

IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH, NAGPUR

BEFORE SHRI MUKUL K. SHRAWAT, JUDICIAL MEMBER AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER.

I.T.A. No.30/Nag/2015.
Assessment Year : 2010-11.

The Income-tax Officer,
Ward-5, Amravati.

Appellant.

Vs. M/s Utkranti Nagri Sahakari
Pat Sanstha, Jarud, Tq. Warud,
Dist Amravati.

Respondent.

Appellant by : Shri S.P.G. Mudliar.
Respondent by : Shri Naresh Jhakotia.

Date of Hearing : 02-06-2016
Date of Pronouncement : 2nd June, 2016

ORDER

Per Shri Shamim Yahya, A.M.

This appeal by the Revenue is directed against the order of learned CIT(Appeals)-II, Nagpur dated 12-11-2014 and pertains to assessment year 2010-11. The grounds of appeal read as under :

1. On the facts and in the circumstances of the case and in law the learned CIT(Appeals) has erred in treating the interest income of Rs.82,60,109/- as business income since the same is not attributable to the assessee's business of providing credit facility to its members.
2. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not appreciating the assessing officer's decision that interest income of Rs.82,60,109/- was correctly taxable as 'Income from other sources' as the same was earned by the assessee on investment made in bank deposit and mutual funds out of its surplus funds not required immediately for business purposes.
3. On the facts and circumstances of the case, learned CIT(Appeals) erred in law in not following the decision of the Hon'ble Supreme Court in The Totgar's Co-op. Sale Society Ltd. Vs. Income Tax

Officer (2010) 322 ITR 283 (SC), which is squarely applicable to the facts in assessee's case.

2. The assessee is a Cooperative Society engaged in the business of providing credit facilities to its members. During the course of assessment the AO noted that assessee has shown interest income amounting to Rs.84,15,472/- which was received from the various Cooperative Banks and other Banks. The AO has held that the assessee was not eligible to deduction u/s 80P(2)(a)(i) on the above interest income.
3. Upon assessee's appeal, learned CIT(Appeals) has decided the issue in favour of the assessee by placing reliance upon several case laws.
4. Against the above order, Revenue is in appeal before the Tribunal.
5. Upon hearing both the counsel and perusing the records, we find that the issue involved is covered in favour of the assessee by a catena of decisions from ITAT as well as a decision of jurisdictional High Court. In this regard we may gainfully refer the Hon'ble jurisdictional High Court decision in the case of CIT vs. Solapur Nagri Audyogic Sahakari Bank Ltd. 182 Taxman 231 wherein the following question was raised.

“ Whether the interest income received by a Co-operative Bank from investments made in Kisan Vikas Patra ('KVP' for short) and Indira Vikas Patra ('IVP' for short) out of voluntary reserves is income from banking business exempt under section 80P(2)(a)(i) of the Income-tax Act, 1961 ?”

After considering the issue the Hon'ble jurisdictional High Court has concluded as under :

“12. Therefore, in all these cases, where the surplus funds not immediately required for day-to-day banking were kept in voluntary reserves and invested in KVP/IVP, the interest income received from KVP/IVP would be income from banking business eligible for deduction under section 80P(2)(i) of the Act.

13. In the result, there being no dispute that the funds in the voluntary reserves which were utilised for investment in KVP/OVP by the co-operative banks were the funds generated from the banking business, we hold that in all these cases the Tribunal was justified in holding that the interest income received by the co-operative banks from the investments in KVP/IVP made out of the funds in the voluntary reserves were eligible for deduction under section 80P(2)(a)(i) of the Act.”

The above case law fully supports the assessee’s case. Here also surplus funds not immediately required for day to day banking were kept in Bank deposits. The income earned there from thus would be income from banking business eligible for deduction u/s 80P(2)(a)(i).

6. Similarly we find that similar issue was considered by this Tribunal on similar grounds raised by the Revenue in the case of MSEB Engineers Co-Op. Credit Society Ltd. wherein the ITAT, Nagpur Bench vide order dated 05/05/2016 held as under :

“Upon hearing both the counsel and perusing the records, we find that the above issues is covered in favour of the assessee by the decision of this ITAT, referred by the Ld. CIT(A) in his appellate order. The distinction mentioned in the Grounds of appeal is not at all sustainable. We further find that this Tribunal again in the case of Chattisgarh Urban Sahakari Sanstha Maryadit Vs. ITO in ITA No.371/Nag/2012 vide order dated 27.05.2015 has adjudicated similar issue as under:-

“11 Upon careful consideration, we note that identical issue was the subject matter of consideration by ITAT, Ahmedabad Bench decision in the case of Dhanlaxmi Credit Cooperative Society Ltd. (supra), in which one of us, learned Judicial Member, was a party. The concluding portion of the Tribunal’s decision is as under:

“4. With this brief background, we have heard both the sides. It was explained that the Co-operative Society is maintaining “operations funds” and to meet any eventuality towards repayment of deposit, the Co-operative Society is maintaining some liquidated funds as a short term deposit with the banks. This issue was thoroughly discussed by the ITAT “B” Bench Ahmedabad in the case of The Income Tax Officer vs. M/s.Jafari Momin Vikas Co-op.Credit Society Ltd. bearing ITA No.1491/Ahd/2012 (for A.Y.2009-10) and CO No.138/Ahd/2012 (by Assessee) order dated 31/10/2012. The relevant portion is reproduced below:-

“19. The issue dealt with by the Hon’ble Supreme Court in the case of Totgars(supra) is extracted, for appreciation of facts, as under:

“What is sought to be taxed under section 56 of the Act is the interest income arising on the surplus invested in short term deposits and securities which surplus was not required for business purposes? The assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is whether interest on such deposits/securities, which strictly speaking accrues to the members’ account, could be taxed as business income under section 28 of the Act? In our view, such interest income would come in the category of ‘income from other sources’, hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer...”

19.1. However, in the present case, on verification of the balance sheet of the assessee as on 31.3.2009, it was observed that the fixed deposits made were to maintain liquidity and that there was no surplus funds with the assessee as attributed by the Revenue. However, in regard to the case before the Hon’ble Supreme Court –

“(On page 286) 7..... Before the assessing officer, it was argued by the assessee(s) that it had invested the funds on short term basis as the funds were not required immediately for business purposes and, consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under section 28 and not under section 56 of the Act and, consequently, the assessee(s) was entitled to deduction under section 80P(2)(a)(i) of the Act. The argument was rejected by the assessing officer as also by the Tribunal and the High Court, hence, these civil appeals have been filed by the assessee(s).

19.2. From the above, it emerges that

(a) that assessee (issue before the Supreme Court) had admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

(c) that assessee carried on two activities, namely , (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and

(d)that the surplus had arisen emphatically from marketing of agricultural produces.

19.3. In the present case under consideration, the entire funds were utilized for the purposes of business and there were no surplus funds.

19.4. While comparing the state of affairs of the present assessee with that assessee (before the Supreme Court), the following clinching dissimilarities emerge, namely:

(1) in the case of the assessee, the entire funds were utilized for the purposes of business and that there were no surplus funds; -

-in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present assessee, it did not carry out any activity except in providing credit facilities to its members and that the funds were of operational funds. The only fund available with the assessee was deposits from its members and, thus, there was no surplus funds as such;

- in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds;

19.5. Considering the above facts, we find that there is force in the argument of the assessee that the assessee not a co-operative Bank, but its nature of business was coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in shortterm deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs.13,69,955/- [source: Balance Sheet of the assessee available on record].

19.6. *In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd. 9supra cannot in any way come to the rescue of either the Ld.CIT(A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT(A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s.56 of the Act. It is ordered accordingly."*

5. *Respectfully following the above decision of the Co-ordinate Bench, we hereby hold that the benefit of deduction u/s.80P(2)(a)(i) was rightly granted by ld.CIT(A), however, he has wrongly held that the interest income is taxable u/s.56 of the Act so do not fall under the category of exempted income u/s.80P of the Act. The adverse portion of the view, which is against the assessee, of ld.CIT(A) is hereby reversed following the decision of the Tribunal cited supra, resultantly ground is allowed."*

8. *We find that the ratio of above case also applies to the present case. As observed in the above case law, in this case also the submissions of the assessee's counsel is that the assessee society is maintaining operational funds and to meet any eventuality towards repayment of deposit the cooperative society is maintaining some liquidated funds as short term deposits with banks. Hence adhering to the doctrin stair desises, we hold that the assessee should be granted benefit of deduction under section 80P(2)(a)(i). Accordingly, the interest on deposits would qualify for deduction under the said section. Accordingly, we set aside the orders of authorities below and decide the issue in favour of the assessee."*

4. We further find that batch of similar appeals decided by the ITAT in favour of the assessee has also been considered by the Jurisdictional High Court. The Hon'ble Jurisdictional High Court has duly affirmed of this Tribunal. Accordingly, in the background aforesaid discussion, we do not infirmity in the order of Ld. CIT(A)."

7. In the background of aforesaid discussion and decision we do not find any infirmity in the order of learned CIT(Appeals). Accordingly we uphold the same.

8. In the result, the appeal filed by the Revenue stands dismissed.

Sd/-
(MUKUL K. SHRAWAT)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER.

Nagpur,
Dated: 2nd June, 2016.

Copy forwarded to :
1. M/s Utkranti Nagari Sahakari Pat Sanstha, A/p Jarud, Tq. Warud, Dist. Amravati.
2. I.T.O., Ward-5, Amravati.
3. C.I.T. -III, Nagpur.
4. CIT(Appeals), -II, Nagpur.
5. D.R., ITAT, Nagpur.
6. Guard File

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By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Nagpur Bench, Nagpur.

Wakode.