

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

समक्ष श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य एवं श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य के समक्ष।
BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं/ ITA No. 786/Ahd/2023
निर्धारण वर्ष/Assessment Year: 2018-19

The Commercial Co. Op. Credit Soc. Ltd., 1, Station Road, Halol, Panchmahal, Gujarat-389350 PAN : AAAAT 5920 B	बनाम Vs.	The Income-Tax Officer, Ward 3(1)(2), Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
निर्धारिती की ओर से / Assessee by :	Shri Dhinal Shah, AR	
प्रत्यर्थी की ओर से / Revenue by :	Shri Vipul Chavda, Sr DR	

सुनवाई की तारीख/Date of Hearing : 17.04.2024
घोषणा की तारीख /Date of Pronouncement: 05.07.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

This appeal has been filed by the assessee against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 09.08.2023, passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2018-19.

2. Grounds raised are as under :-

"1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in dismissing the appeal filed by Appellant, thereby, upholding the order of the learned AO and confirming the addition amounting to INR 75,33,834.

2. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not appreciating the fact that learned AO has wrongly applied 41.1% as against 59.9% while calculating proportionate expenditure to be allowed under section 57 of the Act.

3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not appreciating the fact that learned AO has wrongly applied relevant percentage (i.e. expenditure to be allowed) on interest income as against total expenditure while calculating proportionate expenditure to be allowed under section 57 of the Act."

3. The solitary issue in the present appeal relates to deduction claimed u/s 57 of the Act against income returned u/s 56 of the Act. The dispute being of the manner in which expenses of the assessee were to be apportioned to the earning of income u/s 56 of the Act. The Revenue authorities rejecting assessee's apportionment and allocating expenses on a different basis which is being disputed before us.

4. The background of the case is that the assessee is a co-operative society registered under Gujarat Co-operative Societies Act, 1961, and engaged in the business of banking as well as providing of credit facilities to its members, collection of deposits from members for the purpose of lending it as well as investment of the same when the funds are not used for lending purposes. During the impugned year, the assessee was noted to have received total income of Rs.2,27,56,020/-, which included interest earned from advances made to Members of Rs.87.95 lakhs and interest earned on investment of Rs.1.36 crores. Interest earned on investments was returned under the head Income from Other Sources and pro rata expenses claimed against the same amounting to Rs.1,31,80,080 /- resulting in net income returned u/s 56 of the Act of Rs.5,57,757/-.The Assessing Officer applied a proportionate rate of 41.1% to the total interest income earned by the assessee to calculate the interest allowable against the said income which came to Rs. 56,46,254/-and accordingly the balance taxable income was worked out at Rs.80.91 lakhs. Since the assessee had already included Rs.5.57 lakhs in its total income, the balance amount of Rs.75.33 lakhs was added to the income of the assessee.

The working of the Assessing Officer computing the addition to be made to the income of the assessee so made is at paragraph No. 5 of his order as under:-

"5. After considering reply of the assessee and discussion made in the foregoing paragraphs deduction u/s 57 of the Act is recomputed as under :-

<i>Interest received from Scheduled Bank</i>	-	<i>Rs. 1,37,37,845</i>
<i>Interest allowed @411% (proportionate rate)</i>	-	<i>Rs. 56,46,254</i>
<i>Balance (taxable part)</i>	-	<i>Rs. 80,91,591</i>

The assessee has already included Rs.5,57,757/- (Rs. 1,37,37,845 - Rs. 1,31,80,088/-) in his total income hence balance amount of Rs. 80,91,591-Rs. 5,57,757/- = Rs. 75,33,834/- is added to the income of the assessee.

<i>Income as per ITR</i>	-	<i>Rs. 5,57,760/-</i>
<i>Addition as discussed in para 4 above</i>	-	<i>Rs. 75,33,834/-</i>
<i>Assessed total income</i>	-	<i>Rs. 80,91,594/-</i>
<i>Total Income (rounded off)</i>	-	<i>Rs. 80,91,590/-"</i>

5. The matter was carried in appeal before the Id. CIT(A), but none appeared on behalf of the assessee before him and accordingly the Id. CIT(A), in the absence of any assistance from the assessee, reiterated the order of the Assessing Officer.

6. Aggrieved by the same, the assessee has come up in appeal before us.

7. At the outset itself, the Id. Counsel for the assessee fairly stated that it was a complete fault of the assessee for not appearing before the Id. CIT(A) and there was no reasonable cause with the assessee for not having appeared in the first appellate proceedings. Having said so, he stated that his solitary plea in the present appeal was that the working of the Assessing Officer allocating expenses to the earning of income u/s 56 of the Act was on an incorrect basis. He pointed out that the Assessing Officer, while working out the deduction to be allowed to the assessee of expenses in terms of provisions of Section 57 of the Act, had apportioned 41.1% of the total interest income

earned by the assessee for the said purpose. Drawing our attention to the calculation of the Assessing Officer, as reproduced above, he pointed out that Rs.1.37 crores was the interest received by the assessee from the scheduled banks. It was against this income which was held to be taxable under the head 'income from other sources' u/s 56 of the Act that expenses relating to the earning of the said income were to be allowed to deduction in terms of provisions of Section 57 of the Act as per the Assessing Officer. The Assessing Officer, he pointed out had apportioned 41.1% of the interest income earned by the assessee amounting to Rs.56.46 lakhs, subjecting the balance of Rs.80.91 lakhs to tax.

8. The contention of the Id. Counsel for the assessee was that the Assessing Officer ought to have apportioned the expenses incurred by the assessee as revealed from its Profit & Loss Account for determining expense allowable in terms of Section 57 of the Act. He drew our attention to the Profit & Loss Account of the assessee for the year ended on 31.03.2018, relating to the impugned year before us, and pointed out that the total expense incurred by the assessee was to the tune of Rs.2.18 crores, of which Rs.2.05 crores was the interest paid on Members deposit alone. That, it was these expenses which needed to be apportioned to the interest income earned by the assessee on investments which constituted 59.9% of the total income earned by the assessee. He pointed out that in the case of the assessee, for AY 2014-15, the Hon'ble ITAT had directed the Assessing Officer to allow expenses incurred by the assessee in the earning of identical interest income which was held for not eligible for deduction u/s 80P(2)(a)(i) of the Act. Our attention was drawn to paragraph No.5 of the order of the ITAT in ITA No. 2227/Ahd/2017, order dated 13.07.2018. He further drew our attention to the assessment order passed in AY 2014-15 in pursuance to the directions of the ITAT wherein the

Assessing Officer had accepted the calculation of proportionate expense given by the assessee at paragraph No.3 of its order as under:-

"3. As per the direction of the ITAT's order assessee has been asked to clarify the pro-rata proportionate expenses claimed by you and justify as per books of account. Assessee has furnished reply and calculation of proportionate expenses has been given. The same is as under:

$$\text{Expenditure Ratio} = \frac{\text{Total Expenses } 13987953/-}{\text{Total Income } 16427503/-} * 100 = 85.15\%$$

$$\frac{\text{Proportionate Expenses from Income of Bank Interest Expense Ratio } 85.15\% * \text{Bank Interest } 2887397/-}{100} = 24,36,277/-$$

As per Assessment Order of Income-tax Officer, Baroda-

<i>Total Income as per Order 143(3)</i>	-	<i>28,61,159/-</i>
<i>Deduction 80P(2)(d)</i>	-	<i>26238/-</i>
<i>Less: Proportionate Expenses</i>	-	<i><u>24,36,277/-</u></i>
<i>Taxable</i>		<i><u>4,24,882/-</u></i>
<i>TAXABLE INCOME</i>	-	<i>4,24,882/-"</i>

9. The Id. Counsel for the assessee contended that in the impugned year also the expenses had been apportioned in identical manner and as a consequence against such interest income of Rs.1.37 crores, *pro rata* expenses of Rs.1.31 cores had been apportioned and the balance Rs.5.57 lakhs offered to tax. Our attention was drawn to the computation of income filed by the assessee for the impugned assessment year. He, therefore, stated that there was no reason to make any further addition to the income of the assessee on account of allocation of interest expenses against the interest income earned / offered to tax under Section 56 of the Act.

10. Ld. DR fairly agreed with the same, though he stated that the calculation of the apportionment of expenses of the impugned year be

restored back to the Assessing Officer to determine as to whether there were in the apportionment as agreed to by the Assessing Officer in AY 2014-15.

11. In view of the above and for the purpose of calculating the correctness of expenses apportioned by the assessee to the earning of interest income returned to tax under the head "income from other sources", the issue is restored back to the Assessing Officer, and the Assessing Officer is directed to verify as to whether the formula adopted by the assessee for apportioning interest expenses to the earning of interest income returned to tax u/s 56 of the Act is the same as that adopted in AY 2014-15 and accepted by the AO in assessment of that year. If found to be so, no addition is made to the income of the assessee. In sum and substance the AO is directed to apportion expenses for claim u/s 57 of the Act in the manner done in A.Y 2014-15.

11.1 With the above direction the issue is restored back to the Assessing Officer.

The appeal filed by the assessee is accordingly allowed for statistical purposes.

12. In effect, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 05/07/2024 at Ahmedabad.

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER
(श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य)

Ahmedabad; Dated 05/07/2024

BTK*

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
(श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. **अपीलार्थी** / The Appellant
2. **प्रत्यर्थी** / The Respondent.
3. **संबंधित आयकर आयुक्त** / Concerned CIT
4. **आयकर आयुक्त (अपील)** / The CIT(A)-
5. **विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर** , /DR,ITAT, Ahmedabad,
6. **गार्ड फाईल** /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad