

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.381/Nag./2022
(Assessment Year : 2018-19)

Nagpur Nagarik Sahakar Bank
Karamchari Path Sanstha Maryadit
Dr. Ambedkar Road, C.A. Road
Nagpur 440 008 PAN – AABAN9824D

..... Appellant

v/s

Income Tax Officer
National E-Assessment Centre, Delhi

..... Respondent

Assessee by : Shri Prakash Nanwani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 12/09/2024

Date of Order – 18/09/2024

ORDER

The present appeal has been filed by the assessee challenging the impugned order dated 26/07/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2018-19.

2. During the course of hearing, the Registry has pointed out a delay of 47 days in filing the present appeal before the Tribunal. While going through the record available before us, I find that the assessee has filed application dated nil for condonation of delay requesting the Bench for condoning the delay in

filing the present appeal. The reason for the delay, as contended by the assessee in its application, are reproduced below:—

"1. In the case of assessee, CIT(A) order u/s 250 of I.T. Act 1961 has been passed on 26/07/2022. The order passed u/s 250 of I.T. Act 1961 has been served on assessee on 27/07/2022. The due date of submission of appeal against order passed u/s 250 of I.T. Act 1961 was 26/09/2022. Assessee had forwarded documents along with challan of appeal fees for preparation of appeal to the office of MKPN & Associates, Chartered Accountants on 01/09/2022. The documents were handed over for preparation of appeal to Sagar Jivtani Working in the office of MKPN & Associates, Chartered Accountants. He had misplaced and mixed documents received for preparing and for filling appeal with other documents on his table due to rush of due date of Income tax returns and Tax Audit work for Asstt year 2022-23 and had escaped from his attention to inform CA Kailash Jiwtani Partner in MKPN & Associates, Chartered Accountants regarding the receipt of CIT (A) order u/s 250 order in case Nagpur Nagrik Sahakari Bank Karmachari Path Sanstha Maryadit for preparing and for filling of appeal before Hon'ble Income Tax Appellate Tribunal, Nagpur. Sometime in last week of October 2022 it was notices by him that appeal has remained to be filed. Sagar Jivtani then informed CA Kailash Jiwtani Partner in M KPN & Associates, Chartered Accountants regarding the receipt of CIT (A) orders passed u/s 250 of I.T Act 1961 for Asstt year 2018-19. in case of Nagpur Nagrik Sahakari Bank Karmachari Path Sanstha Maryadit on 01/09/2022 for preparing and for filling of appeal. The appeal was prepared and filed in the office of the Registrar of Income Tax Tribunal, Nagpur on 11/11/2022. Thus there is delay of 46 days in filing appeal before Income Tax Tribunal, Nagpur. The affidavit of Shri Sagar Jivtani working in the office of MKPN & Associates, Chartered Accountants affirming the above facts is enclosed herewith and request for condoning the delay in filing of appeal."

2 It is respectfully submitted that delay in submission of appeal is on account of mistake at the office of counsel of assessee and there is no negligence on part of assessee or any malafide intention to delay the filing of appeal.

3. Assessee places reliance on the decision of Honble Bombay High Court in the case of Vijay Vishin Meghani in ITA No.493 of 2015 vide order dated 19/09/2017 wherein delay of 2984 days in filing appeal has been condoned by Hon'ble Jurisdictional High Court. The ratio laid down by the aforesaid decisions squarely applies to the facts in case of assessee and considering the same delay in filing appeal may kindly be condoned.

4. The assessee submits that no hardship or prejudice will be caused to the revenue in case the application is allowed and delay in condoned however if application for condonation of delay is rejected the assessee may loose a valuable right of appeal. In view of above, it is humbly submitted that liberal view be taken and application be allowed and delay be condoned in the interest of justice.

5. The delay in submission of present appeal is on account of reasonable cause for condoning the delay in filing an appeal. There is no malafide intention to delay the filing of appeal. In view of above the it is humbly prayed that delay in filing appeal may kindly be condoned and appeal of appellant be admitted for adjudication on merits."

3. In support of the application for condonation of delay, the assessee has also filed Affidavit duly sworn.

4. After considering the submissions of the learned Authorised Representative and averments made in the affidavit, I am of the opinion that the assessee is prevented in filing the appeal belatedly and I satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, I condone the delay of 47 days in filing the present appeal and admit the same for adjudication on merit.

5. In its appeal, the assessee has raised following grounds:-

"1. The order passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre u/s 250 of I.T. Act 1961 is illegal, invalid and bad in law.

2. The A.O. and learned CIT(A) erred in denying deduction u/s 80P(2)(a)(i) of I.T. Act 1961 in respect to interest income earned on surplus fund from business activity kept in fixed deposit with Co-operative Bank which is also co-operative society.

3. The A.O. and learned CIT(A) ought to have allowed the deduction u/s 80P(2)(a)(i) of I.T. Act 1961 as claimed in the return of income.

4. The disallowance of deduction u/s 80P(2)(a)(i) of I.T. Act 1961 in respect to interest income earned on fixed deposit is unjustified, unwarranted and bad in law.

5. The learned CIT (A) erred in holding that Nagpur Narik Sahkari Bank Limited is not registered under co-operative society Act and thus assessee is not eligible of deduction u/s 80P(2)(d) in respect to interest income earned on fixed deposit

6. *The learned CIT (A) ought to have allowed deduction u/s 80P(2)(d) of I.T Act 1961 in respect to interest income earned on fixed deposit kept with co-operative bank which is co-operative society.*

7. *The assessee denies liability to pay interest under section 234A, 234B and 234C of I.T. Act 1961. Without prejudice, levy of interest under section 234A, 234B and 234C of I.T. Act 1961 is unjustified, unwarranted and excessive.*

8. *Any other ground that shall be prayed at the time of hearing."*

6. During the course of hearing, both the parties agree before me that the issue in hand is covered by the decision of the Co-ordinate Bench of the Tribunal, (wherein, I am one of the parties to that order), rendered in The Ismailia Urban Co-operative Society v/s ITO, ITA no.122/Nag./2023, order dated 18/06/2024, wherein the Tribunal has considered this issue in detail and held that interest income earned by the assessee trust is eligible for deduction under section 80P(2)(a)(i) / 80P2(d) of the Act. The relevant portion of the order reproduced below:–

"9. Upon hearing both the counsel and perusing the record, we find that the issue involved is covered in favour of the assessee by a catena of decisions from ITAT as well as a decision of jurisdictional High Court. In this regard we may gainfully refer the Hon'ble Jurisdictional High Court decision in the case of CIT vs. Solapur Nagri Audyogik Sahakari Bank Ltd. 182 Taxman 231 wherein the following question was raised.

"Whether the interest income received by a Co-operative Bank from investments made in Kisan Vikas Patra ('KVP' for short) and Indira Vikas Patra ('IVP' for short) out of voluntary reserves is income from banking business exempt under Section 80P(2)(a)(i) of the Income Tax Act, 1961?"

After considering the issue, the Hon'ble Jurisdictional High Court has concluded as under :

"12. Therefore, in all these cases, where the surplus funds not immediately required for day-to-day banking were kept in voluntary reserves and invested in KVP/IVP, the interest income received from KVP/IVP would be income from banking business eligible for deduction under section 80P(2)(i) of the Act.

13. In the result, there being no dispute that the funds in the voluntary reserves which were utilized for investment in KVP/IVP by the co-operative banks were the funds generated from the banking business, we hold that in all these cases the Tribunal was justified in holding that the interest income

received by the co-operative banks from the investments in KVP/IVP made out of the funds in the voluntary reserves were eligible for deduction under section 80P(2)(a)(i) of the Act."

The above case law fully supports the assessee's case. Here also surplus funds not immediately required for day to day banking were kept in Bank deposits. The income earned there from thus would be income from banking business eligible for deduction u/s 80P(2)(a)(i).

10. Similarly we find that similar issue was considered by this Tribunal on similar grounds raised by the Revenue in the case of MSEB Engineers Co-Op. Credit Society Ltd., wherein the ITAT, Nagpur Bench, vide order dated 05/05/2016 held as under :

"Upon hearing both the counsel and perusing the records, we find that the above issue is covered in favour of the assessee by the decision of this ITA, referred by the Ld. CIT(A) in his appellate order. The distinction mentioned in the grounds of appeal is not at all sustainable. We further find that this Tribunal again in the case of Chattisgarh Urban Sahakari Sanstha Maryadit Vs. ITO in ITA No. 371/Nag/2012 vide order dated 27.05.2015 has adjudicated similar issue as under:-

"11. Upon careful consideration, we note that identical issue was the subject matter of consideration by ITAT, Ahmedabad Bench decision in the case of Dhanlaxmi Credit Cooperative Society Ltd (supra), in which one of us, learned Judicial Member, was a party. The concluding portion of the Tribunal's decision is as under:

"4. With this brief background, we have heard both the sides. It was explained that the Co-operative Society is maintaining "operations funds" and to meet any eventuality towards repayment of deposit, the Co-operative society is maintaining some liquidated funds as a short term deposit with the banks. This issue was thoroughly discussed by the ITAT "B" Bench Ahmedabad in the case of The Income Tax Officer vs. M/s.Jafari Momin Vikas Co-op Credit Society Ltd., bearing ITA No. 1491/Ahd/2012 (for A.Y. 2009-10) and CO No. 138/Ahd/2012 (by Assessee) order dated 31/10/2012. The relevant portion is reproduced below :-

"19. The issue dealt with by the Hon'ble Supreme Court in the case of Totgars (supra) is extracted, for appreciation of facts as under :

What is sought to be taxed under section 56 of the Act is interest income arising on the surplus invested in short term deposits and securities, which surplus was not required for business purposes? The assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question before us, is whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? In our view, such interest income would come in the category of 'income from other sources' hence, such

interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer.....”

19.1 However, in the present case, on verification of the balance sheet of the assessee as on 31.3.2009, it was observed that the fixed deposits made were to maintain liquidity and that there was no surplus funds with the assessee as attributed by the Revenue. However, in regard to the case before the Hon'ble Supreme Court –

“(on page 286) 7 Before the assessing officer, it was argued by the assessee(s) that it had invested the funds on short term basis as the funds were not required immediately for business purposes and consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under section 28 and not under section 56 of the Act and, consequently, the assessee(s) was entitled to deduction under section 80P(2)(a)(i) of the Act. The argument was rejected by the assessing officer as also by the Tribunal and the High Court, hence these civil appeals have been filed by the assessee(s).

19.2 From the above, it emerges that

(a) that assessee (issue before the Supreme Court) had admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

(c) that assessee carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and

(d) that the surplus had arisen emphatically from marketing of agricultural produces.

19.3 In the present case under consideration, the entire funds were utilized for the purposes of business and there were no surplus funds.

19.4 While comparing the state of affairs of the present assessee with that assessee (before the Supreme Court), the following clinching dissimilarities emerge, namely:

(1) in the case of assessee, the entire funds were utilized for the purposes of business and that there were no surplus funds:-

- in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present assessee, it had not carry out any activity except in providing credit facilities to its members and that the funds were of operational funds. The only fund available

with the assessee was deposits from its members and, thus, there was no surplus funds as such;

- in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds;

19.5 Considering the above facts, we find that there is force in the argument of the assessee that the assessee not a co-operative bank, but its nature of business was coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in short-term deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs.13,69,955/- [source : Balance Sheet of the assessee available on record].

19.6 In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot in any way come to the rescue of either the Ld. CIT (A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT (A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s 56 of the Act. It is ordered accordingly."

5. Respectfully following the above decision of the Co-ordinate Bench, we hereby hold that the benefit of deduction u/s 80P(2)(a)(i) was rightly granted by Ld. CIT(A), however, he has wrongly held that the interest income is taxable u/s 56 of the Act so do not fall under the category of exempted income u/s 80P of the Act. The adverse portion of the view, which is against the assessee, of Ld. CIT(A) is hereby reversed following the decision of the Tribunal cited supra, resultantly ground is allowed.

8. We find that the ratio of above case also applies to the present case. As observed in the above case law, in this case also the submissions of the assessee's counsel is that the assessee society is maintaining operational funds and to meet any eventuality towards repayment of deposit the cooperative society is maintaining some liquidated funds as short term deposits with banks. Hence adhering to the doctrine stare decisis, we hold that the assessee should be granted benefit of deduction under section 80P(2)(a)(i). Accordingly, the interest on deposits would qualify for deduction under the said section. Accordingly, we set aside the order of authorities below and decide the issue in favour of assessee. "

4. We further find that batch of similar appeals decided by the ITAT in favour of the assessee has also been considered by the Jurisdictional High Court. The Hon'ble Jurisdictional High Court has duly affirmed of this Tribunal. Accordingly, in the background aforesaid discussion, we do not find infirmity in the order of Ld. CIT(A)."

11. In the background of aforesaid discussion and decisions, we find that CIT (A) has erred in upholding the assessment order. The Appellant Co-operative society is entitled for deduction u/s 80P as claimed in the return."

7. In the above decision, the Co-ordinate Bench has already considered the judgment of the Hon'ble Supreme Court in The Totgars' Co-operative Sale Society Ltd. (supra) and held that the facts of this case is distinguishable and not applicable to the facts of the present case. The interest from Co-operative Banks in respect of the amount received from the Members of Co-operative Society is assessable under the head "*Income From Business*" and not under the head "*Income From Other Sources*". I, therefore, respectfully following the decision of the Co-ordinate Bench in The Ismailia Urban Co-operative Society v/s ITO, ITA no.122/Nag./2023, order dated 18/06/2024, set aside the impugned order passed by the learned CIT(A) and hold that the assessee is eligible to claim deduction under section 80P(2)(a)(i) of the Act. Thus, grounds no.1 to 6 are allowed.

8. Ground no.7, relates to charging of interest under section 234A, 234B and 234C of the Act.

9. After hearing both the parties, I hold that charging of interest under section 234A, 234B and 234C of the Act is consequential in nature. Since the core issue raised by the assessee are allowed, hence, charging of interest becomes infructuous and the same is dismissed. Ground no.7, is dismissed.

10. Ground no.8, being general in nature, hence no separate adjudication is required.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 18/09/2024

NAGPUR, DATED: 18/09/2024

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur