

**FIN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(E-Court Module)

ITA No. 4078/Del/2019 : Asstt. Year : 2012-13

ITA No. 6935/Del/2018 : Asstt. Year : 2013-14

ITA No. 2036/Del/2019 : Asstt. Year : 2014-15

The Mantola Cooperative Thrift & Credit Society Ltd., 541, Mantola, Phar Ganj, New Delhi-110055	Vs	Income Tax Officer, Ward-62(5), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAJ1T1976A		

Assessee by : Sh. Gaurav Jain, Adv.

Revenue by : Ms. Rakhi Vimal, Sr. DR

Date of Hearing: 22.06.2020

Date of Pronouncement: 27.07.2020
--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the order of the Id. CIT(A)-18, New Delhi dated 06.03.2019 for A.Y. 2012-13, order of the Id. CIT(A)-27, New Delhi dated 17.08.2018 for A.Y. 2013-14 and order of the Id. CIT(A)-20, New Delhi dated 18.12.2018 for A.Y. 2014-15.

2. In ITA No. 4078/Del/2019, following effective grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the CIT(A) erred in upholding action of the assessing officer in sustaining disallowance of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961

("the Act") to the extent of Rs. 1,90,90,288 claimed on interest income earned from investment of funds in commercial banks and cooperative banks/societies on the ground that such interest income is not eligible for deduction under that section.

2. Without prejudice that the CIT(A) erred on facts and in law in not alternatively allowing deduction to the extent of Rs. 1,83,33,282 under section 80P(2)(d) of the Act on interest income earned from deposits made with cooperative societies/banks."

3. In ITA No. 6935/Del/2018, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the CIT(A) erred in upholding the action of the assessing officer in disallowing deduction of Rs. 68,38,319 under section 80P(2)(a)(i) of the Income Tax Act, 1961 ("the Act") on the ground that interest income of Rs. 1,82,03,792 earned from fixed deposits/investments with co-operative banks/societies is not derived from business and was taxable under the head 'income from other sources', which is not eligible for deduction under that section.

2. Without prejudice, that on the facts and circumstances of the case, the CIT(A) erred in holding that the interest income of Rs. 1,82,03,792 received from deposits made with co-operative banks/societies was eligible not, in the alternate, for deduction under section 80P(2)(d) of the Act.

3. Further without prejudice, on the facts and circumstances of the case, the CIT(A) erred in law in not adjudicating ground of appeal challenging the action of the assessing officer in not allowing deduction of proportionate interest and other expenses, attributable to interest income earned from deposits with cooperative bank/societies, under section 57 of the Act against interest income of Rs. 1,82,03,792 brought to tax under the head income from other sources, without appreciating that similar

deduction was upheld by the appellate authorities in the earlier assessment years.

3.1 That on the facts and circumstances of the case, the CIT(A) erred in not appreciating that, if the netting off of proportionate expenses was allowed against interest income of Rs. 1,82,03,792, the appellant was eligible for deduction of Rs. 45,87,814 under section 80P(2)(a)(i) with respect to interest earned from loans advanced to members, which was clearly/undisputedly eligible for deduction under that section."

4. In ITA No. 2036/Del/2019, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the CIT(A) erred in upholding the action of the assessing officer in sustaining disallowance of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 ("the Act") to the extent of Rs. 17,74,635 on the ground that such interest income is not eligible for deduction under that section.

2. Without prejudice that the CIT(A) erred on facts and in law in not alternatively allowing interest of Rs. 17,51,780 (net) earned from deposits made with cooperative societies/banks under section 80P(2)(d) of the Act.

2.1 That on the facts and circumstances of the case, the CIT(A) erred in upholding the action of the assessing officer in making disallowance of deduction under section 80P and dismissing the ground raised by the appellant, despite holding in para 6.1.8 that the interest received from deposits made with co-operative banks/societies is eligible for deduction under section 80P (sic section 80P(2)(d)) of the Act."

5. Since, the issues involved in all these appeals are common, they were heard together and are being disposed off by common order. The relevant data is as under:

Table 1

Particulars	AY 2012-13	AY 2013-14	AY 2014-15
Income earned from members	369,93,244	384,54,406	380,39,196
Interest from Co-operative Societies (Bank)	183,33,282	182,03,792	186,15,316
Interest from Schedule Commercial Banks & Misc Income	8,75,951	6,59,626	1,25,283
Total Income earned	562,02,477	573,17,824	567,79,795
Total interest paid on deposits to members	314,00,043	324,30,415	329,75,423
Total overhead expenses	175,31,351	195,03,420	190,72,615
Total disallowance	15,28,066	14,54,330	6,81,174
Total taxable income	87,99,149	68,38,319	54,12,931
Deduction claimed in return of income - 80P(2)(a)(i)	87,99,149	68,38,319	54,12,931
Tax demand if deduction u/s 80P(2)(a)(i) is restricted to income earned from members only	80,77,256	76,45,770	84,00,520
Alternate claim of deduction considering deduction under section 80P(2)(d) (As per HC order in assessee's own case)	86,62,009	67,59,622	54,00,987
Tax Payable	39,286	21,227	1,430

Total tax payable

61,943

Tax already paid

35,00,000

Table 2

Assessment Year	Gross Interest income earned	Income earned from investment with cooperative banks/societies	Income earned from investment with commercial Banks	Income earned from members on loans granted
2012-13	5,62,02,477	1,83,33,282	7,57,006	3,69,93,244
2013-14	5,73,17,824	1,82,03,792	6,59,626	3,84,54,406
2014-15	5,67,79,795	1,86,15,316	1,25,283	3,80,38,156

ITA NO. 4078/Del/2019 Assessment Year 2012-13**Deduction u/s 80P(2)(a)(i):**

6. During the year the assessee has shown interest income of Rs. 1,90,90,288/- on FDRs and deposits in non-member Co-operative Banks and commercial banks. This interest income from banks has been claimed as deduction u/s 80P of the Act. The AO has stated that any income earned by a co-operative society other than from the business of providing credit facilities to its members, is not entitled for deduction u/s 80P. Therefore, the AO has disallowed deduction u/s 80P for an amount of Rs. 1,90,90,288/- in respect of the above-mentioned interest on bank deposits and has treated the said interest as income from other sources.

7. The AO also held that as per the provisions of section 80P including the insertion of sub section (4) in this section w.e.f. 01.04.2007 according to which Co-operative Banks have been excluded from the applicability of section 80P of the Act and accordingly, the interest income earned by the Co-operative Societies from deposits made in Co-operative Banks is also not eligible for deduction u/s 80P(2)(d) of the Act. The AO has further held that the principle of mutuality is not applicable and noticed that the interest earned from bank deposits does not satisfy this principle and therefore, the interest income earned from bank deposits is taxable and is not entitled for deduction u/s 80P of the Act. Accordingly, the AO has made the addition by disallowing this deduction in respect of the interest earned from bank deposits. While doing so, the AO relied upon the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO [2010] 188 taxman 282 .

8. The Id. CIT (A) confirmed the action of the Assessing Officer. Further, the matter travelled upto the Hon'ble Jurisdictional High Court of Delhi wherein the Hon'ble Court has held that the assessee is not eligible to claim deduction u/s 80P(2)(a)(i) on the interest earned from the fixed deposits made out of the surplus funds. Section u/s 80P(2)(a)(i) reads as under:

"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 asses see.

(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...

The whole of amount of profits & gains of business attributable to anyone are more of such activities."

9. Since, it has been held by the Hon'ble High Court that the assessee is a thrift & credit society and its functions should not be constituted as "banking". The Hon'ble High Court has clearly held that the assessee is not a banking company and the expression "business of banking" cannot be given a spacious meaning to unrealistically expand the term beyond, the assessee is not eligible for deduction u/s 80P(2)(a)(i).

10. Accordingly, we hereby hold that the interest earned from the fixed deposits made out of the surplus funds is not eligible for the claim of deduction u/s 80P(2)(a)(i).

Deduction u/s 80P(2)(d):

11. Having found itself ineligible for deduction u/s 80P(2)(a)(i), the assessee submitted an alternative plea for deduction u/s 80P(2)(d). The said section reads as under:

"Section 80P(2).....

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income."

12. The Id. AR argued that the assessee is registered under Delhi Co-operative Societies Act and as per the straight provisions of the Act, the assessee is eligible for deduction on the interest or dividends derived by its investments with other co-operative societies. It was argued that the assessee has earned interest amount of Rs. 1,83,33,282/-. It was also argued that the co-operative bank are primarily co-operative societies which are in the business of banking are providing credit facilities, hence the assessee is rightly eligible for the deduction u/s 80P(2)(d).

13. The Id. DR opposed the arguments of the assessee and argued that it is against the spirit and intent of the Hon'ble Supreme Court judgment in the case of Totgars Co-operative Sale Society Ltd. 322 ITR 283.

14. Heard the arguments of both the parties and perused the material available on record.

15. Having decided the matter in the issue of Section 80P(2)(a)(i), the claim of the assessee for deduction u/s 80P(2)(d) is viewed *de novo*.

16. We have given a thought to consider whether the co-operative bank wherein the assessee made deposits out of this surplus fund be considered as a co-operative society, for if a co-operative bank is considered to be a co-operative society than only the interest earned by the assessee on the deposits would be eligible for deduction u/s 80P(2)(d). We find that co-operative society is a broad and larger umbrella under which the co-operative banks do perform. All co-operative societies may not be banks but all co-operative banks are deemed to be co-operative societies. According to banking Regulations Act, a co-operative society bank as the same meaning of the co-operative society.

17. Further, we have also given a thought as to the interest earned by the surplus funds. As per the Income Tax Act, there is no such stipulation or prerequisite as to the nature of the funds. So far as the principles of interpretation to a taxing statute is concerned, we derive it from Cape Brandy Syndicate Vs IRC 1 KB 64 as quoted by the Hon'ble High Court of Punjab & Haryana, Hon'ble J Iqbal Singh that

"In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be

read in, nothing is to be implied. One can only look fairly at the language used."

18. Thus, we also find that Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the investment because this section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. The revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise.

19. We have also considered the case of Totgars Co-operative Sale Society Ltd. 322 ITR 283 relied upon by the Id. DR and find that the Hon'ble Supreme Court has deliberated on the issue of deduction u/s 80P(2)(a)(i) but not on Section 80P(2)(d). We also observed that in the case of Totgars Co-operative Sale Society Ltd. itself the Hon'ble High Court of Karnataka has allowed the claim of deduction u/s 80P(2)(d) vide order dated 05.01.2017.

20. Hence, keeping in view the provisions of the Act and the judgments of the Hon'ble High Court and Supreme Court in the case of Totgars Co-operative Sale Society Ltd., we hereby hold that the assessee is eligible for deduction u/s 80P(2)(d) on the income earned by the way of interest from the co-operative societies.

Expenditure - u/s 57:

21. The assessee has taken a plea that the expenditure incurred in earning of interest from the commercial banks be allowed while computing the taxable income. The provision of Section 57 reads as under:

"Section 57: The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:—

(i) in the case of [dividends, 94[other than dividends referred to in section 115-O,]] [or interest on securities], any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend [or interest] on behalf of the assessee;

[(ia) in the case of income of the nature referred to in sub-clause (x) of clause (24) of section 2 which is chargeable to income-tax under the head "Income from other sources", deductions, so far as may be, in accordance with the provisions of clause (va) of sub-section (1) of section 36 ;]

*(ii) in the case of income of the nature referred to in clauses (ii) and (iii) of sub-section (2) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of section 30, section 31 and [sub-sections (1) [***] and (2)] of section 32 and subject to the provisions of [section 38];*

[(iia) in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or [fifteen] thousand rupees, whichever is less.

Explanation.—For the purposes of this clause, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death ;]

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;

[(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section.]”

22. Having heard the arguments, we hereby direct that the Assessing Officer shall allow the expenditure incurred in relation to earning of interest from the commercial banks.

23. In conclusion,

- a. The assessee being a co-operative society not involved in banking operation is not eligible for deduction u/s 80P(2)(a)(i).
- b. The assessee being a co-operative society is eligible for deduction u/s 80P(2)(d) on the interest earned from other co-operative societies.
- c. The assessee is eligible for the expenditure u/s 57 incurred in earning the interest income which is taxable under the head “income from other sources” as per Section 56.

24. In the result, all the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 27/07/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 27/07/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR