

IN THE INCOME TAX APPELLATE TRIBUNAL : COCHIN BENCH: KOCHI.

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE. K., JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No. 08/Coch/2016.

निर्धारण वर्ष /Assessment year : 2008-2009.

M/s. The Erumely Service
Co-operative Bank Ltd,
No.K.113, Erumely (P.O)
Kottayam 686 509.

Vs. The Principal Commissioner of
Income Tax,
Kottayam.

[PAN AACCT 8991Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. Prasanth Srinivas, C.A.

प्रत्यर्थी की ओर से /Respondent by

: Shri. Shanthom Boe, CIT, D.R

सुनवाई की तारीख/Date of Hearing

: 20-03-2017

घोषणा की तारीख /Date of Pronouncement

: 22-03-2017

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

This appeal filed by the assessee is directed against an order dated 11.08.2015 of Principal Commissioner of Income Tax, Kottayam passed u/s.263 of the Income Tax Act, 1961 (in short "the Act").

2. Appeal has been filed by the assessee with a delay of ninety six days. In the petition seeking condonation of the delay, it is

stated by the assessee that they were not having any professional employees for handling their tax matters. As per the assessee, only when it engaged a Chartered Accountant for tax audit, the need for filing an appeal against the order of the Principal Commissioner of Income Tax, u/s.263 of the Act was brought to its notice. As per Id. Authorised Representative delay was not intentional but only due to lack of professional advice.

3. Opposing the condonation petition, Id. Departmental Representative submitted that the reasons given by the assessee were vague.

4. We have heard the contentions with regard to the condonation petition. Reason cited by the assessee is that it came to know of the requirement to file an appeal against the order u/s.263 of the Act only after it appointed a Chartered Accountant for tax audit and transfer pricing audit. In the facts and circumstances of the case, we are of the opinion that sufficient and reasonable cause has been shown by the assessee for the delay. Delay is condoned. Appeal is admitted.

5. Facts apropos are that assessee had originally declared Nil income in the return filed for the impugned assessment year after claiming deduction u/s.80P(2)(a)(i) of the Act. Assessment was completed u/s.143(3) of the Act on 14.12.2010 accepting Nil income returned by the assessee. Thereafter on 30.11.2012 a notice u/s.148 of the Act was issued to the assessee for reopening the assessment. Reopening was resorted for a reason that assessee had credited interest income of Rs.29,70,416/- as a part of its business receipt in its profit and loss account. As per Id. Assessing Officer such interest on term deposits had to be assessed under the head "income from other sources" thereby restricting the claim for deduction u/s.80P of the Act. In pursuance to such notice, assessee filed a return wherein it declared a net profit of Rs.10,59,889/- against loss of Rs.17,30,373/- shown in the profit and loss account filed alongwith the original return. Id. Assessing Officer during the course of re-assessment proceedings noted that assessee was in receipt of interest from various institutions for deposits placed by it in such institutions. As per Id. Assessing Officer such interest included a sum Rs.5,44,500/- received from Treasury, Kottayam. It seems the balance of interest was received by the assessee from various Co-operative societies. Id. Assessing Officer proposed to consider interest income of

Rs.5,44,500/- under the head "income from other sources". Though the assessee submitted that such deposits were placed as per the directions of the Government, Id. Assessing Officer took a view that there was no such instruction from Government available on record. Relying on the judgment of Hon'ble Apex Court in the case of *Totgar's Co-operative Sale Society Ltd vs. ITO 322 ITR 283*, Id. Assessing Officer held that interest on deposits would not be eligible for deduction u/s. 80P(2) of the Act, since this was not attributable to the business of the assessee. According to him, interest would be allowable as a deduction only if it was received from other co-operative societies u/s. 80P(2)(d) of the Act. Assessee did request Id. Assessing Officer to set off a portion of its interest expenditure paid to its depositors, against such interest income. As per assessee interest earning deposits placed by it in treasury was out of deposits received by it from its members. Claim of the assessee was that it had paid interest of Rs.1,25,12,800/- to its depositors during the relevant previous year against total deposits of Rs.15,57,94,539/- as on 31.03.2008. Id. Assessing Officer worked out a proportionate interest expenditure of Rs.2,60,975/- and allowed it as a deduction against the interest income of Rs.5,44,500/-. Balance of Rs.2,83,525/- was considered under the head "income from other sources" and held

as not eligible for deduction under section 80P(2) (a) or 80P (2)(d) of the Act.

6. On 07.04.2015, a notice u/s.263 of the Act was issued by the Commissioner of Income Tax to the assessee. In the said notice, it was mentioned that assessee was given deduction of Rs.50,000/- u/s.80P(2) (c) (ii) of the Act, though its trading business incurred a loss of Rs.1,11,097.76. Secondly as per Id. CIT an amount of Rs.2,60,975/- was wrongly allowed as interest expenditure against interest income of Rs.5,44,500/- while computing income under the head "income from other sources". As per Id. CIT, assessee's interest expenditure of Rs.2,60,975/- allowed for set off, included those relating to the period 01.04.2001 to 31.03.2007 also. According to Id. CIT these were prior period expenditure, and not allowable since assessee was following mercantile system of accounting. As per Id. CIT, interest expenditure which could be considered for set off, was only for the period 01.04.2007 to 08.10.2007, which came to Rs.20,075/-. In other words, according to him, against allowable expenditure of Rs.20,075/- against interest income, Id. Assessing Officer had allowed Rs. 2,40,900/-. Thus, according to the Id. CIT, order of the Id. Assessing Officer was erroneous and prejudicial to the interest of the revenue, on above two counts.

7. In its reply, assessee stated that interest income of co-operative societies giving credit facilities to its members had to be considered as income from banking business. Relying on the judgment of Apex Court in the case of Karnataka State Co-Operative Apex Bank, assessee submitted that interest income could not be considered in isolation. As per assessee the case of *Totgar's Co-operative Sale Society Ltd (supra)* was not applicable to it, since the said society was a marketing society and not a credit society. In any case as per assessee, interest of Rs.5,44,500/- received by it on 08.10.2007 from the Treasury Kottayam was for a period of 78 months on a deposit made on 31.03.2001. Claim of the assessee was that if interest expenditure of six months alone were to be reckoned, interest income also had to be limited to the same period. In other words, as per the assessee, it should be given the same treatment for interest income as well as interest expenditure.

8. However, Id. CIT not impressed by the above explanation. He was of the opinion that the assessment order was erroneous and prejudicial to the interest of the Revenue on both the counts. According to him, assessee was not eligible for deduction u/s.80P(2) (c)(ii) of the Act since it was having trading business loss. Further, as per Id. CIT deduction of interest expenditure allowed to the assessee, while computing its income under the head 'income from other

sources" was incorrectly calculated since such interest allowed included interest relating to the period 01.04.2001 to 31.03.2007. He directed the Id. Assessing Officer to modify the assessment.

9. Now before us, Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that assessee had already filed an appeal before Commissioner of Income Tax (Appeals) assailing change of head of interest income to "income from other sources". Further, as per Id. Authorised Representative, Id. Assessing Officer had applied his mind and allowed deduction of interest expenditure u/s. 57 of the Act having considered the interest income under "income from other sources". Id. Authorised Representative submitted that Id. Assessing Officer had adopted one of the possible course of action and hence his order could not be treated as erroneous. Id. Authorised Representative submitted that Principal Commissioner of Income Tax was simply adopting a different method for calculating interest allowable u/s.57 of the Act. As per Id. Authorised Representative there was clear application of mind by the Id. Assessing Officer in the original course of proceedings and Principal Commissioner of Income Tax was only trying to substitute a lawful view taken by the Id. Assessing Officer with his view. Reliance was placed on the judgment of Apex Court in the case of *Malabar Industrial Co. Ltd vs. CIT 243 ITR*

83 that of Hon'ble Jurisdictional High Court in the case of *CIT vs. P.D. Abraham (2014) 88 CCH 306* and that of Co-ordinate Bench in the case of *M/s. Platino Classic Motors India (P) Ltd vs. DCIT (in ITA No.315/Coch/2015) dated 19.05.2016*. Further, as per Id. Authorised Representative by virtue of circular No.18/2015 dated 02.11.2015 interest income in the hands of a co-operative society engaged in banking business was to be considered business income and not as income from other sources. In any case, as per Id. Authorised Representative when interest expenditure was to be apportioned in the ratio "6/78", the same ratio should have been applied for interest income also.

10. As for the disallowance of claim u/s.80P(2)(c) (ii) of the Act, no arguments were advanced by the Id. Authorised Representative.

11. Per contra, Id. Departmental Representative strongly supported the order of the Id. CIT. As per Id. Departmental Representative circular of the CBDT could not override the statute and interpretation given by Courts.

12. We have considered the rival contentions and perused the orders of the authorities below. Proceedings under Section 263 of the

Act was initiated for two reasons. First was for allowing deduction of Rs.50,000/- to the assessee u/s.80P(2) (c) (ii) of the Act, when it had a trading loss of Rs.1,11,097.76. Assessee has no grievance on this. Its grievance is limited to revisionary powers exercised by the Id. CIT on interest expenditure claimed and allowed against interest income assessed under the head income from other sources. It is not disputed that assessee had received interest income of Rs.5,44,500/- on its deposits placed with treasury. During the course of original assessment proceedings, assessee had given a reply on this proposal of the Id. Assessing Officer. Pertinent part of the said reply is reproduced hereunder:-

'Without prejudice to our claim of deduction u/s.80P(2) (a) (i) for the whole interest income on deposits with other institutions we have to state that the deposit with Treasury is part of the amount we have accepted as interest bearing deposits from members. So, we are eligible to claim that portion of interest as expense, which we have paid to the depositors.

In fact, bank deposited Rs.5,00,000/- at Treasury on 31.03.2007 for 78 months at 12% per annum at compound interest and it was matured on 08.10.2007. On maturity we got Rs.5,44,500/- as interest and it is included under interest received on deposits. As per the audited accounts, during the FY 2007-08 we paid Rs.1,25,12,800/- as interest on deposits and the total deposit accepted from members as on 31.03.2008 was Rs15,57,94,539/-. Thus the average rate of interest comes to 8.03%. Hence, we are eligible to get deduction @8.03% per annum on Rs.5,00,000/- for 78 months as cost of funds deposited. This comes to Rs.2,60,975/- which may be deducted from the interest received on treasury deposits. Over and above that we are eligible for deduction of Rs.50,000/- u/s. 80P(2) (c) also''.

A reading of the above reply clearly indicate that assessee had brought to the notice of the Id. Assessing Officer the tenure of the deposits on which it had earned interest of Rs.5,44,500/-. It had also stated that such deposits were made out of funds received from its members on which it paid interest of Rs.1,25,12,800/-, during the relevant previous year. Crux of the reply of the assessee was that if interest income for 78 months was to be considered for assessment in one go, then cost of funds also was to reckoned for 78 months. What Id. Assessing Officer has stated in the assessment order dated 24.01.2014 which is subject matter of revision by the Principal Commissioner of Income Tax is reproduced hereunder:-

'Therefore, the interest income of Rs.5,44,500/- as discussed above being interest income arising on the surplus vested in deposits which surplus was not required for business purposes is treated as income from Other Sources to be taxed under section 56 of the Act. However, the assessee vide letter dated 27.12.2013 has made a request to consider its claim of a portion of interest expense which the assessee had paid to the depositors. As per the audited accounts, the assessee paid Rs.1,25,12,800/- as interest on deposits and deposits accepted from members as on 31.03.2008 was Rs.15,57,94,539/-. The proportionate interest expense that is allowable u/s.57 of the Act amounts to Rs.2,60,975/-. The balance income assessable under Income from other sources will be Rs. The assessee has also made a claim for deduction of Rs.50,000/- u/s. 80P(2)(c) of the Act.

Thus, when the Id. Assessing Officer allowed claim of expenditure to the assessee, calculating the prorata interest as a ratio of the total interest paid by the assessee during the relevant financial year, he was aware that, that the interest income was for 78 months. We cannot say that it was an erroneous view of law by the Id. Assessing Officer. When interest income was considered by the Id. Assessing Officer for the whole tenure of the deposits including period prior to the beginning of the previous year, interest expenditure also had to be reckoned for the same period. The view of the Principal Commissioner of Income Tax that interest expenditure alone had to be restricted to the proportionate amount for seven months in the relevant previous year, would be against the matching principles. In other words, it would result in a situation where interest income is reckoned for 78 months but expenditure only for 07 months. We can surely say that Id. Principal Commissioner of Income Tax was trying to substitute a legally permissible view taken by the Id. AO with another view which was not a rational one. Hon'ble Apex Court in the case of *Malabar Industrial Co. Ltd (supra)* has clearly held that revisionary powers u/s.263 of the Act cannot be invoked for substituting a lawful view taken by the Id. Assessing Officer, with another view. Hence, while upholding the revision order in so far as it concerned allowance

u/s.80P(2)(c) (ii) of the Act is concerned, we modify and delete that portion relating to treatment of income and expenditure under the head "income from other sources" on the interest income earned by the assessee from its deposits in Treasury, Kottayam. Order of the Id. CIT stands modified to this extent.

13. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 22-03-2017.

Sd/-
(GEORGE GEORGE. K)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(ABRAHAM P. GEORGE)
लेखा सदस्य/ACCOUNTANT MEMBER

Cochin

दिनांक/Dated:22nd March, 2017

KV

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

By Order

(ASSISTANT REGISTRAR
I.T.A.T., Cochin.