

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.99/Hyd/2019		
Assessment Year:2012-13		
LIC Employees Cooperative Credit Society, Hyderabad PAN:AADFL0548F	Vs.	Income Tax Officer Ward 5(3) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri Amrit Kumar Kota, CA	
Revenue by:	Shri K.P.R.R. Murthy, Sr.DR	
Date of hearing:	12/09/2022	
Date of pronouncement:	14/09/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 28.11.2018 of the learned CIT (A)-1, Guntur, relating to A.Y.2012-13.

2. The grounds raised by the assessee are as under:

1. The learned CIT (A) erred in not considering the additional evidences during the appeal proceedings by mentioning case does not fall in the exceptions provided.

2. The CIT (A)-I is also not considered the revised return filed in response to section 148 of the I.T. Act, 1961.

3. The CIT(A)-I erred by disallowing Rs.99,95,270/- towards additional interest provision on compulsory thrift deposits which is allowable as per by Bye Law.

4. The CIT (A)-I erred by disallowing Rs.58,96,831/- towards additional interest provision on RID CTD which is allowable as per Bye-Law.

5. The CIT disallowed the reserve fund, education fund and common fund debited to P&L A/c which is mandatory to create as per A.P. State Coop. Act.

6. The learned CIT (A)-I erred in not allowing deduction u/s 80P(2)(a)(i) of the I.T. Act, 1961.

7. Any other ground or ground(s) that may be urged at the time of hearing of appeal”.

3. At the time of hearing, the learned Counsel for the assessee did not press grounds of appeal 1 & 2 for which the learned DR has no objection. Accordingly, the above two grounds are dismissed as not pressed. Grounds of appeal No.7 being general in nature is dismissed.

4. So far as grounds of appeal No.3 to 5 are concerned, these relate to the order of the learned CIT (A) in confirming the action of the Assessing Officer in making addition of Rs.99,95,270/- towards additional interest provision on compulsory thrift deposits, Rs.58,96,831/- towards additional interest provision on RID CTD and disallowance of reserve fund, education fund and common fund debited to P&L A/c.

5. Facts of the case, in brief, are that the assessee is a cooperative society registered under the Cooperative Societies Act and formed for the benefit of its members on 17.11.1940. It filed its return of income on 10.9.2012 admitting income of Rs.1,43,563/-. The case was selected for scrutiny through CASS and statutory notices u/s 143(2) and 142(1) of the Act were issued to the assessee. The learned AR of the assessee filed requisite details before the Assessing Officer.

6. During the course of assessment proceedings, the Assessing Officer noted from the annual adjustment entries for the year 2011-12 that the society has debited Rs.12,49,409/- towards interest on CTD A/c (Compulsory Thrift Deposit) being the provision of interest @5% on current year collections of Rs.2,49,88,176/- paid for the year by crediting individual members accounts.

7. The Assessing Officer further noted that the society has debited additional interest RIDCTD(Reinvestment Deposit of CTDs i.e., opening balances of CTDs reinvested of Rs.58,96,831/- on being the provision of additional interest on current year collection of Rs.29,48,41,551/- (which are actually opening balances) @ 2% paid for the year in addition to provisions of 8% on the opening balances of Rs.29,48,41,551/- paid for the year.

8. The Assessing Officer similarly noted that the assessee has also deducted provision made towards Funds i.e., Reserve fund of Rs.83,662/-, Education Fund of Rs.1,00,000/- and common good fund of Rs.10,742/-. He, therefore, asked the assessee to explain as to why the appropriation of profits towards funds should not be disallowed. In absence of any satisfactory explanation given by the assessee, the Assessing Officer disallowed the above expenses by recording the following:

“1. The provision of additional interest of Rs. 99,95,270/- @40% of current year collections of Compulsory Thrift Deposits of Rs. 2,49,88,176/- is nothing but appropriation of profits.

2. It could be seen that the interest provided is not out of income derived from utilizing the Thrift deposits collected and given loans. But the provision made is out of income earned from all sources i.e., Share Capital, Reserves etc.

3 It could be seen from the minutes of the AGM held on 05.09.2011, that the provision of additional interest is nothing but appropriate of profits. The excerpts from the discussion held in the meeting are reproduced below:

"-----Mr. Madhusudhan Reddy discussing on the report.... Jobs. He also pointed out that the giving of dividend on share capital was more attractive to the members than the present system of giving additional interest. He was of the opinion that in the present system the new members get that much benefit as compared senior members. He was suggesting that more attractive and useful gifts may be given to the members.

Smt. Vijaya Bhaskar discussing on the report also opined that the old system of giving dividend and attractive gifts is more beneficial to the members".

4. It is amply clear from the above; the assessee society resorted to a novel method of crediting the dividend on share capital out of profits made during the year in the guise of additional interest on Compulsory Thrift Deposits and Reinvested Compulsory Thrift Deposits.

5. Income accrued and reached the society is applied to discharge self-imposed obligation or gratuitous".

9. Thus, the Assessing Officer determined the total income of the assessee by disallowing the provision of Rs.99,95,270/- towards additional interest on CTDs and provisions made of Rs.58,96,831/- towards additional interest on RID of CTDs and brought to tax.

10. Before the learned CIT (A), the assessee filed certain additional evidences which were rejected by the learned CIT (A). So far as the additions on merit are concerned, the learned CIT (A) upheld the action of the Assessing Officer.

11. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

12. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in sustaining various additions. He submitted that the lower authorities without considering the various decisions cited before him made the additions which is not justified. He accordingly submitted that the order of the learned CIT (A) be set aside and the grounds raised by the assessee be allowed.

13. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A).

14. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case completed the assessment u/s 143(3) by disallowing an amount of Rs.99,95,270/- being the provisions towards additional interest on CTDs and disallowing Rs.58,96,831/- being provision towards additional interest on RID of CTDs. We find the learned CIT (A) upheld the action of the Assessing Officer. We do not find any infirmity in the order of the learned CIT (A) on this issue. We find the Assessing Officer in the instant case completed the assessment u/s 143(3) on 16.3.2015 for the A.Y 2012-13. We find the Assessing Officer completed the assessment for the A.Y 2010-11 on 21.3.2016 and while deciding identical issues, the assessee had filed revised return of income by offering the provisions made on additional interest on CTDs and provision towards additional interest on RID of CTDs. The relevant observation of the Assessing Officer at para 2 of the assessment order reads as under:

“2 During the course of assessment proceedings, the assessee was asked to explain as to why additional interest paid on CTD and RID of CTD should not be treated as dividend payout as discussed in the order passed u/s.143(3) of the I.T.Act, for the A.Y.2012-13. In response, the assessee filed a letter stating as under.

“...We are herewith filing a revised return of income and revised computation of income. We have followed the general method of accounting and filed the return without claiming the deduction u/s. 80P of Income Tax Act, 1961. We are ignorant of that provision during the A. Y.2010-11. The learned A.O. added back the additional interest to the income offered. In this connection, we have taken the expert advice and offering additional interest paid as an income. Therefore, we request your Hon'ble selves to allow deduction u/s 80P of the I.T. Act and complete the assessment.”

The revised computation of income filed by the assessee is as under:

<i>1. Profits and gains from business & profession</i>	<i>Rs.1,59,55,667</i>
<i>2. Income from other sources</i>	<i>Rs. 8,06,385</i>
<i>Gross total income</i>	<i>Rs.1,67,62,052</i>
<i>Less: Deduction u/s.80P :</i>	<i>Rs.1,59,55,667</i>
<i>Taxable income</i>	<i>Rs. 8,06,385”</i>

15. Similarly, for the A.Y 2013-14, the Assessing Officer passed the order on 21.3.2016. The assessee was also confronted identical issues and the assessee had offered the additional income. The relevant observation of the Assessing Officer reads as under:

“ During the course of assessment proceedings, the assessee was asked to explain as to why additional interest paid on CTD and RID of CTD should not be treated as dividend payout as discussed in the order passed u/s. 143(3) of the I.T.Act, for the A.Y.2012-13. In response, the assessee filed a letter stating as under.

“...We are herewith filing a revised return of income and revised computation of income. We have followed the general method of accounting and filed the return without claiming the deduction u/s.80P of Income Tax Act, 1961. We are ignorant of that provision during the A. Y.2010-11. The learned A.O. added back the additional interest to the income offered. In this connection, we have taken the expert advice and offering additional interest paid as an income. Therefore, Therefore, we request your Hon'ble selves to allow deduction u/s 80P of the I.T. Act and complete the assessment.”

The revised computation of income filed by the assessee is as under:

<i>Profits and gains from business & profession</i>	<i>Rs.1,14,74,299</i>
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2 Income from other sources :	Rs. 25,85,008
Gross total income	Rs.1,40,59,307
Less: Deduction u/s.80P	Rs.1,14,74,299
Taxable income	Rs. 25,85,010

After verification of the assessee's submissions and the revised computation of income filed, the assessment is completed on the income declared as per the revised computation of income".

16. Similarly for the A.Y 2014-15, we find the Assessing Officer while passing the order on 29.11.2016 has recorded as under:

"During the course of assessment proceedings, the assessee was asked to explain as to why additional interest paid on CTD and RID and CTD should not be treated as dividend payout as discussed in the order passed u/s 143(3) of the I.T Act for the AY 2012-13. In response the assessee filed a letter stating as under.

"With reference to the above, we are herewith filing a revised income tax return and revised computation of income. We have followed the general method of accounting and filed the return without claiming the deduction u/s. 80P of Income Tax Act 1961. We are ignorant of that provision during the AY 2013-14. The learned Assessing Officer added back the additional interest to the income offered. In this connection we have taken the and expert advice offering additional interest paid as an income. Therefore, we request your Hon'ble' selves to allow deduction u/s. 80P of IT. Act 1961 and complete the assessment. Hence we requested your good selves to verify the same and complete the assessment accordingly.

We have offered interest receivable & accrued interest on bank deposits The revised computation of income filed by tine assessee is as under:

(1) Profits and Gains from Business and Profession	Rs.142.85.529/-
(2) Income from Other sources	Rs 61.98.860-
Gross Total Income	Rs.2,04,84,389/-
Less Deduction under chapter-VIA (80 P)	Rs.142.85.529/-
Taxable Income	Rs. 61,98,860/-"

Subject to the above, the income of the assessee is computed as under:

Income returned	Rs. Nil
Add: Income from other sources:	Rs.61,98,860/-"

17. Under these circumstances, we do not find any infirmity in the order of the learned CIT (A) in confirming the additions made by the Assessing Officer.

18. In Ground of appeal No.6, the assessee is challenging the order of the learned CIT (A) in not allowing deduction u/s 80P of the I.T. Act.

18.1 After hearing both the sides, we find that although this ground was raised before the learned CIT (A), however, he rejected the said ground taken before him on the ground that the assessee has not taken this claim before the Assessing Officer and has taken this ground for the first time and this amounts to a new claim in additional ground. He, therefore, did not permit the assessee to raise the new or additional ground even if this is a legal ground unless the material facts are available on record. The additional evidences filed before him were not admitted by him on the ground that these were not filed by the assessee during the original proceedings. The argument of the assessee that for the A.Ys 2008-09, 2009-10 & 2013-14 the assessee had filed revised return offering certain income and claim deduction u/s 80P of the Act was allowed and therefore, the assessee should be allowed the deduction u/s 80P of the Act was not allowed by the learned CIT (A). It is the submission of the learned Counsel for the assessee that the assessee was all along being allowed deduction u/s 80P by the Assessing Officer on the basis of the additional income declared by the assessee and therefore, the same should not be denied for the impugned A.Y.

19. We find sufficient force in the above arguments of the learned Counsel for the assessee. The Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers & Shareholders Pvt. Ltd reported in 349 ITR 036 held that the assessee can always make a new claim not made in return of income before the

appellate authorities. Since in the instant case, the assessee was all along been granted deduction of section 80P benefit and a ground was also taken before the learned CIT (A), therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to consider the claim of deduction u/s 80P of the I.T. Act. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground of appeal No.6 is therefore, allowed for statistical purposes.

20. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 14th September, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 14th September, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	LIC Employees Coop. Credit Society, LIC Zonal Office, Jeevan Bhagya Secretariat Road, Saifabad, Hyderabad
2	Income Tax Officer Ward 5(3) Hyderabad 500029
3	CIT (A)- 1, Guntur
4	Pr. CIT-II, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order