

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE “SMC” BENCH, INDORE**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.194/Ind/2018
Assessment Year: 2012-13**

Shri Rishabh Sahkari Sakh Sanstha Mydt. Tripoliya Bazar, Shujalpur Mandi Dist. Shajapur (M.P.) (Appellant)	<u>बनाम/</u> Vs.	ITO Shajapur (Revenue)
P.A. No.AACAS 1966L		

Appellant by	Shri Yogesh Bhargav, A.R.
Respondent by	Shri Puneet Kumar, Sr. D.R.
Date of Hearing:	11.12.2019
Date of Pronouncement:	26.12.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is against order of the CIT(A), Ujjain dated 14.12.2017 pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

1. *“The Ld. CIT(A) erred in law as much as on the facts of the case by holding that the A.O. was justified in not allowing the deduction u/s 80P of the I.T. Act on the addition made, in spite of the fact that deduction u/s 80P had been claimed by the assessee in the return of income filed.*
2. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law by upholding the additions for Rs.3,95,032/- made by the A.O., when the income for which the Ld. A.O. had initially formed a reason to believe that it had escaped assessment, had been found by him as not having escaped assessment then it was not open to him to assess some other income, and if he intended to do so, a fresh notice u/s 148 was necessary.*
3. *That the Ld. CIT(A) has erred in law as much as on the facts of the case by confirming the unwarranted addition made by the Ld. A.O. by holding the Daily deposit Agents’ Commission expenses for Rs.95,032/- as disallowable.*
4. *The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.*
5. *It is, therefore, prayed that the unwarranted additions made by the Ld. A.O. and erroneously upheld by the Ld. CIT(A) of Rs.3,95,032/- may kindly be deleted.”*

2. The facts giving rise the present appeal are that the case of the assessee was reopened on the basis of AIR information regarding cash deposits in the savings bank account of the assessee society. Thereafter, after issuing the requisite notice u/s 148 of the Income Tax Act, 1961 (hereinafter called as ‘the Act’) was passed vide order dated 28.6.2016, thereby the A.O. made addition of Rs.50,000/- u/s 43B of the Act in respect of unkeshan fees disallowance of Rs.95,032/-, commission paid to Shri Manoj Jain and an amount of Rs.3 lakhs on account of

disallowance of provision for bad debt. Aggrieved against this order, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions, partly allowed the appeal, thereby the addition of Rs.3,00,000/-, Rs.50,000/- and Rs.95,002/- were confirmed. Now the assessee is in appeal against this order.

3. Ground No.1 is against allowing the deduction u/s 80P of the Act. Ld.Counsel for the assessee reiterated the submissions as made before the authorities below. Ld. Counsel placed reliance on the decision of the coordinate bench rendered in the case of ACIT Circle-4 Vs. Buldana Urban Co-operative Credit Society Ltd. in support of the contention that the assessee society is eligible for deduction u/s 80P of the Act.

4. Ld. D.R. opposed these submissions and supported the orders of the authorities below.

5. I have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The assessee has relied upon the decision of the coordinate bench rendered in the case of ACIT Vs. Buldana Urban Co-operative Credit Society Ltd.

(supra), wherein the coordinate bench has decided the issue as under:

✓ The deposit received from parties whose identity itself are not established, who are not established to be members who are not of the nature of eligible income as given u/s 80P(2)(a)(i). In this regard the CIT(A) relied on the decision of *Indian Leather Corp. (P.) Ltd. (supra)*. Now in this case there are three issues involved (1) Whether the addition can be made u/s 68 of the Income Tax Act or not, (2) In case whether the deposits has added by the Assessing Officer are to be added u/s 68 whether they are regarded as the income from business or as income from other sources and (3) Whether the assessee is entitled for deduction u/s 80P(2)(a)(i) on the addition so made. We will first take up whether the addition can be made u/s 68 of the Income Tax Act. Section 68 of the Income Tax Act lays down rule of evidence. The onus is on the assessee to prove to the satisfaction of the Assessing Officer the nature and source of the cash credit otherwise any sum found credited in the books of the assessee maintained for any previous year be charged to income tax as the income of the assessee of that previous year. In our opinion the assessee cannot be escaped from the deeming provision of section 68 from discharging its onus merely on the basis that the assessee was in the initial stage of development of business. The assessee failed to comply with the KYC norms which could have taken in the case of the assessee to be the charging of the onus by the assessee. The assessee cannot be saved from the clutches of the provisions of section 68 by taking the shelter that manpower of the society engaged for this business was not fully equipped and properly trained and due to(which there had been lapses in complying with KYC norms. The decision of *Lovely Exports (P.) Ltd. (supra)* in our opinion will not apply in the present case as in that case the money was given by the shareholders for a consideration i.e. against the allotment of the shares. This is a case where deposits have been received by the assessee to whom it is to be repaid on demand or after the expiry of fixed period. We therefore, confirm the addition u/s 68. To that extent we confirm the order of the CIT(A). Now the question arise whether the income so added will be the profit and gains from business or not. While disposing of the appeal of the revenue, we confirm the order of the CIT(A) holding that the assessee is not a co-operative bank therefore, in our opinion the restriction put in respect of the deduction available u/s 80P(2)(a)(i) will not apply to the assessee. In his statement recorded even though chairman of the society surrendered the amount but he never agreed that these deposits belong to the assessee or were made by the assessee by surrendering the amount he clearly stated that since our society is in swift mode of development phase and is in the mode of development phase at various places. There are certain basic requirement which have not been complied with like identification of the deposits i.e. name, address, photograph etc., even he accepted manpower of the society engaged for this business is also not fully equipped and properly trained and due to these reasons, the society could not strictly follow the KYC norms. He also stated since these deposits stand withdrawn and society does not have any control over this fund at this stage therefore he surrendered the amount. It is not denied that the deposits have been received during the course of business of the assessee and the assessee is engaged in the business of providing credit facilities to its members. The credit facilities cannot be provided until and unless the assessee receive the deposits. The deposits even if the assessee could not prove the nature and source thereof to the satisfaction of the Assessing Officer, it

could not be said that they were received not during the course of carrying on the business of providing the credit facilities to its members. Therefore, we are of the view that the income added u/s 68 has to be treated as the profits and gains arising from business of the assessee. Now the question arise whether the assessee is entitled for deduction u/s 80P(2)(a)(i) on the income so added. The deduction u/s 80P(2)(a)(i) is available to a co-operative society engaged in carrying on the business of providing credit facilities to its members in respect of whole of the amounts of profits and gains of business attributable to this business. We noted that the Assessing Officer did not agree with the assessee but under para 8 took the view that this amount has not been earned by the assessee in its normal course of business activities and therefore he took the view that there is no case even prima facie to consider the claim of deduction u/s 80P(2)(a)(i) of the Income Tax Act. We have gone through the decision of the Supreme Court in the case of *Indian Leather Corporation (P.) Ltd. (supra)* as relied by CIT(A). In this case Supreme Court took the view that "it is no doubt true that the words "attributable to" have a wider meaning than the words "derived from". But at the same time it cannot be ignored that normally the word "attributable" implies that "for a result to be attributable to anything it must be wholly, or in material part, caused by that thing." [see : Stroud's Judicial Dictionary, 5th edn., volume I, page 223]. A casual connection is necessary. In order that income can be said to be attributable to manufacture or processing of goods for the purpose of the Explanation to section 104(4) of the Act the earning of the income must be directly connected with manufacture or processing of goods. It is also necessary that a material part of the said income should have been earned by that activity." Now the question arise whether the income so added u/s 68 being the deposits in respect of which KYC norms were not complied with can be regarded to be the amount of profit and gains of business providing the credit facilities to its members, This is not denied that the assessee is engaged in the business of providing credit facilities to its members. The credit facilities cannot be provided until and unless the assessee receives the deposits. It cannot always be provided out of its own capital. Receiving of the deposit is necessary and essential for advancing the money on credit and earning the interest income. The deposits may not have been derived from the income for providing the credit facilities to the members. Receiving of the deposit thus in our view in case it is treated to be the income of the assessee has a casual connection with the business of providing credit facilities to its members as this receipt in our opinion has been received by the assessee during the course of carrying on the business. Thus the judgment of the Supreme Court has referred to by CIT(A), in our opinion, support the case of the assessee rather than that of revenue. There is no evidence being brought on record or placed before us during the course of the hearing which may prove that these deposits belong to the assessee and he made the same. The Chairman never agreed that the deposits belong to the assessee there may be number of reasons for surrendering the amount as the income of the society but in our opinion tax has to be imposed on the real income. If there is no income has arisen to the assessee, there is no question that it can be treated to be the income of the assessee as the assessee is agreeing to it. There cannot be any contract against the statute. The addition is confirmed due to the specific deeming provision of section 68 which lays down the burden on the assessee to prove the nature and source of cash credit to the satisfaction of the Assessing Officer. We noted that the CIT(A) rejected the claim of the assessee for the deduction u/s 80P(2)(a)(i). If the deduction is available to the assessee under any provision of the Income Tax Act, in our opinion, it

cannot be denied to the assessee merely on the basis that the assessee has agreed to treat it to be its additional income. We have gone through the decision of the Pune Bench in the case o

f *Shri Mahavir Nagari Sahakari Pat Sanstha Ltd. (supra)* as relied by the assessee, the headnote of this judgment read as under :-

“Deduction u/s 80P(2)(a)(i) Providing credit facility to members -Loans to members only- As per definition of a ‘member’ given in Maharashtra Co-operative Societies Act members include nominal members also who are admitted as per the bye-laws of the society- assessee giving loans only to its members-Therefore, it satisfied the conditions laid down u/s 80P(2)(a)(i) and was entitled to deduction-cash credit, even if taxed, would be considered as income from the same business, i.e. providing credit facilities to the members, and accordingly, it would also be entitled to deduction u/s 80P- Bye-laws do not take the character of the Statute-Violation of bye-laws by the assessee could not lead to the automatic conclusion that the assessee was not a co-operative society-Government auditor or the Registrar has not held that the assessee has ceased to be a co-operative society none have they cancelled the registration of the assessee as a co-operative society-assessee-society would continue to enjoy the status of a co-operative society and, therefore, deduction u/s 80P would be available to it.”

33. The aforesaid decision is clearly applicable on the facts and circumstances of the case. The decision of the Coordinate Bench is binding on us. Respectfully following the aforesaid decision and the discussion held in the preceding paragraph, we set aside the order of CIT(A) on this issue and direct the Assessing Officer to allow the deduction to the assessee u/s 80P(2)(a)(i) in respect of the addition sustained by us u/s 68 of the Income Tax Act; Thus, this ground is partly allowed.

34. In the result, appeals filed by the revenue stands dismissed, while the appeals filed by the assessee are partly allowed.

6. However, we find that before Ld. CIT(A) also, the assessee had made the claim of deduction u/s 80P of the Act in the ground No.5 before the Ld. CIT(A). However, the

Ld. CIT(A) rejected the claim of the assessee in para 4.5, which is reproduced as under:

“Ground No.5:- Through this ground of appeal the appellant has challenged for not allowing the deduction u/s 80P of the I.T. Act on the addition made. The A.O. made the addition on the expenses which are not allowable. The A.O. is justified in not allowing the exemption u/s 80P of the I.T. Act on the addition made. Therefore, the appeal on this ground is Dismissed.”

6. From the above finding of the Ld. CIT(A), it can be inferred that the deduction u/s 80P of the Act is not allowed on the ground that the expenses claimed by the assessee are not allowable. The coordinate bench of this Tribunal has decided the issue related to allowance of deduction u/s 80P of the Act and the expenditure disallowed by the A.O. whether this would qualify for deduction u/s 80P of the Act. A bare reading of provision of section 80P(2) of the Act makes it clear that the deduction would be available in respect of the profit & gains of business attributable to any one or more of search activities, which is prescribed u/s 80P(2) of the Act. As per

the assessee, the assessee is providing credit facilities to its members. Therefore, it would qualify for claim of deduction u/s 80P of the Act. The coordinate bench under the identical facts has allowed deduction u/s 80P of the Act in respect of the activity similar or same, which is being undertaken by the assessee society. Now the issue would be whether the disallowances made in respect of bad debts and commission payment claimed by the assessee would qualify for deduction u/s 80P of the Act or not? In respect of the bad debt, the assessee is required to demonstrate that the debt which is claimed is in the nature of profit & gains and business attributable to such activity. In the present case, the assessee had made provision for bad debt. If the assessee had not done this provision, this amount would have not been deducted from the profit & loss account. Therefore, in my considered view, this amount is certainly attributable to the profit & gains of the

assessee society. Further, disallowance of payment of commission. The commission is claimed as business expenditure, deducted from the profit & gains account. Therefore, this would also be in the nature of profit & gains of the assessee society. Therefore, I am of the considered view that in the light of the decision of the coordinate bench rendered in the case of ACIT Circle-4 Vs. Buldana Urban Co-operative Credit Society Ltd. (supra), the assessee is entitled for benefit of deduction u/s 80P of the Act. I therefore, direct the A.O. to grant deduction u/s 80P of the Act to the assessee.

7. The other grounds are against sustaining the addition by the Ld. CIT(A). I have already allowed claim of deduction u/s 80P of the Act. These grounds would become of academic nature only. Hence, Ground Nos.2 & 3 needs no separate adjudication.

8. In the result, the appeal filed by the assessee is partly allowed.

Order was pronounced in the open court on 26.12.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 26/12/2019
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore