

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "C" KOLKATA**

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1702/Kol/2010 Assessment Year :2005-06

Boinchipota Samabay Krishi Unnayan Samity Ltd., P.O. Ananda Nagar, Dist. Hooghly Pin-712 409 [PAN No.AAAAB 2418 A]	V/s.	DCIT, Circle-1, Hooghly Rupamati Mahal, Khadina More, P.O. Chinsurah, Dist. Hooghly, PIN-712 102
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri V.N.Purohit, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Rajat Kr. Kurel, JCIT, DR
सुनवाई की तारीख/Date of Hearing	07-04-2016
घोषणा की तारीख/Date of Pronouncement	11-05-2016

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal filed by assessee against the order of Commissioner of Income Tax (Appeals)-XXXVI, Kolkata dated 18.05.2010. Assessment was framed by DCIT, Circle-1, Hooghly u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 07.12.2007 for assessment year 2005-06. Grounds raised by assessee are reproduced below:-

"1) That CIT(A) has erred in holding while disposing ground No.1 (as reproduced below) that assessment order does not suffer any legal infirmity, ignoring the fact that the assessee has challenged by this ground

the computing the income at Rs7,31,360/- which is bad in law and not the assessment order.

'That for the facts and under the circumstances the order passed by A.O computing income taxable at Rs.7,31,360/- is bad and also bad in law and liable to be held as such.'

2) That CIT(A) has erred in not considering that additions made by AO while arriving taxable income are not so includable in total income of the assessee under provisions of law applicable to co-operative societies namely net interest on RIP and RD with United bank of India Rs.9,16,971/- as per computation of total income ignoring the fact that assessee in his computation has claimed the said amount as not taxable u/s. 80P of the IT Act, 1961 and in allowing relief of Rs.78,685/- only being difference between Rs.9,95,656/- added by AO as income from deposit mobilization and Rs.9,16,971/- claimed by assessee in his computation as not taxable u/s 80P.

3) That the CIT(A) has further erred in confirming addition of Rs.30,000/- being provision made for Gratuity Fund as per Co-operative Rules & Regulation.

4) That the CIT(A) has further erred in confirming addition on account of alleged stock valuation to the extent of Rs.8,254/-“.

Shri V.N. Purohit, Ld. Authorized Representative appearing on behalf of assessee and Shri Rajat Kr. Kureel, Ld. Departmental Representative appearing on behalf of Revenue.

2. During the course of hearing before us, Ld. AR did not press for ground No.3 & 4 and same stand dismissed as not pressed.

3. The common issue raised by assessee in ground No.1 & 2 is that Ld. CIT(A) erred in not giving relief to the assessee u/s 80P of the Act.

3.1 Facts in brief are that assessee is a Co-operative Society registered under the West Bengal Co-operative Societies Act, 1983 and engaged in distribution of agricultural related materials. During the first appellate proceedings, Ld. CIT(A)

noticed that assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act on the following interest income.

a) <u>From Banks</u>	Rs.	Rs.
UBI-RIP	30,59,884/-	
UBI- RD	<u>7,78,585/-</u>	38,38,469/-
Less: Interest paid		
UBI-RIP	24,40,865/-	
UBI-RD	<u>2,75,616/-</u>	<u>27,16,481/-</u>
		11,21,988/-

The relevant provisions of Sec.80P(2)(a)(i) of the Act reads thus:

Deduction in respect of income of co-operative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.”

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

- (i) carrying on the business of banking or providing credit facilities to its members, or
- (ii) a cottage industry, or
- (iii) the marketing of agricultural produce grown by its members, or
- (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
- (v) the processing, without the aid of power, of the agricultural produce of its members, or
- (vi) the collective disposal of the labour of its members, or
- (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities :

The CIT(A) treated the interest income as “income from other sources” and accordingly denied the benefit of deduction u/s 80P(2)(a)(i) of the Act without

adducing any reason thereon. According to the assessee, it was giving loans to agriculturists who are members of the society. Therefore interest income was part and parcel of the activity of either banking or providing credit facilities to members. This contention was not accepted by the CIT(A).

4. Aggrieved by the order of CIT(A) the assessee is in appeal before the Tribunal.

5. At the time of hearing Ld. AR for the assessee filed a copy of order rendered by this Tribunal in the case of *Rupnarayanpur Samabay Krishiunnayan Samity Ltd. Vs ACIT* in **ITA No.07/Kol/2014** dated 09.12.2015. In the aforesaid case the identical question as to whether interest income had to be regarded as income from “business” or “income from other sources” had come up for consideration. The assessee in the aforesaid decision accepted loans and deposits from its members and utilized the same towards providing loans and credit facilities to its members. However, excess funds were utilized in making deposits in banks and investments. The Tribunal relying upon the decision rendered by the Hon’ble jurisdictional High Court in the case of *CIT vs South Eastern railway Employees Co-operative Credit Society* in **G.A.No.1838 of 2010** dated 22.07.2010 came to the conclusion that interest income has to be regarded as income from business of banking and is entitled for deduction u/s 80P(2)(a)(i) of the Act. The Tribunal had also distinguished the decision rendered by the Hon’ble Supreme Court in the case of *Totgar’s Co-operative Sale Society Ltd vs ITO 188 taxmann. 282 (SC)*. The following observations of the Hon’ble Tribunal read as under :-

“7.1. We further find that the issue involved is covered in favour of the assessee by catena of decisions of the Tribunal in assessee’s own case. These decisions are also affirmed by the Hon’ble Jurisdictional High Court in its order for A.Yr.2005-06. In this order the Hon’ble Jurisdictional High Court has considered all the relevant orders and has decided the issue in favour of the assessee. We may gainfully reproduce the operative order of the Jurisdictional High Court which is as under :-

“We have gone through the impugned judgment and order of the Learned Tribunal. It appears that the point involved .is whether interest earned out of the investment earned by the assessee cooperative can be treated to be the income arising out of business activity or from other sources in order to apply the provision of Section 80P(2)(a)(i) of the I.T. Act. It is an undisputed factual position that similar issue arose before the Commissioner of Income Tax (Appeal) in relation to the assessment year 1998-99 to 2002-2003 as also for the assessment year 1995-96 and 1996-97. Then again in relation to the assessment years 2003-04 and 2004-05 a similar point arose. The Learned Tribunal in relation to the assessment years 1998-99 to 2002-2003 by order dated 10.11.2006 in ITA Nos. 840 to 844/Kol/2006 and again by order dated 29.12.2006 in relation to assessment years 2003-04 and 2004-05 has deleted the disallowance made in those assessment years and it was held that the interest earned by the assessee cooperative society from its short term and fixed deposits with the banks and other institutions were disallowed on the ground that this income was not business profit of the assessee society but was income from other sources. The Ld. Tribunal has also held that income from investment in banks and other financial institutions is the business income of the assessee society and it is eligible to get deduction under Section 80P(2)(a)(i). The Tribunal has overruled the decisions rendered against the assessee in relation to assessment years 1995-96 and 1996-97 on the same issue in relation to subsequent years.

It was found by the Tribunal while affirming the order of the Commissioner of Income Tax (Appeal) that there is no change in the facts and circumstances of this case and it was held that the assessee was eligible for deduction under Section 80P(2)(a)(i) on interest on investment amounting to Rs.1,18,07,645/- in this assessment year also. Since the Tribunal found that this decision of the Tribunal was followed by CIT(A) there is no reason to take a different view.

Under these circumstances, we feel that when the Commissioner of Income Tax (A) as well as the Tribunal has followed the earlier unchallenged decision no question of law is involved in this matter. Nothing has been produced before us to show subsequent decision of the Tribunal in relation to the assessment years 1998-99 to 2002-03 and 2003-04 have been challenged by any of the parties before this Court.

It is submitted by Mr.Bhowmick that there has been challenge of the decision in relation to assessment years 1995-96, 1996-97 and the same is pending before this Court we think that challenge of the assessee has now become redundant as the earlier view taken in both the assessment years have been reversed by the Tribunal by its subsequent decision. Hence, the pendency of that earlier matter is of no consequence in this matter. Had there been a challenge of the decision of the Tribunal in relation to the assessment years 1998-99 to 2002-03 and also 2003-04 to 2004-05 the matter would have been different. The revenue did not take any step whatsoever. Therefore, we presume the revenue has accepted the subsequent view of the Tribunal and the same now hold the field right now.”

7.2. Considering the above we find that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in assessee's own case. In this regard we would like to place reliance upon the decision of the Hon'ble Apex Court in the case of CIT vs Excel Industries 358 ITR 295 wherein the principle of consistency has been reiterated. Hence when the issue has been decided by the Jurisdictional High Court no convincing reason has been pointed to take a different view, any deviation is not permitted.

7.3. Now we come to the case laws relied upon by the Id. CIT(A). As regards the decision of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. (supra) we find that the said decision is not applicable in the facts of the case. We find that the Hon'ble Apex Court in the said decision in para 11 has itself mentioned that **"We are confining the judgment to the facts of the present case"**. The facts of the case were that assessee's business was to provide credit facilities to its members and to market their agricultural produce. In many cases assessee retained sale proceeds of members whose produce was marketed by it and since funds created by such retention were not required immediately for business purposes, it invested same in specified securities and earned interest income. In these circumstances the Hon'ble Apex Court had held that interest earned would come in category of **Income from other sources**' taxable u/s 56 of the Act and would not qualify for deduction as business income u/s 80P(2)(a)(i). From the above it is amply evident in the present case the assessee has not retained any amount due to its members and instead of paying the same had invested the same and earned interest. Thus this case law is not applicable on the facts of the present case.

7.4. As regards the decision of Hon'ble Patna High Court in the case of Bihar Rajya Sahkari Bhoomi Bikash Co-op. Bank Ltd. (supra) the same is also not applicable to the facts of the present case. In that case the question was the treatment of interest earned on provident fund and rental income as attributable to banking business and this qualifying for deduction u/s 80P(2)(a)(i) of the Act.

7.5. In the background of the aforesaid discussion and precedent we hold that the issue is squarely covered in favour of the assessee by the decision of the Tribunal and the Jurisdictional High Court in assessee's own case. The decision relied upon by the Id. CIT(A) are not applicable in the facts of the case. The principle of consistency as conveyed by the Hon'ble Apex Court mandates that the Revenue does not take a different stand. Accordingly we set aside the orders of the authorities below and decide the issue in favour of the assessee."

Respectfully following the above decision of Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd. (supra) and taking down the fact that interest income in the present case is identical to the interest income received by the assessee in the decision referred to above. We hold that the assessee is entitled to deduction u/s 80P(2)(a)(i) of the Act in respect of the interest income. In this

view of the matter, we reverse the order of Ld. CIT(A) and the common grounds of assessee are allowed.

6. In the result, assessee's appeal stands partly allowed.

Order pronounced in the open court 11/05/2016

Sd/-
(S.S.Vishwanethra Ravi)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 11/05/2016 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Boinchipota Samabay Krishi Unnayan Samaity Ltd., P.O. Ananda Nagar, Dist. Hooghly, Pin-712 409
2. प्रत्यर्थी/Respondent-DCIT, Circle-1, Hooghly Rupamati mahal, Khadina More, P.O. Chinsurah, Dist. Hooghly, Pin-712 102
3. संबंधित आयकर आयुक्त / Concerned CIT Hooghly
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।