

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.66/CTK/2017
Assessment Year : 2012-2013

Orissa State Co-operative Handicrafts Corporation Limited, D-2/3, Industrial Estate, Rasulgarh.	Vs.	DCIT, Circle 4(1), Bhubaneswar
PAN/GIR No. AAAAO 0096 K		
(Appellant)	..	(Respondent)

Assessee by : Shri Biswa Ranjan Patnaik, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 24 /05/ 2017
Date of Pronouncement : 31/05/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)—
2, Bhubaneswar, dated 30.11.2016, for the assessment year 2012-13.

2. The issue involved in Ground Nos.1,2,3,4 & 5 of the appeal is that the Id CIT(A) erred in not allowing deduction u/s. 80P of the Act on the following income of the assessee:

i)	Interest on fixed with Bank of Baroda	:	Rs.7,05,927/-
ii)	Interest on S.B.A/c. with BOB	:	Rs.2,70,706/-
iii)	Interest on F.D. with OSCB	:	<u>Rs.8,03,082/-</u>
			Rs: 17,79,725/-

3. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. The brief facts of the case are that the Assessing Officer observed that the assessee has created certain reserve funds from year to year and parked its surplus income in the form of fixed deposits in different banks resulting in substantial interest income. Since the funds created by such retention was not required immediately for business purposes, it was invested in specified securities. Therefore, such interest income is actually to be considered as income from other sources instead of income from business as treated by the assessee in its books of account. He observed that the income which is attributable to any of the specified activities u/s.80P(2) is eligible for deduction. In the instant case, the assessee society invested funds not immediately required for business purposes and, therefore, interest on such investments, cannot fall within the meaning of the expression "profit and gains of business" and cannot be attributable to the activities of the society. The Hon'ble apex Court in the case of Totgars Co-operative Sales Society Ltd vs ITO, 322 itr 283 has held that the interest income earned by the co-operatives from the fund created by retention which is not required immediately for business purposes fell under the head "income from other sources" is taxable under section 56 of the I.T.Act, 1961. Therefore, the Assessing officer disallowed deduction u/s. 80P of the assessee of interest income of Rs.7,14,513/- which was enhanced in appeal by the CIT(A) to Rs.17,79,725/-.

4. Similarly, the Assessing Officer observed that the assessee has earned rental income during the year under appeal by letting out of shops and office premises. He observed that as per section 80P(2)(e) the whole of the income derived by co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities is deductible. The term godown and ware houses is very important and Hon'ble Gujarat High Court in the case of CIT vs. Ahmedabad Maskati Cloth Dealers Co-operative Warehouse Society Ltd., (1986) 162 ITR 142 held that there must be a godown or warehouse which should be let out for the purpose as specified in the clause (e) to section 80P(2) of the Income tax Act, 1961. If the godown or warehouse is let out for the purpose of other than storage, processing or facilitating the marketing commodities, the income derived there from by a co-operative society would not be deductible u/s. 80P. Later, the Hon'ble Supreme Court in the case of Udaipur Sahakari Upbhokta Thok Bhandar Ltd vs CIT, 182 Taxman 287 (SC) has held that deduction is available in respect of income derived from the letting out of godowns and warehouses only where the purpose of letting is storage, processing or facilitating marketing of commodities. He observed that in the case of the assessee the rental income earned from letting out shops and office premises and, therefore, is not eligible for deduction u/s. 80P(2) of the Act and hence, disallowed deduction of Rs.15,52,966/-, which was enhanced in appeal by the CIT(A) to Rs.17,79,725/-.

5. On appeal the CIT(A) confirmed the action of the Assessing Officer by enhancing the disallowance under the head interest income and rental income by relying on the following judicial decisions:

- i) Punjab State Co-operative Milk Producers Federation Ltd vs CIT, (2012 20 TAXMANN.COM 834 (P&H)
- ii) Mantola Co-operative Thrift & Credit Society Ltd vs CIT, (2014) 50 taxmann.com 278 (Delhi)
- iii) State Bank of India vs CIT, (2016) 72 taxmann.com 64 (Guj)
- iv) Bihar Rajya Sahkari Bhoomi Vikas Co-operative Bank Ltd vs CIT, (2010) 186 taxmann 54 (Pat)
- v) Kottayam Co-operative Land Mortgage bank Ltd vs CIT, 40 TAXMAN 259(Ker)
- vi) Sindhi Sahiti Multipurpose & Transport Co-operative Society Ltd vs CIT, 214 ITR 232 (MP)

6. Ld A.R. reiterated the submissions made before the lower authorities. He could not point out any specific error in the order of the CIT(A). He submitted that Special Leave Petition has been granted by the Hon'ble Supreme Court against the order of Hon'ble P&H High Court in the case of Punjab State Co-operative Federation of House Building Society Ltd vs CIT, (2016) 76 taxmann.com 99 (SC), wherein, it was held that interest earned by co-operative society by investing surplus funds in short term deposit or interest earned by giving loans to employees for housing and conveyance would not be entitled to section 80P(2)(a) . Further, he submitted that Special Leave Petition has been granted against the decision of Hon'ble Delhi High Court in the case of Mantola Co-operative Thrift & Credit Society Ltd vs CIT (2016) 70 taxmann.com 296 (SC), wherein, it was held that the

co-operative society engaged in providing credit facilities to its members, deposited surplus funds in fixed deposits and earned interest thereon, said interest would be assessable as "income from other sources" and, thus, not eligible for deduction under section 80P(2)(a)(i) of the Act. Thus, the assessee by own submission admits that the decision of above Hon'ble High Courts are against the assessee and there is no decision of Hon'ble Supreme Court reversing the same.

6.1 He also relied on the decision of Hon'ble Delhi High Court in the case of Snam Progetti S.P.A. vs ACIT (1981) 132 ITR 70 (DEL)), wherein, it was held that if the interest income was derived from 'business activity' then the mere fact that it is taxed under a different section will make no difference. The approach to the problem has, therefore, to be disassociated from the section under which the tax is imposed on the form of income.

6.2 In the case of the assessee, it is not in dispute that interest income is earned from fixed deposit with bank and not from any business activity. Hence, the said decision is not applicable to the facts of the assessee's case.

6.3 He further relied on the decision of Hon'ble A.P. High Court in the case of CIT vs. A.P. Industrial Infrastructure Corporation Ltd, 175 ITR 361 (AP), wherein, it was held that receiving and disbursing funds including the government funds, pending disbursement of such funds was placed in bank deposits and interest thereon was held to be business income. In the case of the assessee, it is not in dispute that the assessee has not received any

funds for disbursement from Government which was kept in the bank in the interval between receipt and disbursement. Therefore, this decision is not applicable to the facts of the assessee's case.

6.4 The Ld A.R. further relied on the decision of Hon'ble Calcutta High Court in the case of CIT vs Tirupati Woollen Mills Ltd., 193 ITR 252 (Cal) wherein it was held that the Tribunal had found that the interest arose from utilization of commercial asset. The funds utilized in making fixed deposit with banks were business funds lying temporarily surplus with the assessee. It was therefore assessable as business income and revenue expenditure could be deducted from it. In the case of the assessee, it is not the case of the assessee that interest income was earned out of utilization of business funds lying temporarily surplus with the assessee. Therefore, this case is not applicable to the facts of the assessee's case.

6.5 For the reason given above, I find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and grounds of appeal of the assessee are dismissed.

7. In Ground No.6 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.12,33,626/- made by the Assessing Officer u/s.2(24)(x) of the I.T.Act, 1961.

9. The facts of the case are that the Assessing Officer observed that the assessee has not deposited the employee's contribution to PF by the due date as stipulated under the relevant Act. As per the assessment order, the

Assessing Officer in his order stated that the employee's contribution to PF have been deposited as under:

Head Office

Month	EPF share of the employees	Due date of deposits	Actual date of deposited/credited	No of days delayed
April,2011	96,063	15.05.2011	25.05.2011	10 days
May, 2011	90,605	15.06.2011	22.06.2011	07 days
June, 2011	1,00,329	15.07.2011	22.07.2011	07 days
July, 2011	98,313	15.08.2011	24.08.2011	09 days
August,2011	97,592	15.09.2011	24.09.2011	09 days
Sept., 2011	97,751	15.10.2011	25.10.2011	10 days
Oct., 2011	1,17,935	15.11.2011	26.11.2011	11 days
Nov., 2011	1,18,954	15.12.2011	23.12.2011	08 days
Jan, 2012	1,18,058	15.02.2012	22.02.2012	07 days
Feb., 2012	1,14,050	15.03.2012	27.03.2012	12 days
March, 2012	1,09,650	15.04.2012	10.05.2012	25 days.
Total	11,65,300			

Branch Office

Month	EPF share of the employer	Due date of deposit	Actual date of deposit	No. of day delayed
April, 2011	5,535	15.5.2011	30.5.2011	15
May, 2011	5743	15.6.2011	30.6.2011	15
June, 2011	5455	15.7.2011	3.8.2011	19
July, 2011	5728	15.8.2011	24.8.2011	09
August, 11	5728	15.9.2011	22.9.2011	07
Sept, 11	5702	15.10.2011	27.10.2011	12
Oct, 11	6887	15.11.2011	30.11.11	15
Nov, 11	6887	15.12.2011	12.1.2012	28
Jan 2012	6887	15.2.2012	2.3.2012	16
Feb 2012	6887	15.3.2012	26.3.2012	11
March,12	6887	15.4.2012	7.6.2012	53

Therefore, he disallowed deduction for the same.

10. On appeal, the CIT(A) confirmed the addition made by the Assessing Officer of Rs.12,33,626/- being employee's contribution to PF u/s.2(24)(x) r.w.s. 36(1)(va) on the ground that the employee's contribution was not

deposited within the due date prescribed under the relevant Act but was deposited before filing the return of income u/s.139(1) of the Act.

11. Before me, Id A.R. of the assessee submitted that the employee's contribution was deposited before the due date prescribed u/s.139(1) of the I.T.Act, 1961 and, therefore, the deduction should be allowed.

12. Ld D.R. relied on orders of the lower authorities.

13. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. A perusal of assessment order, it is revealed that the employee's contribution to Provident Fund has been deposited by the assessee before the due date prescribed u/s.139(1) of the Act. I find that the Hon'ble Bombay High Court in the case of CIT Vs. Ghatge Patil Transports Ltd., (2014), 368 ITR 749 has held that employees contribution to PF and ESI is allowable if the same is deposited before the due date of filing of return of income u/s.2(24)(x) r.w.s. 36(1)(va) and 43B of the Act. The Hon'ble Delhi High Court in *CIT Vs. AIMIL Limited [2010] 321 ITR 508 (DEL)* has held that the employees' contribution towards EPF and ESI etc. deposited after the due date but before the time allowed for filing the return u/s.139(1) will not call for any disallowance u/s.36(1)(va). Therefore, I set aside the orders of lower authorities and delete the disallowance of employees contribution to PF of Rs12,33,626/- and allow this ground of appeal of the assessee.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 31 /05/2017 in the presence of parties.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 31 /05/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Orissa State Co-operative Handicrafts Corporation Limited, D-2/3, Industrial Estate, Rasulgarh
2. The Respondent. DCIT, Circle 4(1), Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack