

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri N.R.S. Ganesan (JM) and Shri B.R. Baskaran(AM)

I.T.A No. 546/Coch/2010
(Assessment year 2006-07)

ITO, Wd.1(1)
Trivandrum
PAN : AAAAK4255G
(Appellant)

vs M/s Kerala State Co-op. Bank Ltd
Palayam, Trivandrum
(Respondent)

Appellant by : Ms. Veni Raj
Respondent by : Shri Devarajan

Date of hearing : 09-08-2012
Date of pronouncement : 12-10-2012

O R D E R

Per N.R.S. Ganesan (JM)

This appeal of the revenue is directed against the order of the Commissioner of Income-tax(A)-I, Trivandrum dated 14-07-2010 for the assessment year 2006-07.

2. The only issue arises for consideration is deduction u/s 80P(2)(a)(i) of the Act in respect of rental income received by the taxpayer.

3. Ms. Veni Raj, the Id.DR submitted that the taxpayer has received rental income of Rs.27,12,152 and claimed the same as deduction u/s 80P(2)(a)(i). Referring to the provisions of section u/s 80P(2)(a)(i) the Id.DR pointed out that

the income of the taxpayer from banking activity or such other activity which is attributable to the banking activity alone is eligible for deduction u/s 80P(2)(a)(i) of the Act. Letting out of property, according to the Id.DR, is not the business of the taxpayer. Moreover, letting out of the property is not in any way attributable to banking business. Therefore, rental income received by the taxpayer cannot be treated as business income for the purpose of granting deduction u/s 80P(2)(a)(i). The Id.DR placed her reliance on the judgment of the jurisdictional High Court in the case of Kottayam Land Mortgage Co-operative Land Mortgage Bank Ltd vs Commissioner of Income-tax (1988) 172 ITR 43 (Ker) and also the judgment of the Apex Court in the case of Totgar's Co-operative Sales Society Ltd vs Commissioner of Income-tax (2010) 322 ITR 283 (SC).

4. On the contrary, Shri V Devarajan, the Id.representative for the taxpayer submitted that the taxpayer has let out the commercial premises / asset. Therefore, the rental income received on letting out of the commercial asset has to be treated as business income attributable to the business of the taxpayer, therefore, eligible for deduction u/s 80P(2)(a)(i) of the Act. The Id.representative has placed his reliance on the judgment of the Madras High Court in Commissioner of Income-tax vs Madurai Dist. Co-operative Bank Ltd (1999) 239 ITR 700 (Mad) and the Karnataka High Court in Commissioner of Income-tax vs The Grain Merchants' Co-operative Bank Ltd (2004) 267 ITR 42 (Kar).

5. We have considered the rival submissions and also perused the material available on record. We have carefully gone through the provisions of section 80P(1) and 80P(2) of the Act which read as follows:

“80P. (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 in sub-section (1) shall be the following:-

- (a) In the case of a co-operative society engaged in –
- (i) Carrying on the business of banking or providing credit facilities to its members, or
 - (ii) A cottage industry, or
 - (iii) The marketing of agricultural produce grown by its members, or
 - (iv) The purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
 - (v) The processing, without the aid of power, of the agricultural produce of its members, or
 - (vi) The collective disposal of the labour of its members, or
 - (vii) Fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,
- The whole of the amount of profits and gains of business attributable to any one or more of such activities:”

From the above provisions of sections 80P(1) and 80P(2) it is obvious that the income of the taxpayer from the business of banking or providing credit facility to its members and any activity which are attributable to business of banking are eligible for deduction u/s 80P(2)(a)(i). The question arises for consideration is whether letting out the property is attributable to the business of banking or not?

6. The business of banking is not defined in the Income-tax Act. Therefore, we have to necessarily go to the definition provided in Banking Regulation Act which defines “banking” as follows:

“5(b) “banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise.”

Further to that, we find that for the purpose of considering whether an activity is banking activity or not, it is necessary that the activity of a bank falls under anyone of the activities mentioned in section 6 of the Banking Regulation Act or it should have some nexus with the activities which are mentioned in section 6 of the Banking Regulations Act. This section 6 of the Banking Regulation Act reads as follows:

6. Forms of business in which banking companies may engage – (1) In addition to the business of banking, a banking company may engaged in any one or more of the following forms of business, namely:-

(a) The borrowing, raising or taking up of money, the lending or advancing of money either upon or without security; drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundees, promissory notes, coupons, draft, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instructions, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller’s cheques and circular notes; the buying selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on

commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

- (b) Acting as agents of any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a [Managing Agent or Secretary and Treasurer] of a company;
- (c) Contracting for public and private loans and negotiating and issuing the same;
- (d) The effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;
- (e) Carrying on and transacting every kind of guarantee and indemnity business;
- (f) Managing, selling and realizing any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;
- (g) Acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;
- (h) Undertaking and executing trusts;
- (i) Undertaking the administration of estate as executor, trustee or otherwise;
- (j) Establishing and supporting or aiding in the establishment support of associations, institutions, funds, trusts, and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing

- moneys for charitable or benevolent objects or for any exhibition or for any public general or useful object;
- (k) The acquisition, construction, maintenance and alteration of any building or work necessary or convenient for the purposes of the company;
 - (l) Selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;
 - (m) Acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section;
 - (n) Doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;
 - (o) Any other form of business which the Central Government may, by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.
- (2) No banking company shall engage in any form of business other than those referred to in sub-section (1).”

7. A bare reading of the section 6 of the Banking Regulations Act clearly shows that the letting out of the property in no way connects with the banking business or providing credit facility. Letting out the premises is an independent and separate activity for the purpose of exploiting the landed properties. The Commissioner of Income-tax(A) by following the judgment of the Madras High Court in Madurai Dist. Co-operative Bank Ltd (supra) and the Karnataka High Court in The Grain Merchants Co-operative Bank Ltd (supra) allowed the claim of the taxpayer.

8. We have carefully gone through the judgment of the Madras High Court in the case of Madurai Dist.Co-operative Bank Ltd (supra). In the case before the Madras High Court, the taxpayer, a co-operative bank let out the meeting hall of and the rental income was claimed as “Income from business”. The Madras High

Court, after considering the judgment of the Kerala High Court in Kottayam Co-operative Land Mortgage Bank Ltd (supra) found that the revenue has challenged the treatment of income as business income and once the letting out of the property was assessed under the head "Income from business" it can only be said that letting out of a commercial asset is a business activity and entitled for deduction u/s 80P(2)(a)(i) of the Act. The Madras High Court has distinguished the judgment of the Kerala High Court.

9. We have also carefully gone through the judgment of the Karnataka High Court in the case of The Grain Merchants Co-operative Bank Ltd (supra). The Karnataka High Court found that rental income received by a co-operative bank is income received in the course of business of banking and as such entitled for deduction u/s 80P(2)(a)(i) of the Act.

10. We have also carefully gone through the judgment of the Kerala High Court in Kottayan Co-operative Land Mortgage Bank Ltd (supra). In the case before the High Court, the taxpayer co-operative society was engaged in the business of banking by providing credit facilities to its members. The taxpayer constructed a building to house the bank and the administrative office. The surplus space in that building was let out and the taxpayer claimed the rental income as deduction u/s 80P(2)(c) of the Act. The Kerala High Court, after considering the provisions of section 80P(2)(c) found that the business of banking or providing credit facility to its members falls under clause (c) of section 80P(2). The claim of exemption under clause (c) is in addition to exemption provided under clause (a). The provisions of clauses (a) and (c) are cumulative and mutually supplementing. The Kerala High Court further found that the limit specified in clause (c) are in relation to profit and gain attributable to activity

other than one specified in clause (a). The Kerala High Court further found that if the rental income received by the society is attributable to an activity of the society then clause (c) would be attracted. The Kerala High Court further found that deduction u/s 80P(2) is available in respect of income of the co-operative society which are attributable to the activity in which the co-operative society is engaged. The Kerala High Court further found that letting out of the property is not an activity which falls under clause (c). Letting out of the property is not a commercial asset and the profit or gain received by the taxpayer is not from exploitation of commercial asset. Accordingly, the Kerala High Court held that the rental income received by the taxpayer on letting out of the surplus space is not eligible for deduction u/s 80P(2).

11. In the case on our hand also the taxpayer has let out the building. It is nobody's case that the commercial asset was exploited in the course of its banking activity or providing credit facility to its members. Therefore, letting out of the property is other than one specified in section and u/s 80P(2)(a)(i) and 80P(2)(c). Therefore, the rental income received by the taxpayer has to be assessed as "Income from house property" and it is not eligible for deduction u/s 80P(2)(a)(i) of the Act as held by the Kerala High Court in Kottayam Co-operative Land Mortgage Bank Ltd (supra). This judgment of the Kerala High Court is binding on all authorities and this Tribunal. It is unfortunate that the Commissioner of Income-tax(A) has chosen to place reliance on the judgment of the Madras High Court rather than that of the jurisdictional High Court. The law Laid down by the jurisdictional High Court is binding on all authorities. Therefore, all authorities in the State of Kerala has to prefer to follow the judgment of Kerala High Court rather than other High Courts. This Tribunal is of the considered

opinion that the judgment of the Kerala High Court in the case of Kottayam Co-operative Land Mortgage Bank Ltd is squarely applicable to the facts of the case.

12. We have also carefully gone through the judgment of the Apex Court in the case of Totgar's Co-operative Sales Society Ltd (supra). The Apex Court, after considering the provisions of section 80P found that the source of income is relevant for deciding the applicability of section 80P of the Act. The Apex Court further found that weightage should be given to the words "the whole of the amount of profit and gain of business" attributable to one of the activities specified in section 80P(2)(a) of the Act. The Apex Court further found that "the whole of the amount of profit and gain of business" emphasizes that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. Therefore, for the purpose of claiming deduction u/s 80P(2)(a)(i), the income should be from operational activity, viz. banking activity. Unless and until the letting out of property falls within the definition of banking activity, the rental income received by the taxpayer cannot be construed as operational income. Therefore, as held by the apex court, the rental income received by the taxpayer on letting out of the property has to be assessed as "Income from house property" and it cannot be construed as "Income from banking activity". At no stretch of imagination it could be said that rental income is attributable to banking business.

13. A similar view was taken by the Madras High Court in the case of Indian Overseas Bank Ltd vs Commissioner of Income-tax (2000) 246 ITR 2006 (Mad). The Madras High Court, after distinguishing the judgment of the Madhya Pradesh High Court in National Newsprint Paper Mills Ltd (1978) 114 ITR 388 found that the business of the taxpayer is banking and the business connection between the

tenant and taxpayer has nothing to do with banking operation carried on by the taxpayer. Further, the Kerala High Court in Kottayam District Co-operative Bank Ltd (1991) 188 ITR 568 (Ker) has also taken a similar view. Therefore, this Tribunal is of the considered opinion that the taxpayer is not eligible for deduction u/s 80P(2)(a)(i) in respect of rental income. By respectfully following the judgment of the Apex Court in the case of Totgar's Co-operative Sales Society Ltd (supra) and the Kerala High Court in the case of Kottayam Co-operative Land Mortgage Ltd (supra) we set aside the order of the Commissioner of Income-tax(A) and restore that of the assessing officer.

14. In the result, the appeal of the revenue stands allowed.

Order pronounced in the open court on this 12th October, 2012.

Sd/-

sd/-

(B.R. Baskaran)

(N.R.S. Ganesan)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Cochin, Dt : 12th October, 2012

pk/-

copy to:

1. The appellant
2. The respondent
3. The Commissioner of Income-tax
4. The Commissioner of Income-tax(A)
5. The DR

(True copy)

By order

Asstt. Registrar, Income-tax Appellate Tribunal, Cochin Bench