

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No. 450/Ind/2024
Assessment Year : 2020-21

ACIT, 1(1), Bhopal	<u>बनाम/</u> Vs.	M.P. State Co-operative Housing Federation Limited, Sahkar Bhawan, Opp. Rangmahal Talkies, T.T. Nagar, Bhopal
(Revenue /Appellant)		(Assessee / Respondent)
PAN: AAAAM1593M		
Assessee by	Shri Vipul Jain, AR	
Revenue by	Shri V.K.Singh, CIT-DR	
Date of Hearing	26.11.2024	
Date of Pronouncement	29.11.2024	

आदेश / O R D E R

Per B. M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 17.08.2023 passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 09.09.2022 for AY 2020-21 passed by learned Assessment Unit of Income-tax Department ["AO"]

u/s 143(3) of Income-tax Act, 1961 [“the Act”], the revenue has filed this appeal.

2. The registry has informed that the present appeal has been filed by revenue/appellant on 17.05.2024 against impugned order dated 17.08.2023 after expiry of statutory period of 60 days and thus delayed by 213 days and time-barred. Ld. DR for revenue submitted that the revenue has filed an application for condonation of delay supported by an affidavit on stamp. Referring to contents of same, Ld. DR submitted that there were other appeals of revenue in the case of this very assessee, being ITA No. 358/Ind/2023 for AY 2017-18 and ITA No. 363/Ind/2023 for AY 2018-19 separately filed and pending before this Bench involving identical issue as involved in present appeal. Therefore, the authorities of Income-tax Department decided to defer filing of present appeal for AY 2020-21 in terms of section 158AB and for that reason, filed Form No. 8A to ITAT instead of filing present appeal. However, subsequently, it was realized that the provision of section 158AB was misunderstood as the same is applicable only when an identical issue is pending before High Court or Supreme Court. Immediately without further delay, this appeal was filed with a condonation prayer. Ld. DR submitted that the delay of 213 days has occurred due to mistaken understanding of legal provision of section 158AB and not because of any lethargy, negligence, mala fide intention or ulterior motive. Ld. DR prayed to condone the delay in this situation. Ld.

AR for assessee did not raise any objection against submission and prayer of Ld. DR. We have considered the explanation advanced by Ld. DR. On perusal of case-file, we find that the ITA No. 358/Ind/2023 for AY 2017-18 and ITA No. 363/Ind/2023 for AY 2018-19 of assessee were pending before ITAT and also that Form No. 8A in terms of section 158AB was filed by revenue to ITAT office. Thus, the revenue has deferred filing of this appeal under mistaken understanding of section 158AB as being claimed. We find that that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a 'sufficient cause' for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. In present case, the delayed filing of appeal is due to mistaken understanding of legal provision of section 158AB which, in our considered view, constitutes a 'sufficient cause'. Therefore, taking into account the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit this appeal and proceed with hearing.

3. The revenue/appellant has raised following solitary ground:

"On the facts and in the circumstances of the case, the Ld. CIT(A)-I,

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Bhopal, erred in deleting the addition of Rs. 8,16,62,105/- made on account of interest on FDRs and Saving Bank Accounts when the said interest income was no attributable to the business of the assessee of providing credit facilities to the members and was not exempt by virtue of provisions of Section 80P(2)(a)(i) of the Income-tax Act, 1961."

4. Thus, the revenue is claiming that the CIT(A) has erred in deleting the addition made by AO on account of disallowance of deduction claimed by assessee u/s 80P(2)(a)(i) of the Act qua the interest income from FDRs and Saving Bank A/cs.

5. On hearing learned Representatives of both sides, we find that the assessee is a co-operative society engaged in the activity of providing credit facility to its members by way of housing loans. The assessee earned interest income from FDRs and Saving A/cs with Banks by investing surplus funds available with it and claimed the same as eligible for deduction u/s 80P(2)(a)(i). This issue of allowability of deduction is recurring year after year in assessee's case. The AO has disallowed deduction but in first-appeal, the CIT(A) allowed the same by following the decision of ITAT in favour of assessee in earlier years. The relevant portion of CIT(A)'s order is reproduced below:

"5.0 The most important point of the appellant is that the Hon'ble ITAT in appellant's own case in similar facts have given decision in appellant's favour, The list of ITAT orders is as follow:-

. ACIT, 1(2), Bhopal vs. M/s. M.P. State Coop. Housing Federation Society, Bhopal for A.Y. 2009-10 in I.T.A.No. 7/Ind/2013 dated 09.05.2013 (ITAT, Indore).

. The DCIT, 1(1), Bhopal vs. M/s. M.P. State Coop. Housing Federation Society, Bhopal for A.Ys. 2010-11, 2011-12 and 2012-13 in I.T.A.Nos. 560, 607/Ind/2014 and 02/Ind/2016

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dated 04.10.2016 (ITAT, Indore).

The ACIT, 1(1), Bhopal vs. M/s. M.P. State Coop. Housing Federation Society, Bhopal for A.Y. 2013-14 in I.T.A.No. 1051/Ind/2016 dated 27.03.2017 (ITAT, Indore.)”

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5.4 *On identical issue has also been decided by ITAT, Indore Bench for the assessment years 2003-04, 2006-07 and 2007-08 in the case of the appellants themselves. While deciding the appeal of the assessee for the assessment-year 2006-07, the Tribunal vide its order dated 21.2.2012 in I.T.A. No. 315/Ind/2011 has held that :-*

“8. The assessee was having income on the deposits with Bank, U.T.I. These deposits were made out of the surplus fund available with the assessee in the intervening period of making the advances and recovery of the loans. The ITAT, Indore Bench has decided in the case cited supra that interest on IDBI Bonds and FDRs qualify for deduction u/s 80P. Even in the case of CIT vs. Karnataka Coop. Bank Limited (supra), the interest on Indira Vikas Patras, Kisan Vikas Patras, UTI and IDBI Bonds was found qualified for deduction u/s 80P. The Hon'ble Supreme Court in the case of Mehsana District Central Coop. Bank Limited vs. ITO, has held that there is nothing in phraseology, of section 80P(2)(a)(i), which makes it applicable only to income derived from working or circulating capital. Even interest income from IVPs has also, held eligible for deduction. Respectfully following the ratio of the Hon'ble Supreme Court and Hon'ble High Courts and also ITAT, we hold that the assessee was eligible for deduction u/s 80P(2)(a)(i) of the Act, on the interest income from fixed deposits with the Banks and interest from S. B. Account, interest on deposits with U.T.I.”

5.5 *Respectfully following all above judicial pronouncements, in the sake of the facts of the case, held that this issue is squarely covered by various decisions of the Tribunal in favour of the assessee wherein it was categorically held that “the interest earned on deposits with bank, FDRs and saving bank accounts is an integral part of business activity of providing credit facilities to its members and, therefore, covered u/s 80P(2)(a)(i) of the Act”. Therefore, all the grounds of appeal filed by the appellants are allowed.”*

6. Therefore, the CIT(A) has passed impugned order in favour of assessee following the view taken by ITAT in earlier years. Ld. DR for revenue though dutifully supported the assessment-order passed by AO but could not show that the decision given by ITAT in earlier years as

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followed by CIT(A) has been reversed by higher forum. Because of this very reasoning, the Co-ordinate Bench of ITAT, Indore has already decided other appeals of assessee being ITA No. 358/Ind/2023 for AY 2017-18 and ITA No. 363/Ind/2023 for AY 2018-19 vide order dated 11.10.2024 and upheld the order of CIT(A). Being so, this Bench is also inclined to uphold the impugned order of CIT(A). Consequently, the same is upheld. The revenue fails in this appeal.

7. Resultantly, this appeal is dismissed.

*Order pronounced by putting on notice board as per Rule 34 of ITAT Rules,
1963 on 29.11.2024*

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated : 29.11.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore