

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 3114/Mum/2023
(Assessment Year: 2013-14)

ITA No. 3115/Mum/2023
(Assessment Year: 2014-15)

ITA No. 3116/Mum/2023
(Assessment Year: 2017-18)

ITA No. 3117/Mum/2023
(Assessment Year: 2018-19)

ITA No. 3118/Mum/2023
(Assessment Year: 2020-21)

Reserve Bank Staff and Officers
co-op credit society Ltd.
2nd Floor, Amar Building,
Sir P.M. Road,
Fort, Mumbai-400 001

(Appellant)

Vs.

Income Tax Officer,
Ward, 26(1)(1),
Mumbai-400 051

(Respondent)

PAN No. AAAAR0178F

Assessee by : Mr. Siddesh Mayekar, AR
Revenue by : Smt. Mahita Nair, DR

Date of hearing: 09.01.2024

Date of pronouncement 22.01.2024

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ORDER

PER BENCH:

01. These are the appeals filed by the assessee for A.Ys. 2013-14, 2014-15, 2017-18, 2018-19 and 2020-21 involving the identical issue of allowability of deduction under Section 80P(2)(a) or 80P(2)(d) of the Income-tax Act, 1961 (the Act) of interest income earned by the assessee from the co-operative banks. All these appeals have identical facts. Therefore, disposed off by this common order.

02. Grounds in ITA No. 3114/Mum/2023 for A.Y. 2013-14:-

"1. On facts and in circumstances of the case and in law, the learned The Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [hereinafter referred to as learned CIT(A)] erred in passing the Order u/s. 250 of the Income-tax Act, 1961 (the Act) without appreciating the facts, submissions, documents and case law placed on record

2. Validity of reopening of assessment

2.1. The learned CIT(A) erred in upholding the validity of reopening of assessment even though there was no reason to believe that the income has escaped assessment and the assessment was reopened merely on the basis of audit objection.

2.2. The learned CIT (A) erred in upholding the validity of reopening of assessment even though the assessment was reopened due to change of opinion,

without obtaining any fresh material on record or fresh enquiry or application of mind.

2.3. The learned CIT (A) also erred in holding that not providing reasons recorded for reopening of assessment has no relevance on the validity of the reassessment proceedings.

2.4. The learned CIT(A) erred when he ignored that the assessment was reopened on the basis of approval granted by Principal CIT-17, Mumbai in mechanical manner without any application of mind.

3. Deduction u/s. 80P

3.1. The learned CIT(A) erred when he confirmed the stand taken by the learned AO that only the income received from the members will be eligible for deduction u/s. 80P(2)(a) of the Act despite the fact that the entire income of the Appellant was attributable to the activity of providing credit facility to its members.

3.2. The learned CIT (A) erred when he, while accepting the judgment of Hon Supreme Court holding that interest income received by the co-operative society from co-operative banks is eligible for deduction u/s. 80P(2)(d) of the Act is applicable to the Appellant, added directive that only interest income from co-operative banks without banking licence will be eligible for such deduction even though there is no such directive or finding in the Order of Hon. Supreme Court.

3.3. *The learned CIT (A) erred when he ignored the fact that for a co-operative society to be considered as co-operative bank, it is required to have banking licence issued by Reserve Bank of India and co-operative society without banking licence cannot be considered as bank.*

3.4. *The learned CIT (A) erred when he failed to follow the principle laid down by the Order of Hon. Supreme Court that co-operative banks are also co-operative societies and income derived by a co-operative society from its investment held with a co-operative bank would be entitled for claim of deduction u/s. 80P(2)(d) of the Act.*

3.5. *The learned CIT(A) erred when he dismissed the Appellant's contention that precedent set by the Department in the Appellant's own cases in the earlier assessment years has not been followed.*

3.6. *The learned CIT(A) erred when he passed the Order merely two days after the Appellant made its final submission thereby disposing off appeal injudiciously without following the judgment of Hon. Supreme Court.*

Prayer to amend grounds of appeal

4. *The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of appeal at any time before or at the time of hearing."*

03. The facts as called out from A.Y. 2013-14 shows that assessee filed its return of income on 27th September, 2013, declaring

total income at ₹ nil. The case was selected for scrutiny and was assessed under Section 143(3) of the Act on 29th March, 2016, at the assessed income of ₹5,98,430/-. Later on, it was found that assessee has claimed deduction under Section 80P(2) of the Act on interest income amounting to ₹257,97,789/- and same was allowed. Therefore, the learned Assessing Officer was of the view that assessee has earned income from co-operative bank and not from co-operative societies on which deduction under Section 80P(2)(d) of the Act is not available and therefore, notice under Section 148 of the Act was issued on 31st March, 2019. The assessee reiterated its return of income on 15th April, 2019. During the course of hearing, the assessee was given a show cause notice stating that in the computation of total income assessee has claimed deduction under Section 80P of the Act on interest income from co-operative banks amounting to ₹257,97,789/-, which is not allowable. The assessee objected to the reopening of the assessment as well as contested the same on merit. The learned Assessing Officer rejected both and denied the deduction under Section 80P (2) (a) as well as (d) of the Act. Accordingly, the assessment order under Section 147 read with section 143(3) of the Act, wherein the learned Assessing Officer held that assessee is a primary co-operative bank and therefore, it is clearly not eligible for deduction under Section 80P(2)(a)(i) of the Act in view of the specific provisions of Section 2(24)(viia) read with explanation under Section 80P(4) of the Act with effect from 1st April, 2007. He also denied deduction under Section 80P (2) (d) of the Act. The total income of the assessee computed at ₹263,96,220/-.

04. Aggrieved assessee preferred an appeal before the learned CIT (A). It was contested that assessee is eligible for deduction under Section 80P(2)(d) of the Act.
05. The learned CIT (A) held assessee is eligible for claim of deduction under Section 80P (2) (d) of the Act, in view of the decision of Hon'ble Supreme Court in 123 taxmann.com 161 and allowed the deduction. He further directed the learned Assessing Officer to assess the interest earned on the deposits held with schedule bank/ co-operative banks holding license issued by the Reserve Bank of India, Commercial Bank and Financial Institutions under the head income from other sources. Accordingly, the appeal of the assessee is partly allowed.
06. The assessee is aggrieved on the issue of reopening of the assessment holding that the assessment was reopened due to change of opinion and in absence of any tangible material it also challenges the approval granted by the learned Pr. CIT in mechanical manner and without application of mind.
07. The assessee is also aggrieved with the learned Assessing Officer and learned CIT (A) holding that under Section 80P(2)(a) of the Act only the interest income received from the members would be eligible for deduction. The assessee is also aggrieved by the direction of the learned CIT (A) that interest income earned from co-operative bank without banking license only would be eligible for such deduction. It is further stated that there is no such directive or finding in the decision of the Hon'ble Supreme Court. The claim is also that a co-operative society to be considered as a co-operative banks is mandatorily require to have license issued by Reserve Bank of India and a



co-operative society without banking license cannot be considered as bank.

08. We have heard the rival contentions and perused the orders of the lower authorities. The facts clearly show that assessee is a co-operative credit society engaged in the business of providing credit facilities to its members only. Naturally, it does not have any banking license. Assessee filed return of income originally on 27th September, 2013 at ₹ nil, wherein the entire interest income of ₹263,96,215/- was claimed as deduction under Section 80P of the Act. The assessment under Section 143(3) of the Act was passed on 29th March, 2016 at a total income of ₹5,98,430/-. The addition was made only on account of income received from employees of the society who are not the members of the society; identical issue was decided by the coordinate Bench for A.Y. 2009-10. Meanwhile, notice under Section 148 of the Act was issued against which the return of income was reiterated. The reasons were provided to the assessee on 25th October, 2019. According to those reasons, the assessment is reopened in respect of interest income earned on fixed deposit from co-operative banks. The reasons state that the benefit of deduction under Section 80P(2)(d) of the Act is not available on interest received from investment made with co-operative banks and therefore, such deduction is required to be disallowed. The impugned assessment order is 2013-14, the notice under Section 148 of the Act was issued on 31st March, 2019. There was no tangible material available with the learned Assessing Officer to reopen the concluded assessment year beyond four years. Thus, the reopening has been made merely on reappraisal of facts available in the original assessment proceedings culminating into an

assessment order under Section 143(3) of the Act. Therefore, the assessee succeeds on ground no.1 itself.

09. Even on the merits as the assessee is a co-operative society engaged in carrying on the business of providing credit facilities to its members. The whole of the amount profits and gains of such business attributable to such activities is deductible under Section 80P(2)(a) of the Act. Even otherwise, in respect of any income by way of interest or dividend derived by the co-operative society from its investment with any other co-operative society is also allowable as deduction fully under Section 80P(2)(d) of the Act, the facts are clear that assessee is a co-operative society and co-operative banks are also co-operative societies. The provisions of Section 80P (4) of the Act specifically denies deduction only to co-operative banks. The assessee is admittedly not a co-operative bank. The learned Assessing Officer instead of treating the assessee as credit co-operative society considered the assessee as primary co-operative bank without any basis. In view of the above facts, we hold that interest income earned by the assessee on fixed deposits with the co-operative banks are eligible for deduction under Section 80P(2)(d) of the Act.
010. We also find that honourable supreme court in case of Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. [2023] 154 taxmann.com 305 (SC) where in decision of Mavilayi Service Co-operative Bank Ltd. v. CIT [2021] 123 taxmann.com 161/279 Taxman 75 has also allowed the claim of assesses u/s 80P (2) (d) of the Act. Thus, now the issue is squarely covered in favour of the assessee.
011. In view of this on both the grounds of reopening as well as on the merits the orders of the lower authorities are reversed and

the learned Assessing Officer is directed to grant assessee's deduction under Section 80P(2)(d) of the Act. Accordingly, the appeal of the assessee for A.Y. 2013-14 is allowed.

012. Coming to the appeal of the assessee for A.Y. 2014-15, which is on identical facts and circumstances where the case of the assessee was reopened and further assessee was denied deduction under Section 80P (2) (a) of the Act as well as under Section 80P (2) (d) of the Act on bank interest received from co-operative bank amounting to ₹2,31,63,766/-, which was challenged before the learned CIT (A) allowing the appeal of the assessee partly. As we have already held for A.Y. 2013-14, that reopening of the assessment is without any tangible material and further even otherwise on merit, the assessee is eligible for deduction under Section 80P(2)(d) of the Act. Therefore, for the reasons given for A.Y. 2013-14, the appeal of the assessee is allowed for A.Y. 2014-15 also.

013. For A.Y. 2017-18, the assessee filed its return of income at ₹nil on 7th November, 2017, which was picked up for scrutiny and therefore, a show cause notice was issued to the assessee that why on interest income earned of ₹2,68,31,658/- being interest received from co-operative banks on which deduction under Section 80P is claimed should not be disallowed. After hearing the case of the assessee, the learned Assessing Officer disallowed the deduction under Section 80P(2)(a) as well as under Section 80P(2)(d) of the Act and assessed the total income at ₹258,31,619/- by order under Section 143(3) of the Act dated 26th December, 2019. The appeal preferred against the assessment order was partly allowed. However, the assessee aggrieved with the finding of the learned Assessing Officer that though the learned CIT (A) has directed that the



assessee is eligible for deduction under Section 80P(2)(d) of the Act only from the co-operative societies and co-operative banks not holding the license issued by the RBI. He further held that if the interest is earned from the co-operative banks holding license issued by RBI same should be chargeable to tax under the head income from other sources. Therefore, assessee is aggrieved and is in appeal before us. We on the merits already dealt with the issue in appeal of the assessee for A.Y. 2013-14 and therefore, directed the learned Assessing Officer to grant deduction under Section 80P(2)(d) of the Act to the assessee on the bank interest received from co-operative banks. Accordingly, the appeal of the assessee for A.Y. 2017-18 is allowed.

014. The appeals of the assessee for A.Y. 2018-19 also involved identical issue, wherein the interest income earned by the assessee from co-operative bank amounting to ₹1,39,30,075/- for A.Y. 2018-19 and ₹7,56,84,273/- for A.Y. 2020-21 are denied deduction under Section 80P(2)(d) of the Act. As we have already held that interest received by the assessee from the co-operative banks is eligible for deduction under Section 80P(2)(d) of the Act, on the same reasoning, we also allow the appeal of the assessee for A.Y. 2018-19 and 2020-21.

015. In the result, all the five appeals filed by the assessee are allowed.

Order pronounced in the open court on 22.01. 2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)



Mumbai, Dated: 22.01. 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