

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 3047/CHNY/2019
निर्धारण वर्ष / Assessment Year: 2013-14

The Asst. CIT,
NCC-22, No.7, Ramakrishna
Street, West Tambaram,
Chennai – 45.

M/s. DAEE Coop T&C Society,
v. First Floor, Main Shopping
Centre, DAE Township,
Kalpakkam – 603 102.

(अपीलार्थी/Appellant)

PAN : AAAAD4689H
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Ms. R. Anitha, JCIT
: Shri R. Kumar, Advocate

सुनवाई की तारीख/Date of Hearing : 10.11.2020

घोषणा की तारीख/Date of Pronouncement : 10.11.2020

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the Revenue is directed against of the order of the Commissioner of Income Tax (Appeals)-10, Chennai, dated 19.08.2019 and pertains to the assessment year 2013-14.

2. The Revenue has raised the following grounds in its appeal:-

The order of the CIT(A) is contrary to facts and circumstances of the case.

2. Disallowance of deduction claimed u/s. 80P:

2.1 The assessee society did not file return of income before the due date but filed the return after issue of notice u/s.148, that too after expiration of 30 days of time allowed in the said notice by claiming deduction u/s 80P amounting to Rs.2,19,45,464/- which includes interest received of Rs.40,37,552/- from cooperative urban bank and Rs. 1,79,07,912/- from other cooperative banks.

2.2. The learned CIT(A) vide their order has not dealt with the issue of not filing the return of income in time and thereby erred in allowing the deduction u/s.80P, overriding the provisions of section 80A(5) which stipulates that no deduction shall be allowed if the assessee fails to make a claim in the return of income.

*{Reliance is placed in the case of **Kadachira Service Co-Op. Bank Limited Vs. ITO Ward-1 Kunnur** reported in “141 ITD 270” by the Honourable Cochin Tribunal’s decision- Wherein it was held that filing of Return of Income and making a claim therein in respect of deduction u/s 80P is mandatory as per provisions of section 80A(5)}.*

2.3 The learned CIT(A) failed to appreciate that the assessee society has not earned any interest from any other Co-operative society but has earned interest from a Co-operative Bank where it has parked some of its funds and hence not eligible for deduction u/s.80 P(2)(d).

*{Reliance is placed in the case of “**Totagars Co-Operative Sales Society Limited Vs. ITO in 188 Taxman 282 (2010)** by time Honourable Supreme Court’s decision” Wherein it was held that the interest earned by the Co-operative society comes under “other sources” as such the societies are not eligible for deduction u/s 80P in respect of such interest income and ii) in the case of **PCIT Vs. Totagars Cooperative Sales Society** in “395 ITR 6ii (2017) by the Honourable Karnataka High Court -wherein it was held that deduction u/s 80P(2)(d) is not available to any Co-operative society, if the interest is earned from funds parked in any Co-operative Bank.}*

2.3.1 The learned CJT(A) erred both in facts and on law in holding that the assessee being the cooperative society promoted by Government of India and dealing with its own members and providing credit and thrift facilities to only these members would be fully entitled to benefit of Section 80P.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the CIT(A) be quashed and that of the revenue upheld.

3. The brief facts of the case are that the assessee is a co-operative society formed for the benefit of the employees of the Department of Atomic Energy. The assessee has not filed its return of income for the assessment year 2013-14 u/s.139 of the Income Tax Act, 1961 (hereinafter 'the Act'). Therefore, the assessment has been re-opened u/s.147 of the Act for the reasons recorded as per which income chargeable to tax had escaped the assessment and hence notice u/s.148 of the Act dated 28.03.2018 was served on the assessee. In response to notice, the assessee has filed its return of income on 30.07.2018 declaring total income of Rs.14,57,023/- after claiming deduction u/s.80P(2)(a)(i) of the Act to the tune of Rs.2,19,45,464/-. The case was selected for scrutiny and during the course of assessment proceedings, the AO noted that the claim of deduction u/s.80P(2)(a)(i) of the Act is not eligible because the assessee has not filed its return of income u/s.139(1) of u/s.139(4) of the Act or in response to notice u/s.148 within the prescribed time allowed under the Act and hence in view of specific provisions of Section 80A(5) of the Act, the deduction claimed u/s.80P(2)(a)(i) of the Act cannot be allowed unless such deduction is claimed by filing the return within the prescribed time allowed under the Act. Accordingly, disallowed

the deduction claimed u/s.80P(2)(a)(i) of the Act and added back to total income. The Id.AO further noted that besides deduction claimed u/s.80P(2)(a)(i) of the Act, the assessee has got other income of Rs.55,14,785/- being interest received on deposits kept in other co-operative banks and the same has been claimed as income earned from business to be eligible for deduction u/s.80P(2)(a)(i) of the Act. The AO further noted that however as per provisions of u/s.80P(2)(d) of the Act, the assessee is not entitled for claiming deduction for interest income earned from deposits kept in co-operative banks or commercial banks and hence was of the opinion that the assessee is not entitled for deduction u/s.80P(2)(d) of the Act on interest income. Accordingly rejected the claim of the assessee and disallowed total deduction claimed u/s.80P(2)(a)(i) for Rs.2,19,45,464/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id.CIT(A), the assessee submitted that it is entitled for deduction u/s.80P(2)(a)(i) of the Act in respect of profit and gains derived from its business because the assessee being a co-operative society is mainly engaged in providing banking business to its members. The assessee further contented that although it has

earned interest income from deposits kept with other co-operative banks but such deposits have been kept as required under the statutory provisions of co-operative societies and such deposits is made out of funds collected from the members. Since the interest income is an integral part of its business activity, it is entitled for deduction u/s.80P(2)(a)(i) of the Act for entire income including interest earned on funds kept in other co-operative banks.

5. The Id.CIT(A) after considering the relevant submissions of the assessee and also by taking note of provisions of Section 80P(2)(a)(i) of the Act and by relying upon certain judicial precedents including the decision of Hon'ble High Court of Karnataka in the case of Pr.CIT vs. Totagars Co-operative Sale Society, 395 ITR 611 allowed relief to the assessee and directed the AO to delete the additions made towards disallowance of deduction claimed u/s.80P(2)(a)(i) of the Act by holding that the assessee being a co-operative society promoted for the benefit of members and involved in providing credit facility to its members would be entitled to benefit of Section 80P on total income earned from its business including interest income earned from

deposit kept in other co-operative banks. Aggrieved by the CIT(A) order, the Revenue is in appeal before us.

6. The Id.DR submitted that the Id.CIT(A) erred in allowing deduction claimed u/s.80P of the Act without appreciating the fact that in order to claim the deduction, the assessee should file its return of income making a claim within the time allowed u/s.139(1) or 139(4) of the Act. Unless the return is filed within the prescribed time then deduction claimed u/s.80P of the Act cannot be allowed because provisions of Section 80A(5) of the Act which stipulates that no deduction shall be allowed if the assessee fails to make a claim in the return of income. The Id.DR further submitted that the Id.CIT(A) failed to appreciate that the assessee society had not earned any interest from any other co-operative society but has earned interest from the co-operative bank where it has parked some of its funds and hence not eligible for deduction u/s.80P(2)(d) of the Act. The DR further referring to the decision of the Hon'ble Supreme Court in the case of Totagars Co-operative Sales Society Limited vs. ITO, [2010] 188 Taxman 282 submitted that the Hon'ble Supreme Court clearly held that interest earned by co-operative society comes under "other sources" as such the societies are not

eligible for deduction u/s.80P of the Act in respect of such interest income.

7. The Id.AR for the assessee on the other hand strongly supporting the order of the CIT(A) submitted that the assessee is entitled for deduction u/s.80P(2) of the Act in respect of its income including interest income because the assessee is mainly engaged in providing credit facilities to its members and as per the provisions of Section 80P(2)(a)(i) of the Act, *in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members* the profit derived from such activity is eligible for deduction. The AR further submitted that as per Section 80P(2)(d) of the Act, *a co-operative society can claim deduction towards income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society.* In this case, the assessee has kept surplus funds with other co-operative banks and the same is part of its business activity and hence total income including interest earned from deposits is eligible for deduction. The CIT(A) after considering the relevant submissions of the assessee rightly upheld that the assessee is entitled for deduction towards profit derived from its business

activity including interest earned u/s.80P(2)(d) of the Act and his order to be upheld.

8. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below along with various case laws cited by both the parties. There is no dispute with regard to the fact that the assessee is a credit co-operative society registered under the TamilNadu Co-operative Societies Act, 1983. It is also not in dispute that the assessee is engaged in the business of providing credit facilities to its members. The AO has disallowed deduction claimed u/s.80P(2)(a)(i) of the Act primarily on two grounds. The first objection of the AO is with regard to claim of deduction in the light of provisions of Section 80A(5) of the Act which restricts the deduction unless such deduction is claimed in the return of income. We have gone through the provisions of Section 80P read with Section 80A(5) of the Act and found that nowhere in Section 80P or in Section 80A(5) of the Act it is mentioned that the assessee is required to file its return of income within the prescribed time provided u/s.139(1) or 139(4) of the Act. But, what is required to be seen is whether the assessee has made a claim in the return of income filed for the relevant year or not,

even though such return is not filed within due date. In this case, the assessee although not filed its return of income for the impugned assessment year u/s.139 of the Act but such return of income has been filed in response to the notice issued u/s.148 of the Act and in the said return of income the assessee has made a claim for deduction u/s.80P(2)(a)(i) of the Act. Therefore, we are of the considered view there is no merit in the arguments taken by the Id.DR that the assessee is not entitled for deduction u/s.80P unless such deduction is claimed by filing return of income within the prescribed time allowed u/s.139(1) or 139(4) of the Act. This view is fortified by the decision of the Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Ltd., vs. CIT (2016) 384 ITR 490 (Ker), where the Hon'ble Kerala High Court held that *"a return filed by the assessee beyond the period stipulated u/s.139(1) or 139(4) or 142(1) or 148 of the Act can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est in law and invalid for the purpose of deciding exemption under Section 80P of the Act."*

9. Coming back to the issue of interest income earned from fixed deposits and claimed deduction u/s.80P(2)(d) of the Act. The AO has denied deduction claimed u/s.80P(2)(d) of the Act in respect of interest income earned from a co-operative bank on the ground that as per the said provisions, interest earned from any other co-operative society is only eligible for deduction u/s.80P(2)(a)(i) of the Act. The AO has taken support from the decision of the Hon'ble Supreme Court in the case of M/s. Totagars Co-operative Sales Society Ltd., *supra*. We have gone through the findings recorded by the AO in the light of the decision of the Hon'ble Supreme Court in the said case and find that the fact of the case before the Hon'ble Supreme Court is entirely different from the facts of the present case. In the case before the Hon'ble Supreme Court, the assessee was a co-operative sales society which is engaged in the business of trading in agricultural produce for its members and during the course of its business it has parked surplus funds in other co-operative banks / nationalized banks and earned interest. In those facts, the Hon'ble Supreme Court came to the conclusion that the assessee is not entitled for deduction towards interest income u/s.80P(2)(d) of the Act, because such interest is not earned from its business activity. In this case, the assessee is

primarily engaged in the business of providing credit facilities to its members and in the course of its business it has parked funds collected from its members in other co-operative banks / nationalized banks as per the statutory requirements of the co-operative societies Act. The assessee has treated interest earned from other co-operative banks as part of its business activity. Once the assessee has earned interest income as part of its business activity and such interest income is earned out of the funds belonging to its members, then the assessee is entitled for deduction u/s.80P(2)(d) of the Act in respect of such interest income. Therefore, we are of the considered view that the case laws relied upon by the Id.AO in the case of Totogars Co-operative Sales Society Ltd., is not applicable to the present facts. We further noted that an identical issue was considered by the Hon'ble Madras High Court in the case of CIT vs. Veerakeralam Primary Agricultural Co-operative Credit Society (2016) 388 ITR 492 (Mad), where the Hon'ble High Court after referring to the decision of the Hon'ble Supreme Court in the case of Totagars Co-operative Sales Society Ltd., held that the benefit of deduction u/s.80P of the Act is excluded for co-operative banks but credit co-operative societies are entitled to

claim deduction u/s.80P of the Act in respect of interest income earned from deposits kept in other co-operative banks.

10. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the Id.CIT(A) was right in allowing the benefit of deduction claimed u/s.80P of the Act in respect of income derived from the activity including interest income earned from fixed deposits. We do not find any error or infirmity in the order of the CIT(A). Hence, we are inclined to uphold the order of the CIT(A) and dismiss the appeal filed by the Revenue.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 10th November, 2020 at Chennai.

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-

(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 10th November, 2020

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |