

Income Tax Appellate Tribunal - Indore

Bhee Thrift & Credit Co-Operative ... vs Department Of Income Tax

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IN THE INCOME TAX APPELLATE TRIBUNAL

INDORE BENCH, INDORE

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER

And

SHRI R.C. SHARMA, ACCOUNTANT MEMBER

ITA No. 217/Ind/2012

A.Y. 2008-09

ACIT-3(1), Bhopal :: Appellant

Vs

BHEE Thrift & Credit  
Co-op. Society, Bhopal  
PAN - AAAAB-0697H

:: Respondent

Appellant by	Shri Keshav Saxena
Respondent by	Shri Ajay K. Chhajed

Date of hearing	25.07.2012
Date of pronouncement	06 .08.2012

O R D E R

PER JOGINDER SINGH , judicial member The Revenue is aggrieved by the impugned order dated 31st January, 2012, on the ground that on the facts and in the circumstances of the case, the ld. first appellate authority erred in deleting the addition of Rs.39,74,958/- made on account of credit balance outstanding as the persons or group concerns are relatives of the partners of the firm.

2. During hearing, we have heard Shri Keshave Saxena, ld. CIT(DR) and Shri Ajay K. Chhajed, ld. Counsel for the assessee. The crux of the arguments on behalf of the Revenue is that the present issue is covered against the assessee by the order of the Tribunal in the case of M/s. Vidisha Bhopal Kshetriya Gramin Bank, Vidisha (ITA Nos.215 & 216/Ind/2011, AYs 2007-08 & 2008-09, order dated 18.6.2012). The learned CIT DR also contended that after insertion of sub-section (4) of section 80P of the Act, with effect from 1.4.2007, the deduction is only available to primary agricultural credit society and primary cooperative agricultural and rural development bank by further submitting that deduction u/s 80P of the Act is not available to the assessee because the assessee is neither a primary agricultural credit society nor a primary cooperative agricultural and

rural development bank.

2.1 On the other hand, the learned counsel for the assessee strongly defended the impugned order by submitting that only employees of BHEL are the members of this credit society who deposit monthly subscriptions (thrift) with the assessee society and they are advanced loans by the credit society out of such deposits. Therefore, it was contended that the assessee society is engaged in providing credit facilities to its members only and not to the public at large, therefore, the society is entitled to deduction u/s 80P of the Act.

2.3 We have considered the rival submissions and perused the material available on record. The learned AO disallowed the claimed exemption u/s 80P and added to the total income of the assessee. On appeal, the same was directed to be deleted by the learned CIT(A) against which the Revenue is in appeal before the Tribunal. Before coming to any conclusion, we are reproducing hereunder the relevant portion from the impugned order :-

"2.3 On examination it is found that the appellant society is an duly registered cooperative society. It is providing credit to its members only. Hence is entitled for deduction u/s 80P(2). The AO's finding that the society is not in entitled for deduction u/s 80P(2) due to the reason that it is not carrying on the business of banking is ill founded. Section 80P(2) provides that a cooperative society engaged in carrying on the business of banking or providing credit facilities to its members is eligible for deduction u/s 80P(2). Its shows that a society carrying on either business of banking or providing credit facilities is entitled for deduction. Since the appellant society is providing credit facilities to its members, it is entitled deduction u/s 80P(2). The AO is directed to allow deduction u/s 80P(2) at Rs. 18435916/-. This ground of appeal is allowed."

2.4 If the assertion made by the learned respective counsel, facts available on record, observations made in the assessment order and the conclusion drawn in the impugned order are kept in juxtaposition and analysed, there are certain undisputed facts which are summarised as under :-

- (a) the assessee is registered as a thrift and credit cooperative society under Madhya Pradesh Cooperative Societies Act,
- (b) The members of the society only can be from the employees of BHEL and not the public at large.
- (c) The society is engaged in providing credit facilities to its members only.
- (d) The society is forbidden to grant any loan to any person other than its members meaning thereby the object is of "mutual benefit" only.
- (e) The objects of the society are fortified by the letter of the President dated 19th January, 2012 (page 50 of the paper book) as per which it has been specifically mentioned that the society is restricted to employees of BHEL and no outsider is permitted to become a member or share holder

of depositor or lender or borrower.

(f) The assessee society is forbidden to grant any loan, advance or any kind of assistance to any person other than its members

(g) The accounts of the assessee society are duly audited from time to time on prescribed Form No. 3CB (audit report u/s 44AB) of the Act available on pages 32 to 49 of the paper book.

2.5 We have also perused the registration certificate dated 23rd April, 1993 issued by the office of the Deputy Registrar, Cooperative Societies, Bhopal (pages 7 to 31 of the paper book). At page 11 of the paper book, there is a mention of membership as per which also only the permanent employees of BHEL can become the member of the assessee society. Even on retirement of such members, there are certain restrictions. The assessee as on 31.9.2008 declared income of Rs.38,560/- after claiming deduction of Rs.1,84,35,916/- u/s 80P of the Act. Pursuant to various notices, the assessee submitted the required details, explanations, documents and evidences as is evident from the assessment order. If these facts are analysed with the provisions of section 80P(2)(a)(i) of the Act, which speaks about deduction in respect of income of cooperative societies. As per sub-section (1) of section 80P of the Act, where, in the case of an assessee, being a cooperative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee. Clause (a) speaks about cooperative societies which are engaged in carrying on the business of banking or providing credit facilities to its members. In the present appeal also, the assessee society is providing credit facilities to its members only and not to the public at large, therefore, the case of the assessee is covered by this section and not by sub-section (4) of section 80P which was inserted by the Finance Act, 2006 with effect from 1.4.2007. Earlier sub-section (4) was omitted by the Finance Act, 1969 with effect from 1.4.1970. The assessee society is neither a bank nor a rural development bank, therefore, the assertion made by the learned CIT DR is not applicable to the facts of the present appeal. The finding of the AO that the assessee society is carrying on business of banking is also contrary to the facts. Since the assessee society is providing credit facilities to its members only, therefore, clearly entitled to deduction u/s 80P(2) of the Act, consequently, we find no infirmity in the stand of the learned CIT(A). It is affirmed.

Finally, the appeal of the Revenue is dismissed. This order was pronounced in the open Court on 6.8.7.2012.

Sd

(R. C. SHARMA)  
ACCOUNTANT MEMBER

sd

(JOGINDER SINGH)  
JUDICIAL MEMBER

Dated: 6.8.2012

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