

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, AM
AND
SHRI PRASHANT MAHARISHI, AM

ITA No. 3518/Mum/2023
(Assessment Year: 2017-18)

ITA No. 3519/Mum/2023
(Assessment Year: 2013-14)

Indian Oil Employees Welfare
Cooperative Society Ltd.
G-9, Aliyavar Jung Marg
Bandra (East),
Mumbai-400 051
(Appellant)

ACIT 23(1)
Room No.113, 1st Floor,
Vs. Matru Mandir Tardeo Road,
Mumbai-400 007
(Respondent)

PAN No. AAAAI1298K

Assessee by : Shri Viraj Mehta
Revenue by : Shri H.M. Bhatt, DR

Date of hearing: 21.02.2024
Date of pronouncement : 22.02.2024

ORDER

PER BENCH:

01. These are the two appeals filed by Indian oil employees' welfare cooperative society Ltd, Mumbai (the assessee/appellant) for assessment year 2013 – 14 in ITA number 3519/M/2022 and ITA number 3518/M/2022 for assessment year 2017 – 18 involving identical issue and therefore decided by this common order.
02. ITA No. 3518/mum/2023 filed by the assessee against the appellate order passed by the National faceless appeal Centre, Delhi (the learned CIT – A) for assessment year

2013 – 14 dated 16/8/2023 wherein the appeal filed by the assessee against the assessment order dated 17/12/2019 passed under section 143 (3) read with section 147 of the income tax act, 1961 (the act) by ACIT Circle 23 (1), Mumbai (the AO), was dismissed.

03. Assessee raised following grounds of appeal: –

"1. On the given facts, circumstances and judicial pronouncements, CIT (Appeals) erred in confirming the action AO in denying deduction of u/s 80P of Rs. 81,48,348/- as claimed by the assessee while filing the Return of Income for A.Y. 2017-18. Such action of CIT (A) to deny the deduction u/s 80P is bad in law and deduction be thereby directed to be allowed.

2. On facts and circumstances, Ld. CIT (A) has erred in confirming the addition without providing proper opportunity of hearing which is against the principle of natural justice. Such addition is bad in law and erroneous in facts and liable to be deleted as the same is confirmed without providing proper opportunity of hearing.

3. The Appellant craves leave to add, alter, rescind or amend any of the above grounds of appeal."

04. Fact shows that assessee is a co-operative society primarily engaged in making suitable arrangements for prompt payment to beneficiaries of diseased employees of Indian oil Corp. It accepts any amount or deposits from



- members only and it pays interest to its members on credit balance standing on the last day of financial year.
05. Assessee filed its return of income on 27 September 2013 at a total income of ₹ 10,622,078/- after claiming deduction of ₹ 7,645,872/- showing net taxable income of ₹ 2,976,210. Return was picked up for scrutiny. The assessment was completed on 17 December 2019 assessing the total income of the appellant at ₹ 1,06,22,018 against the returned income of ₹ 2,976,210/- where the deduction of ₹ 7,645,872/- was disallowed.
06. The disallowance was with respect to the fact that assessee has received income in the form of fixed deposit interest of ₹ 7,595,579 from cooperative bank and savings bank interest of ₹ 293/-. Assessee also claim standard deduction under 80 P (2) (c) of ₹ 50,000/- thus the aggregate deduction was claimed under section 80 P of ₹ 7,645,872/-.
07. The claim of the assessee is that assessee is a co-operative society registered under the Maharashtra cooperative societies act, 1960 and interest received by the appellant from the cooperative banks which are registered under the cooperative society act is deductible under section 80 P (2) (D).
08. However, the learned AO did not agree with the assessee and disallowed the above deduction.
09. On identical facts and circumstances, the disallowance was made for assessment year 2014 - 15 and 2015 - 16. For



both the above years the learned CIT – A has decided the issue in favour of the assessee.

010. However, the learned assessing officer disallowing impugned deduction passed an assessment order on 30 December 2019.

011. Assessee preferred an appeal before the learned CIT – A. He passed an order on 16/8/2023 holding that honourable Supreme Court in Maviyelli cooperative bank has held that the profits attributable to the nonmember are not eligible for deduction under section 80 P (2) (a) of the act. With respect to the deduction under section 80 P (2) (d), the learned CIT – A held that in the Totagars cooperative sale societies versus income tax officer in 188 taxmann.com 282 Supreme Court has held that deduction is also not allowable under section 80P (2) (a) of the act. Therefore it was held that interest income from deposits With scheduled banks and cooperative banks are to be taxed under the head income from other sources, as nature of income shows that it cannot be charged to business income and therefore the assessee is not entitled to the benefit of deduction under 80 P (2) (a) (i) or under section 80 P (2) (d) of the act in respect of interest income earned out of investment made with the cooperative bank. Accordingly, the appeal of the assessee was dismissed and assessee is in appeal before us.

012. Similarly, for assessment year 2017 – 18 assessee filed its return of income on 4/10/2017 declaring total income of ₹ 3,345,340. The return was processed under section 143

(1) of the act and selected for the scrutiny. During this year the assessee has declared gross total income of ₹ 11,543,690/- and has claimed deduction under section 80 P (2) (d) of the act for bank interest received from cooperative banks and nationalized Bank amounting to ₹ 8,148,348/- and other income of ₹ 50,000.

013. The learned assessing officer on the same grounds held that assessee is not eligible for deduction under section 80 P (2) (d) of the act for ₹ 8,148,348. The same was disallowed and assessment order was passed under section 143 (3) of the act on 7/12/2019. The assessee challenged the same before the learned CIT – A who passed an order on 16/8/2023 on similar lines and dismissed the appeal of the assessee. Therefore, assessee is in appeal.

014. The only issue in both these appeal is whether the assessee is entitled to deduction of interest income received from cooperative bank under provisions of section 80 P (2) (a) of the act or 80 P (2) (d) of the act or not.

015. Before us, the assessee has filed detailed paper book containing 368 pages for assessment year 2013 – 14 and 278 pages for assessment year 2017 – 18. Assessee was heard.

016. Learned Departmental representative supported the orders of the lower authorities.

017. We have carefully considered the rival contention and perused the orders of the learned lower authorities. The



only issue in this appeal is whether the assessee Indian oil employees welfare cooperative societies Ltd is eligible for deduction of bank interest earned from cooperative banks under section 80 P (2) (d) or (a) of the act or not.

018. Assessee is a co-operative society primarily engaged into arranging for prompt payment to beneficiaries of diseased employees. In addition, arrangements have been made to refund the welfare Society dues to employees who ceases to the member of the society due to superannuation, voluntary retirement, termination, resignation etc. For these purpose contribution towards capital in monthly deduction from salary and subscription to the society is made by the members. Such surplus is kept by the assessee with the cooperative banks and interest thereon is earned.
019. According to the provisions of section 80 P, wherein case of an assessee being a co-operative society the gross total income includes any income referred to in subsection (2) it shall be deducted in accordance with and subject to the provisions of the section in computing the total income of the assessee. According to subsection (2) in case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its member is eligible for deduction of the whole of the amount of profits and gains of business attributable to anyone or more of such activities. The claim of the revenue authorities is that the amount of interest earned by this entity is not the business income of the assessee and

therefore, the interest income does not fall into the amount of profits and gains of business attributable to the activities of the society. Therefore the deduction under section 80 P (2) (a) of the act is denied. However, we find that if the assessee is a co-operative society, then according to subsection 2 (d) in respect of income earned by way of interest or dividends received by the cooperative society from its investment with any other cooperative society, then the whole of such income is deductible. According to the provisions of subsection (4), the provision of section 80 P shall not apply in relation to any cooperative bank or any other specified cooperative society. That means according to this provisions the deduction is not allowable to these entities i.e. Cooperative banks. Assessee is not a cooperative bank. Admittedly, the office of Central registrar of cooperative societies, New Delhi has issued a certificate of registration to the assessee registering it under section 11 of The Multistate Cooperative Societies Act, 2002. Therefore, it is not an issue in dispute that whether the assessee is a co-operative society or not. Accordingly, the income earned by a co-operative society by way of interest derived by from its investment with any other cooperative society, then the whole of such income is deductible. Further the amount of interest received by the assessee from the different cooperative banks; it is not the claim that those banks are also not cooperative societies. It is agreed that those are also the cooperative bank in terms of The Banking Regulation Act, 1949. Therefore even if it is



accepted that bank interest on from cooperative banks by the assessee is not the income from the business of the assessee and therefore the claim of the assessee fails under section 80 P (2) (a) of the act, but the claim is still allowable and therefore cannot be denied under section 80 P (2) (d) of the act. This issue is also covered in favour of the assessee by the decision of the honourable Supreme Court in case of Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. [2023] 154 taxmann.com 305 (SC)/where the deduction was allowable to the state level agricultural and rural development bank, was engaged in providing credit facility to its members . The case of the assessee is on far better footings that these are society of only the employees of Indian oil Corporation. In view of the above facts, we direct the learned lower authorities to allow the deduction to the assessee on interest income earned from various cooperative banks under section 80 P (2) (d) of the act.

020. Accordingly, both the appeals of the assessee are allowed.

Order pronounced in the open court on 22.02.2024.

Sd/-
(AMIT SHUKLA)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.02.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai