

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'B' PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1700/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Nashik Road Nagari Sahkari Patsanstha Limited, 7/8, Yashwant Apartment, Amrut Nagar, Jail Road, Nashik Road, Nashik – 422 101 PAN : AAAAN2225K	Vs.	ITO, Ward- 1(2), Nashik
Appellant		Respondent

Assessee by : Shri Sanket Joshi, Shri Bhushan Daga & Shri Shakarlal Meena
Revenue by : Shri Mahesh Jasnani
Date of hearing : 24-12-2021
Date of pronouncement : 27-12-2021

आदेश / ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Nashik ('CIT(A)' for short) dated 01.05.2017 for the assessment year 2013-14.

2. Briefly, the facts of the case are that the appellant is a cooperative society registered under the Maharashtra Co-operative Societies Act, 1960. It is engaged in the business of providing credit facilities to its members. The return of income for the assessment

year 2013-14 was filed on 19.07.2013 declaring Rs.Nil income. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-1(2), Nashik ('the Assessing Officer') vide order dated 19.10.2015 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') Act at a total income of Rs.48,36,400/-. While doing so, the Assessing Officer made the following additions to the returned income :

Sr.No.	Particulars	Amount (Rs.)
1	Interest income on deposit made with Nationalized bank, i.e. Bank of Baroda treated as 'income from other sources' thereby denying deduction u/s.80P(2) thereon.	3,18,843
2	Interest income estimated @7.50% on Govt./RBI Securities and treated as 'income from other sources' thereby denying deduction u/s.80P(2) thereon.	11,71,331
3	Disallowance of Provision for Building Fund debited to P&L A/c. (and adding the same figure as 'income from other sources).	24,00,000
4	Disallowance of Investment Fluctuation debited to P&L A/c. (without allowing deduction u/s.80P(2) on the enhanced amount of business income).	5,00,000
5	Disallowance of expenses pertaining to MSEB Commission Income (without allowing deduction u/s.80P(2) on the enhanced amount of business income).	1,115
6	Disallowance u/s.14A (without allowing deduction u/s.80P(2) on the enhanced amount of business income).	9,713
	Total Additions	44,01,002

3. Being aggrieved by the above additions, an appeal was preferred before the CIT(A).

4. The CIT(A) during the course of proceedings before him held that the appellant society is a Cooperative bank and, therefore, hit by the provisions of sub-section (4) of section 80P, accordingly, denied the claim for deduction of income u/s. 80P(2)(a)(i) of the Act by giving enhancement notice. The CIT(A) also enhanced the addition under the provisions of section 14A by holding that no *ad hoc* disallowance should be computed in accordance with the provisions of Rule 8D. The CIT(A) also confirmed the other disallowances made by the AO. Being aggrieved the appellant is in appeal before us in the present appeal.

5. Ground of appeal No. 1 & 2 challenges the decision of the CIT(A) denying the claim of exemption u/s. 80P(2)(a)(i) in respect of interest on fixed deposits with Bank of Baroda at Rs.3,18,843/-. The AO denied the exemption of interest of Rs.3,18,843/- earned on the investment made with Bank of Baroda treating it under the head 'income from other sources' not as 'income from business'. On an appeal before the CIT(A), the CIT(A) upheld the contention that the said interest income should be assessed as 'income from business'. However, he denied the claim of exemption u/s. 80P(2)(a)(i) on the ground that the assessee lends money to nominal members.

6. Being aggrieved by the above decision of the Id. CIT(A), the assessee is in appeal before us in the present appeal.

7. The Id. AR submitted that the CIT(A) having accepted that the interest earned on fixed deposits with Bank of Baroda is assessable under 'business income' ought not to have denied the exemption u/s. 80P(2)(a)(i) of the Act on the ground that the assessee is a Cooperative Bank. It is submitted that the appellant society was not granted licence to carry on the business of banking by RBI. It is a Cooperative society registered under the Maharashtra Cooperative Societies Act, 1960. Placing reliance on the recent decision of Hon'ble Supreme Court in the case of *The Mavilayi Service Co-Operative Bank Ltd. and Another Vs. CIT (2021) 431 ITR 01* submitted that the AO cannot go beyond the registration certificate granted under the Cooperative Societies and therefore, the provisions of section 80P have no application.

8. On the other hand, the Id. DR placing reliance on the orders of the lower authorities held that the interest earned on investment made in Bank of Baroda are not eligible for exemption u/s. 80P(2) of the Act as it is not a 'business income' derived from the activity of lending money to its members.

9. We heard the rival submissions and perused the material on record. Admittedly, the appellant is a Cooperative society formed under the provisions of Maharashtra Cooperative Societies Act, 1960 with the objective of accepting deposits and lending money to its members. The money which is not immediately required for the purpose of lending to the members is deposited with Bank of Baroda in the form of Fixed Deposit. The question is whether the interest so earned qualifies for exemption u/s. 80P(2)(a)(i) of the Act. The AO as well as the CIT(A) were of the opinion that the interest earned from third parties or non-members does not qualify for exemption u/s. 80P. It is an admitted position that the interest so earned should be taxed as 'income from other sources'. There is a cleavage of judicial opinion among several High Courts on the issue of eligibility of this kind of income for exemption u/s. 80P(2)(a)(i) of the Act. The Hon'ble Punjab & Haryana High Court in the case of *CIT vs. Punjab State Cooperative Federation of Housing Building Societies Ltd.* 11 *taxmann.com* 448, the Hon'ble Gujarat High Court in the case of *State Bank of India Vs. CIT* 389 *ITR* 578 (Guj.), the Hon'ble Delhi High Court in the case of *Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT* 50 *taxmann.com* 278, the Hon'ble Punjab & Haryana High

Court in the case of *CIT Vs. Punjab State Cooperative Agricultural Development Bank Ltd.* 389 ITR 68 and the Hon'ble Kolkata High Court in the case of *CIT Vs. Southern Eastern Employees Cooperative Credit Society Ltd.* 390 ITR 524 took a view that the income arising on the surplus invested in short term deposits and securities cannot be attributed to the activities of the society and, therefore, not eligible for exemption u/s.80P(2)(a)(i) of the Act. However, the Hon'ble Karnataka High Court in the case of *Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 taxmann 309 (Kar.)* and the Hon'ble Telangana and Hon'ble Andhra Pradesh High Court in the case of *Vaveru Co-operative Rural Bank Ltd. v CIT [(2017) 396 ITR* took a view that such interest income is attributable to the activities of the society and, therefore, eligible for exemption u/s.80P(2)(a)(i) of the Act. The Coordinate Bench of Pune Benches in the case of *M/s. Ratnatray Gramin Bigar Sheti Sah. Pat Sanstha Maryadit Vs. ITO (ITA Nos.559/560/PUN/2018, dated 11-12-2018)* has taken view in favour of the assessee following the judgment of Hon'ble Karnataka High Court in the case of *Tumkur Merchants Souharda Credit Cooperative Ltd. (supra)*. Respectfully following the decision of the Coordinate Bench, we hold that the interest income earned on the investment of surplus money with banks is also eligible for exemption

u/s.80P(2)(a)(i) of the Act. Thus, the grounds of appeal No. 1 & 2 stands allowed.

10. Grounds of appeal No. 3 & 4 challenges the decision of the CIT(A) denying the claim for exemption of interest earned on the securities held with RBI. The reasoning given by us in relation to grounds of appeal No. 1 & 2 equally holds good to the issue in grounds of appeal No. 3 & 4 and, therefore, for the reasons stated therein, we allow these grounds in favour of the assessee and direct the AO to exempt the interest earned on securities held with RBI under the provisions of section 80P(2)(a)(i) of the Act.

11. Grounds of appeal No. 5 to 10 challenges the other disallowances made by the AO. Without going into the merits of the disallowances made by the AO, it would suffice to hold that the disallowances, if any, made shall increase the business profits of the cooperative society. The business profits so increased shall equally qualify for exemption u/s.80P(2)(a)(i) of the Act. Accordingly, we hold that the enhanced income on account of disallowances made by the AO should qualify for exemption 80P(2)(a)(i) of the Act. Thus, the grounds of appeal No. 5 to 10 stands allowed.

12. Ground of appeal No.11 challenges the decision of the CIT(A) holding that the appellant society is not eligible for exemption u/s. 80P(2)(a)(i) of the Act on the ground that the money is also lent to the nominal members and extraordinary members who are not members of the cooperative society. Therefore, the question that comes up for consideration is whether the nominal members are also the members of the Cooperative societies or not. The term “members” is not defined in the Income Tax Act, 1961. In *U.P. Co-operative Cane Union Federation Ltd. v. CIT* (1999) 237 ITR 574/103 Taxman 376 (SC), the Supreme Court considering the claim again under Section 80P(2)(a)(i) held :

The expression “members” is not defined in the Act. Since a Co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression “members” in section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the co-operative society claiming exemption has been formed. It is, therefore, necessary to construe the expression “members” in section 80P(2)(a)(i) of the Act in the light of the definition of that expression as contained in section 2(n) of the Co-operative Societies Act...”

Under the provisions of Maharashtra Cooperative Societies Act, 1960, the term “members” include nominal members and extraordinary members and in the circumstances, we hold that the CIT(A) was not

justified in denying the exemption u/s.80P(2)(a)(i) of the Act. This ground is also allowed.

13. In the result, the appeal is allowed.

Order pronounced in the Open Court on 27th December, 2021.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 27th December, 2021
Satish

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Nashik
4. The Pr.CIT-1, Nashik
5. DR, ITAT, 'B' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	27-12-2021	Sr.PS
2.	Draft placed before author	27-12-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		