

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.958/Bang/2024
Assessment year : 2017-18

Sneha Sangama Souharda Pattina Sahakari Niyamitha, Veerashiva Samaja, J.C. Road, Tumakur – 572 102. PAN : AAJAS 5779C	Vs.	The Income Tax Officer, Ward-1, TPS, Tumkur.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaina Bhatia, CA
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	27.06.2024
Date of Pronouncement	:	01.07.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 19.09.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 on the following grounds:-

- “ 1. The order of the learned authorities below in so far as it is against the appellant is opposed to law, equity, facts, weight of evidence, probabilities and circumstances of the case.
2. The learned authorities below erred in making a net addition of Rs. 1,76,36,503/- being denial of deduction claimed

u/s 80P and demanded a tax liability of Rs. 79,30,209/- by concluding the assessment proceedings without considering the facts and circumstances of the case.

3. The learned AO erred in denying benefit u/s 80 P to the extent of Rs. 1,56,09,177/- claimed by appellant by stating that in the case of appellant the principle of mutuality did not exist and hence the appellant is not eligible to claim the deduction ignoring the fact that there is no such requirement to claim the deduction under Section 80 P of the Income Tax Act, 1961.

4. The learned authorities below have erred and failed to appreciate the fact that the in order to claim the deduction the business should be done with the Members, which is exactly the case with the appellant here and therefore the action of the AO in denying the deduction under section 80P(2)(a)(i) is erroneous and deserves to be cancelled.

3. The learned AO erred in interpreting law beyond what is required. The appellant has satisfied all the conditions as per Section 80 P and hence the question of denying deduction does not arise and the denial is bad in law on facts and circumstances of the case.

6. The learned AO erred in relying on the decision of the Hon'ble Supreme Court in the case of Citizen Co-operative Society, without appreciating that the facts are distinguished by the Hon'ble ITAT Bangalore in the case of Kodavoor Vyavasaya Seva Sahakari Vs Income Tax Officer ITA 707/Bang/2019 2016-17, where in the ITAT has distinguished the fact on the issue of nominal members and held that they are eligible for benefit of credit society. Hence, the reliance placed by the AO is clearly misplaced.

7. The learned AO erred in disallowing deduction u/s 80 P(2)(d) of Rs. 20,01,217/- by considering the interest earned as Income from other sources ignoring the fact that the same is a business income and deduction allowed based on facts and circumstances of the case.

8. The learned AO erred in considering the commission earned of Rs. 26,109/- as Income from other sources ignoring the fact that the same is a business income and deduction allowed based on facts and circumstances of the case.

9. The learned AO failed to appreciate that the interest income earned by the appellant out of the deposits kept in the in the Banks are all out of the monies of the members which are essentially towards the Share Capital and Reserve Funds of the appellant society and therefore the income earned from these short term deposits are inextricably linked to the business of the appellant and consequently deduction under section 80 P [2] of the Act becomes allowable on the facts and circumstances of the case. Reliance is placed on the parity of reasoning by the Apex Court in Bokaro Steel Corporation Vs. CIT.

10. The learned authorities below erred in reducing the deduction u/s 80 P by disallowing the deduction u/s 80 P(2) (d) and considering the same as Income from other sources, ignoring the fact that the interest is out of the capital of the society and investment of surplus funds in the bank would constitute business income and not income from other sources as canvassed by the AO on the facts and circumstances of the case.

11. The learned AO erred in ignoring the fact that interest earned from members or from the banks both constitute business income and merely because the same is earned out from Banks would not disentitle or change the character of Income. Hence the income earned on deposits held with bank also deserves to be considered as business income and deduction u/s 80 P ought to be allowed in full on the facts and circumstances of the case.

12. The learned AO erred in relying on the decision of Hon'ble Supreme Court in the Totgar Co-operative Sale society Ltd., ignoring that the same is distinguished in the case of M/s. Guttigedarara Credit Co-operative Society Ltd., Vs. Income Tax Officer ward 2(2), Mysore, [2015] 60 taxmann.com 215 (Karnataka) holding that the facts and circumstances in the Totgars Co-operative Sale Societies case are peculiar to that Society and therefore the ratio of the Hon'ble Supreme Court in that case is not applicable to all other Co-operative Societies across the board. Hence, the very basis of reliance is bad in law.

13. Without prejudice, the learned authorities below failed to appreciate that the beneficial provision has to be interpreted liberally. Section 80 P is a beneficial provision and the learned AO cannot impose any condition that is not mentioned in the section for claim of deduction and deny the same on facts and circumstances of the case.

14. Without prejudice, the additions made is highly excessive and deserves to be reduced substantially.

15. The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

16. For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeals may be allowed and justice rendered.”

2. Briefly stated the facts of the case are that assessee filed return of income on 23.10.2017 declaring Gross Total Income of Rs.1,76,36,503 and claimed deduction u/s. 80P on the entire total income and arrived at taxable income at Nil. The case was selected for scrutiny and statutory notices issued. During the course of assessment proceedings it was observed that the assessee has violated the principle of mutuality as per the judgment of Hon’ble Apex Court in the case of Citizen Co-operative Society Ltd. and noted that there are different classes of members in the society and nominal & associate members have no equal rights in terms of share in the profits of the society, participation in the general body meeting, voting rights and their membership in the society is for limited period. Considering the entire submissions and case laws deduction u/s. 80P(2)(a)(i) of the Act of Rs.1,56,09,177 as well as u/s. u/s. 80P(2)(d) of the Act of Rs.20,01,217 was not allowed. Commission income received by assessee of

Rs.26,109 was treated as income from other sources. Accordingly gross total income was assessed at Rs.1,76,36,500. Aggrieved, the assessee filed appeal before the First Appellate Authority (FAA) raising various issues.

3. The FAA issued notices/communication on 7.11.2021 & 21.7.2023, but there was no compliance from the assessee's side. Accordingly he dismissed the appeal of the assessee on 19.9.2023. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR reiterated the submissions made before the AO and she further submitted that the first notice was issued by the FAA during the COVID 19 period and therefore it was not possible to reply due to COVID restrictions. Thereafter the FAA after long period issued notice on 21.7.2023, but the notice was not served to the assessee. She submitted that the FAA has not granted proper opportunity to the assessee.

5. The Id. DR relied on the order of lower authorities and submitted that the CIT(Appeals) gave opportunities to the assessee, but it was not responded by the assessee.

6. Considering the rival submissions, we note that the AO has not allowed deduction u/s. 80P(2)(a)(i) & 80P(2)(a)(i) of the Act out of its operational income as well as interest received on investments. He treated the commission income as income from other sources. The Id. FAA issued two notices out of which first notice was in the mid of

COVID-19 period and thereafter only one opportunity was granted to the assessee. Considering the facts of the case and in the interest of justice, we remit the issue to the CIT(Appeals) for fresh consideration and decision as per law. The assessee is directed to update its email id, communication address and other details and file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 01st day of July, 2024.

Sd/-
(SOUNДАРARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 01st July, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.