

**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, Hon'ble J.M. AND
SHRI MANISH BORAD, Hon'ble A.M.**

**I.T.A.Nos.859 & 860/Ind/2017
A.Ys. : 2012-13 & 2013-14**

M/s.Vidisha Bhopal Kshetriya Gramin Bank (now merged with Central Madhya Pradesh Gramin Bank, Bhopal		ACIT, 4(1), Bhopal.
	Vs.	
Appellant		Respondent

PAN NO. AAACV 5199 E

Appellant by : Shri Sumit Khabya, CA
Respondent by : Shri Rajeeb Jain, Sr. DR
Date of Hearing : 05.2.2019
Date of pronouncement : 06.2.2019

ORDER

PER SHRI KUL BHARAT, J.M.

Both these appeals are filed by the assessee against the different orders of Id. CIT(A)-2, Bhopal, dated 22.09.2017 for the assessment years 2012-13 & 2013-14, respectively.

ITA No.859/Ind/2017 (A.Y. 2012-13)

2. The assessee has raised the following grounds of appeal:

- “1. That the Id. CIT(A) erred in maintaining disallowance of Rs.5,84,76,896/- claimed as deduction u/s 80P of the Income Tax Act, 1961.
2. That the Id. CIT(A) erred in not accepting that by virtue of Section 32 of the Regional Rural Bank Act, 1976, Section 22 of RRB Act has overriding effect on any provision of Income Tax Act, Rule, circular etc and a Regional Rural Bank shall be deemed to be a “cooperative society” and since it is carrying on business of banking, benefit of Section 80P remained in force?
3. That the Id. CIT(A) erred in not accepting that provisions of Part V of Banking Regulation Act are not applicable to the appellant Bank since the appellant Bank is not covered under the definition of “Cooperative Banks” as defined in Part V of Banking Regulation Act in as much as the provisions of Section 80(P)(4) excluding the benefit of Section 80(P) to only to certain cooperative bank and is not applicable to the appellant’s case and the appellant bank is entitled to claim benefit of Section 80P since the exclusion in the Explanation is specific and applied only to a Cooperative Bank and is therefore to be construed strictly?”

3. Facts, in brief, are that the assessee filed return of income declaring total income at Rs. Nil. The assessee had claimed deduction u/s 80P of the I.T. Act. However, the Assessing Officer noted that the assessee is a Regional Bank and as per the Circular 6/2010 of CBDT dated 20.9.2010, Section 80P of the Act was amended w.e.f. 01.4.2007

introducing sub-section (4) which laid down specifically that deduction u/s 80P was no more available to any Regional Rural Bank from A.Y. 2007-08 onwards. Furthermore, the Circular No.319 dated 11.1.1982 deeming any Regional Rural Bank to be cooperative society was also withdrawn by the CBDT w.e.f. A.Y. 2007-08 onwards. Following the circulars, the claim of the assessee for deduction u/s 80P of the Act was held as inadmissible by the Assessing Officer.

4. The matter was carried to Id. CIT(A) and the Id. CIT(A) dismissed the appeal of the assessee following the decision of the Tribunal in assessee's own case for the assessment years 2007-08 & 2008-09.

5. The Id. Authorized Representative has filed a declaration in Form No.8 under the provisions of Section 158A(1) of the Income-tax Act, 1961, to avoid the repetitive appeal on the ground that the substantial question of law is already admitted by the Hon'ble High Court in the assessee's own case for the assessment year 2007-08. Therefore, Form No.8 may be accepted and the matter may be restored to the AO.

6. Ld. Senior D.R. did not raise any objection in this regard.

7. Looking to the above facts, we accept the Form No.8 (copy filed) and accordingly, the appeal of the assessee deserves to be restored to the file of AO and the AO is directed to take the decision as per

outcome of the appeal in case of assessee's own case for the assessment year 2007-08, which is pending before the Hon'ble M.P.High Court in MAIT 212/2012.

8. In result, the appeal filed by the assessee is allowed for statistical purposes only.

ITA No.860/Ind/2017 (A.Y. 2013-14)

9. The assessee has raised the following grounds of appeal:

- “1. That the Id. CIT(A) erred in maintaining disallowance of Rs.4,08,43,770/- claimed as deduction u/s 80P of the Income Tax Act, 1961.
2. That the Id. CIT(A) erred in not accepting that by virtue of Section 32 of the Regional Rural Bank Act, 1976, Section 22 of RRB Act has overriding effect on any provision of Income Tax Act, Rule, circular etc and a Regional Rural Bank shall be deemed to be a “cooperative society” and since it is carrying on business of banking, benefit of Section 80P remained in force?
3. That the Id. CIT(A) erred in not accepting that provisions of Part V of Banking Regulation Act are not applicable to the appellant Bank since the appellant Bank is not covered under the definition of “Cooperative Banks” as defined in Part V of Banking Regulation Act in as much as the provisions of Section 80(P)(4) excluding the benefit of Section 80(P) to only to certain cooperative bank and is not applicable to the

appellant's case and the appellant bank is entitled to claim benefit of Section 80P since the exclusion in the Explanation is specific and applied only to a Cooperative Bank and is therefore to be construed strictly?

4. That the Id. CIT(A) erred in confirming addition of Rs.32,23,269/- made by the Assessing Officer by disallowing claim of 'other expenditure' duly debited in profit and loss account."

10. So far as ground nos. 1 to 3 are concerned, both the parties submitted that facts and issue are identical to the appeal for the assessment year 2012-13 above and the decision taken for the assessment year 2012-13 will be applicable to the appeal for the assessment year 2013-14 too. Therefore, following the same, we accept the Form No.8 (copy filed) and accordingly, the appeal of the assessee deserves to be restored to the file of AO and the AO is directed to take the decision as per outcome of the appeal in case of assessee's own case for the assessment year 2007-08, which is pending before the Hon'ble M.P.High Court in MAIT 212/2012. Thus, ground nos.1 to 3 are allowed for statistical purposes only.

11. So far as ground no.4 with regard to disallowance of Rs.32,23,269/- is concerned, the learned Counsel for the assessee contended that under schedule 16 of the audited accounts pertaining

to operating expenses, “other expenditures” of Rs.32,23,269/- was given. However, during the time of filing of details of “other expenditures”, a blank proforma was submitted at the time of the assessment proceedings. The explanation was that this bank had been taken over by the Central Bank during this FY and the audited accounts were prepared by the successor bank and no details of this expenditure were filled by the successor bank in the proforma. Before us, learned Counsel for the assessee submitted that this expenditure comprised of expenditure related to different items such as, entertainment expenses, news paper expenses, travelling allowance and others of seven branches of the bank for the assessment year 2012-13 pertaining to the period 01.4.2012 to 08.10.2012. After 08.10.2012, the bank was taken over by the Central Bank of India. The Assessing Officer has not disbelieved the audited accounts wherein “other expenses” amounting to Rs.32,23,269/- have been duly reflected. The Assessing Officer did not call for any explanation on this point to explain the alleged discrepancy. Further, learned Counsel for the assessee contended that the total expenditure incurred during the year compares well with the expenditure incurred under this head in previous year where the same have been accepted. The assessee had enclosed full details of all such expenses which remained to be examined in proper perspective. On

the other hand, ld. Sr. DR relied upon the orders of the Revenue Authorities.

12. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that learned Counsel for the assessee has claimed that the Assessing Officer has not disbelieved the audited accounts wherein “other expenses” amounting to Rs.32,23,269/- have been duly reflected and the Assessing Officer did not call for any explanation on this point to explain the alleged discrepancy. Further, learned Counsel for the assessee also contended that the total expenditure incurred during the year compares well with the expenditure incurred under this head in previous year where the same have been accepted. The assessee had enclosed full details of all such expenses which remained to be examined in proper perspective. Totality of the facts clearly indicates that this issue requires reconsideration at the level of the Assessing Officer who will verify the details submitted by the assessee in the light of the submission of the assessee and decide the issue afresh. The assessee will be given proper opportunity of being heard and the assessee is also directed to cooperate in this regard before the Assessing Officer. Accordingly, the orders of the Revenue Authorities on this issue are set aside and the issue is restored to the file of the Assessing Officer. Thus, this ground

of the appeal of the assessee is also allowed for statistical purposes only.

13. Finally, both the appeals filed by the assessee are allowed for statistical purposes only.

This order has been pronounced in the open court on 06.2.2019.

**Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER**

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

Dated : 06.2.2019

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Copy to:

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