

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1183/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Shankarrao Shelar Nagari Sah. Patsanstha Marya, 8 Laxmi Apartment, Opp. Pandit Jawaharlal Nehru Karyalaya, Pune – 412101 Maharashtra PAN : AAAAL1969J	Vs.	Income Tax Officer, Ward-9(3), Pune
Appellant		Respondent

Assessee by : Shri Deepak S. Sasar

Revenue by : Shri Rajesh Gawali

Date of hearing : 13.08.2024

Date of pronouncement : 13.08.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Addl/JCIT(A)-1, Guwahati dated 20.03.2024 for the assessment year 2017-18.

2. Brief facts of the case are as under :

The appellant is a Cooperative Society formed under the Maharashtra Cooperative Societies Act, 1960. It is engaged in the business of accepting deposits and lending money to its Members. No regular Return of Income for the A.Y. 2017-18 was filed. The Assessing Officer (AO) based on the information that the appellant society made a cash deposit of Rs.12,84,010/- during the

demonetization period with Thane Janata Sahakari Bank Ltd. Dehu Road, Pune, formed an opinion that income escaped assessment to tax. Accordingly, a notice u/s.142(1) was issued by the Assessing Officer on 09.03.2018 calling upon the appellant society to file the return of income. The appellant society had not complied with the said notice. During the course of assessment proceedings, the AO noticed that the appellant society had furnished the computation of total income on 08.08.2019 wherein it claimed deduction of Rs.4,19,144/- u/s.80P(2)(a)(i) of the Income-tax Act, 1961 (hereinafter also called 'the Act'). The AO was of the opinion that the interest income of Rs.4,19,144/- earned on deposits made out of the surplus funds with other Cooperative banks cannot be allowed as deduction, primarily for the reason that no such claim was made in the return of income and secondly, such interest does not qualify for deduction u/s.80P(2)(d) of the Act. Accordingly, he brought to tax the sum of Rs.4,19,144/- treating the same as Income from Other Sources.

3. Being aggrieved, an appeal was filed before the Addl./JCIT(A) who vide impugned order confirmed the action of the AO.

4. Being aggrieved, the appellant is in appeal before the Tribunal.

5. I heard the rival submissions and carefully perused the material on record. The issue in the present appeal relates to the allowability of deduction u/s.80P(2)(a)(i)/80P(2)(d) in respect of interest income earned by a Cooperative Society formed with the object of accepting deposits from Members and lending money to its Members. Admittedly, in the present case, the appellant society earned interest income of Rs.4,19,144/- on the deposits made with other Cooperative Banks out of the surplus money. No doubt, this Tribunal has been taking a consistent view that such interest income qualifies for

deduction u/s.80P(2)(d) of the Act. But in the present case, the appellant society had not filed any return of income either u/s.139 or in response to notice u/s.142(1) of the Act. The appellant society only filed the computation of total income on 08.08.2019 before the AO. The AO had rightly held that it does not amount to a valid return of income. Sub-section (5) of section 80A provides that where an assessee does not make a claim for deduction in respect of certain income as specified in Chapter VIA, no deduction shall be allowed. What sub-section (5) of section 80A of the Act mandates is that when assessee fails to make a claim in the return of income for any deduction under the provisions specified therein, the same would not be granted to the assessee. There is nothing in the sub-section (5) of section 80A that embargo is limited to the power of Assessing Officer only. It was so held by the Hon'ble Bombay High Court in the case of *EBR Enterprises and Another Vs. Union of India and Another (2019) 415 ITR 139 (Bom.)* by holding as under :

“8. However, the Petitioners are faced with the statutory provision contained in Sub Section (5) of Section 80A of the Act. The Petitioners' claim cannot therefore be accepted de hors the said statutory provision and ordinary principle of the wide powers of the Commissioner of Income-tax exercising revisional jurisdiction under Section 264 of the Act cannot be imported. What Sub Section (5) of Section 80A of the Act mandates is that, if the assessee fails to make a claim in his return of income for any deduction under the provisions specified therein, the same would not be granted to the assessee. This condition or restriction is not relatable to the Assessing Officer or the Income Tax Authority. This condition attaches to the claim of the assessee and has to be implemented by the Assessing Officer, Commissioner of Income-tax or the Appellate Tribunal as the case may be. There is no indication in Sub Section (5) of Section 80A of the Act as to why the restriction contained therein amounts to limiting the power of Assessing Officer but not that of Commissioner.”

6. In view of the statutory embargo, I have no hesitation to hold that the appellant society is not entitled for deduction of Rs.4,19,144/- u/s.80P(2)(a)(i) of the Act.

7. In the result, the appeal filed by the appellant society is dismissed.

Order pronounced on this 13th day of August, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th August, 2024.

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.