Income Tax Appellate Tribunal - Ahmedabad

Samarpan Co.Op.Credit Society ... vs Assessee on 5 February, 2016

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH AHMADABAD

, ''

Before: Shri Pramod Kumar, Accountant Member
Shri Rajpal Yadav, Judicial Member

ITA Nos. 2400 & 2401/Ahd/2015
Assessment Years :2010-11 & 2012-13

The Samarpan Co-op. Credit Society Ltd. 124-125, Rajiv Gandhi Complex, Lalchali Road, Opp. Old Bus Stand Deesa, Dist. B. K. 385535	V/s. The ACIT, Banaskantha Circle, Palanpur, 2 n d Floor, Shree Hari Complex, Abu High way, Palanpur, Dist. B. K. 385001
PAN No. AAAAT8371A	
(Appellant)	.. (Respondent)

/By Assessee Shri M. S. Thakkar, A.R.
/By Revenue Shri R. P. Maurya, D.R.

/Date of Hearing 22.12.2015
/Date of Pronouncement 05.02.2015

ORDER

PER : Rajpal Yadav, Judicial Member The present two appeals are directed at the instance of assessee against separate orders of even dated i.e. 09th June, 2015 passed by ld. CIT(A)-4, I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Ys . 1 0 - 1 1 & 1 2 - 1 3 (T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T) Page 2 Ahmedabad on the appeals of assessee for A.Ys.2010-11 & 2012-13. Since, common issues are involved, therefore, we heard both the appeals together and it may be appropriate to dispose of them by this common order.

2. First we take ITA No.2401/Ahd/2015 i.e. appeal for A.Y. 2012-13. The grounds of appeal taken by assessee are not in consonance with Rule 8 of ITAT Rules, 1963. They are descriptive and argumentative in nature. In brief, the grievance of the assessee is that ld. CIT(A) erred in denying the claim of assessee for grant of deduction u/s.80P(2)(a)(i) on a sum of Rs.3,77,515/- which was earned by the assessee as interest income on fix deposits with the banks.

3. The brief facts of the case are that the assessee is a Co-operative Society registered under Gujarat Co-operative Society Act, 1961 carrying on the business of providing credit facilities to its member. It has filed its return of income on 29th of September, 2012 declaring total income at NIL. The case of the assessee was selected for scrutiny assessment and a notice u/s.143(2) of the Income Tax Act was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Assessing Officer that assessee society has earned income by way of interest derived from its investments other than co-operative society. He worked out the total interest income of Rs.3,77,517/-. Ld. A.O. rejected the prayer of assessee to grant exemption u/s.80P(2)(a)(i) of the Income Tax Act on this amount. Accordingly, income of the assessee was determined at Rs.3,77,520/-.

4. Appeal to the ld. CIT(A) did not bring any relief to the assessee.

5. The ld. Counsel for the assessee, at the very outset, submitted that this issue is covered in favour of the assessee by the order of ITAT, Ahmedabad in the case of ITO vs. Jafari Momin Vikas Co.-op. Credit Society Ltd. in ITA No.1491/Ahd/2012. The appeal of the Revenue against this order has also been ITA Nos.2400&2401/Ahd/15A.Ys.10-11&12-13(The Samarpan Co-op. Credit Society Ltd. vs. ACIT) Page 3 dismissed by the Hon'ble Gujarat High Court and the order of the Hon'ble Gujarat High Court reported in [2014] 49 taxmann.com 571 (Gujarat). The question framed by the Hon'ble High Court in this case read as under:

> "Whether the hon'ble Tribunal is correct in allowing the deduction under section 80P(2)(a)(i) to the assessee's society even though the same is covered under section 80P(4) read with section 2(24)(viia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble High Court was answered the question against the Revenue by observing as under:

> "6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of sub-section (4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then the Legislature specified primary agricultural credit societies along with primary co-operative agricultural and rural development banks for exclusion from such exclusion and, in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of the Central Board of Direct Taxes Circular No. 133 of 2007, dated May 9, 2007. Circular provides as under :
>
> "Subject : Clarification regarding admissibility of deduction under section 80P of the Income-tax Act, 1961.
>
> 1. Please refer to your letter No. DCUS/30688/2007, dated March 28, 2007, addressed to the Chairman, Central Board of Direct Taxes, on the above given subject.

2. In this regard, I have been directed to state that sub-section(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949.

3. In Part V of the Banking Regulation Act, 'co-operative bank' means a State co-operative bank, a Central co-operative bank and a primary co-operative bank.

4. Thus, if the Delhi Co-op. Urban Thrift and Credit Society Ltd. does not fall within the meaning of 'co-operative bank' as defined in Part V of the Banking Regulation Act, 1949, sub-section (4) of section 80P will not apply in this case.

5. This is issued with the approval of the Chairman, Central Board of Direct Taxes."

ITANos.2400&2401/Ahd/15A.Ys.10-11&12-13(TheSamarpanCo-op.CreditSocietyLtd.vs.ACIT) Page 4

7. From the above clarification, it can be gathered that sub-section (4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by the Central Board of Direct Taxes, the Delhi Co-op. Urban Thrift and Credit Society Ltd. was under consideration. The circular clarified that the said entity not being a co- operative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not co-operative banks. In the present case, the respondent-assessee is admittedly not a credit co-operative bank but a credit co-operative society. The exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, the tax appeals are dismissed."

Similarly, identical question has come before Hon'ble Karnataka High Court in the case of Guttigedarara Credit Co-operative Society Ltd. vs. ITO reported in [2015] 60 taxmann.com 215 (Karnataka). The questions framed by Hon'ble Karnataka High Court rendered as under:

"(i) Whether the Tribunal failed in law to appreciate that the interest earned on short-term deposits in banks were only investment in the course of activity of providing credit facilities to members and that the same cannot be considered as investment made for the purpose of earning interest income and consequently passed a perverse order ?

(ii) Whether the Tribunal is correct in law in holding that the interest earned on the deposits by the appellant/co-operative society does not qualify for deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961 on the facts and circumstances of

the case?

(iii) Without prejudice, whether the tribunal is justified in not holding that if at all the interest earned from deposits with scheduled banks is held to be not attributable to the activity of providing credit to members, then the whole of such income is not liable to tax but only the net income after reducing the expenditure incurred to earn such interest income would be liable to tax on the facts and circumstances of the case?"

The Hon'ble Karnataka High Court has recorded the following findings while deciding the above questions in favour of assessee:

"7. From the aforesaid facts and rival contentions, the undisputed facts which emerge are, certain sums of interest were earned from short-term deposits and from savings bank account. The assessee is a Co-operative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question.

ITANos.2400&2401/Ahd/15A.Ys.10-11&12-13(TheSamarpanCo-op.CreditSocietyLtd.vs.ACIT) Page 5

8. In this regard, it is necessary to notice the relevant provision of law i.e., Section 80P(2)(a)(i):--

"80P Deduction in respect of income of co- operative societies:-- (1) Where, in the case of an assessee being a co-operative 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.

(2) The sums referred to in sub-section (1) shall be the following, namely:

(a) in the case of co-operative society engaged in--

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) to (vii) ** ** ** the whole of the amount of profits and gains of business attributable to any one or more of such activities."

9. The word 'attributable' used in the said Section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v.

CIT [1978] 113 ITR 84 (at page 93) as under:--

> 'As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor- General, it has used the expression "derived from", as. for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.'

10. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Ys . 1 0 - 1 1 & 1 2 - 1 3 (T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T) Page 6 A Co-operative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

11. In this context when we look at the judgment of the Apex Court in Totgars Co- operative Sale Society's case (supra), on which reliance is placed, the Supreme Court was dealing with a case where the assessee/Co-operative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought. was invested in a short-term deposit/security.

Such an amount which was retained by the assessee-Sociery was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

12. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State Co-operative Bank Ltd. [2011] 336 ITR 516/200 Taxman 220/12 taxmann.com 66.

13. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial questions of law are answered in favour of the assessee and against the revenue. Hence, we pass the following order:--

Appeal is allowed. The impugned order dated 19.9.2014 is set aside. Parties to bear their own costs."

ITANos.2400&2401/Ahd/15A.Ys.10-11&12-13(TheSamarpanCo-op.CreditSocietyLtd.vs.ACIT) Page 7 The Hon'ble Karnataka High Court has reversed the order of the Tribunal and held that interest income earned by a Credit Co-operative Society from the deposits with scheduled bank is liable to be considered as eligible for claim of deduction u/s.80P(2)(a)(i) of the Income Tax Act.

6. On the other hand, ld. D.R. relied upon the order of Assessing Officer.

7. On due consideration of the facts and circumstances, we find that issue in dispute is purely covered in favour of the assessee partly by the decision of Hon'ble Karnataka High Court wherein it has been specifically held that interest income earned by the Credit Co-operative Society from deposits made with scheduled bank would also qualify for grant of deduction u/s.80P(2)(a)(i) of the Income Tax Act. Therefore, we allow the appeal of the assessee and direct the Assessing Officer to grant deduction u/s.80P(2)(a)(i) of the Income Tax Act and the interest income of Rs.3,77,517/-.

8. Now we take ITA No.2400/Ahd/2015 i.e. appeal for A.Y. 2010-11.

9. In this appeal, the grievance of the assessee is that ld. CIT(A) has erred in upholding the denial of deduction u/s.80P(2)(a)(i) of the Income Tax Act of Rs.56,359/- which was earned by the assessee as interest income.

10. The brief facts of the case are that assessee has filed its return of income on 08.10.2010 declaring total income at Nil. The ld. Assessing Officer has passed an assessment order u/s.143((3) of the Act on 07.12.2012. The ld. Assessing Officer has held that assessee society is carrying out business of banking and claimed deduction u/s.80P(2)(a)(i) of the Income Tax Act. He was of the opinion that in view of sub-section (4) of Section 80P inserted with effect from 01.04.2007. The assessee is not entitled for deduction u/s.80P(2)(a)(i) of I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Ys . 1 0 - 1 1 & 1 2 - 1 3 (T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T) Page 8 the Income Tax Act. The ld. Assessing Officer has determined the taxable income of the assessee at Rs.14,02,150/-.

11. Dissatisfied by this assessment order, assessee carried the matter in appeal before the ld. CIT(A). Ld. CIT(A) has partly allowed the appeal of the assessee. The ld. CIT(A) has held that interest received by the assessee on short term deposits and Government securities would be assessed as income from other sources and deduction u/s.80P(2)(a)(i) of the Income Tax Act will not be admissible to the assessee. The finding given by the ld. CIT(A) in paragraph no.4.12 read as under:

> "4.12 AO is directed to verify whether any interest was received by the appellant on short-term deposits and government securities. He shall assess such interest under the head 'income from other sources' as laid down by the above mentioned decision of the Supreme Court and no deduction be allowed u/s.80P(2) on such interest income. Therefore, he shall restrict the deduction u/s.80P(2)(a)(i) accordingly."

12. The ld. Assessing Officer has given effect to this order of ld. CIT(A) dated 25th February, 2014. The ld. Assessing Officer has worked out the interest of Rs.56,359/-. He denied the deduction to the assessee on this amount u/s.80P(2)(a)(i) of the Income Tax Act.

13. Dissatisfied with this order of A.O., assessee went in appeal before the ld. CIT(A). Ld. First Appellate Authority has confirmed the order of Assessing Officer and dismissed the appeal of the assessee.

14. Ld. counsel for the assessee has reiterated the contentions as were raised in A.Y. 2012-13. On the other hand, ld. D.R. relied upon the order of A.O.

15. On due consideration of the facts and circumstances, we are of the opinion that assessee cannot draw any benefit from the arguments made in A.Y. 2012-13 because the Assessing Officer while passing the order dated 16th June 2014 was giving effect to the order of ld. CIT(A). The assessee if aggrieved I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Ys . 1 0 - 1 1 & 1 2 - 1 3 (T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T) Page 9 with the directions of the ld. CIT(A) given in order dated 25th February 2014, then it should challenge that order before the Tribunal. The Assessing Officer was acting merely as an Executing Court who cannot go beyond the decree. The Assessing Officer has no jurisdiction to take a different view than that the one directed by the ld. CIT(A). The order of the ld. CIT(A) was not challenged by the assessee and therefore, under the garb of rectification, assessee cannot be permitted to challenge the order of the ld. CIT(A) which has been become final. Therefore, the appeal for A.Y. 2010-11 is dismissed.

16. In the result, the appeal of the assessee for A.Y. 2012-13 is allowed whereas appeal for A.Y. 2010-11 is dismissed.

This Order pronounced in open Court on 05.02.2016

Sd/-
(Pramod Kumar)
Accountant Member
Ahmedabad: Dated 05.02.2016

True Copy
S.K.Sinha
/ Copy of Order Forwarded to:-
1. / Appellant
2. / Respondent
3. $ &
/ Concerned CIT
4. &
- / CIT (A)

5. ' **$, $, / DR, ITAT, Ahmedabad

6. . / Guard file.

By order/ , / $,