Co-operative Bank Ltd.,in T.C.A Nos.882 and 891 of 2018. Respectfully following the same, I allow the claim of deduction u/s.80P(2)(i) of the Act. Accordingly, claim of the assessee to the tune of Rs.5,82,164/- is allowed.

6.1 In view of the above, we allow the assessee's claim of deduction u/s.80P(2)(d) of the Act towards interest from deposits made with TAICO amounting to Rs.22,81,452/-.

7. As regards to interest income earned from Canara Bank amounting to Rs.13,36,070/-, which is earned from a scheduled bank and hence, not eligible for claim of deduction u/s.80P(2)(d) of the Act. Hence, we confirm the order of CIT(A)-NFAC on this issue.

8. As regards to additional grounds raised by assessee regarding treatment of capital receipt of interest received from Canara Bank and without prejudice, the deduction should be granted u/s.57 of the Act, in regard to expenditure incurred for earning of this interest income being assessed under the head 'income from other sources', the assessee has raised following additional grounds:-

“Ground 8 – The interest received form Canara Bank should be treated as a Capital receipt and is not chargeable to tax.

Ground 9 – Without prejudice, if the interest is chargeable to tax under the head “Income from Other Sources” then deduction shall be granted under section 57 in respect of expenditure incurred.”

8.1 When pointed out that whether the facts relating to this issue as regards to additional ground are available on record, the Id.counsel stated that she is ready to file all the details of the

interest expenditure, etc. But she could not answer why this issue was not raised by assessee before the lower authorities. We noted that there is no fact available in regard to expenditure incurred for earning of this interest and moreover, there is no fact that this should be treated as capital receipt. When this was confronted to Id. Senior DR, he vehemently opposed the admissibility of additional ground for the reason that these are purely factual issue raised for the first time before the Tribunal and the relevant facts are not at all available on record. In the given facts and circumstances, as the Id.counsel before us could not substantiate her claim in regard to facts of these two additional grounds are available on record or not, we decline to entertain these additional grounds. Hence, these are dismissed as un-admitted.

9. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court at the time of hearing on 3rd June, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 3rd June, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai/Coimbatore/Salem/Erode
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.