

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH : RAIPUR

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.31/RPR/2016
Assessment Year: 2011-12

Gramin Seva Sahakari Samiti Maryadit,
Vill. Mohda Tilda,
Raipur,
Raipur (CG).
PAN: AAAAG9755H

Vs. Income Tax Officer 1(3),
Aaykar Bhavan,
Civil Lines,
Raipur,
Raipur (CG).

(Appellant)

(Respondent)

Assessee by : Shri G.S. Agrawal, CA
Revenue by : Shri P.K. Mishra, CIT, DR
Shri Sanjay Kumar, DR

Date of Hearing : 14.08.2018
Date of Pronouncement: 22.10.2018

ORDER

PER R.K. PANDA, AM:

This appeal by the assessee is directed against the order dated 14th December, 2015 of the CIT(A)-I, Raipur, relating to Assessment Year 2011-12.

2. The ground of appeal No.1 raised by the assessee reads as under:-

“1. **Banking Business:**

1.1. That under the facts & the law the Ld. CIT (Appeals) erred in rejecting the deduct claimed by the appellant u/s 80 P(2)(a)(i)

pertaining to its banking business amounting to Rs. 23,74,716/- as rejected by the Id AO.

Prayed that Rs. 23,74,716/- is income from banking business & deduction be allowed.

- 1.2. Without prejudice to above the Ld CIT(Appeals) further erred in not deducting the interest paid amounted to Rs.13,06,258/- from the aforesaid sum of Rs. 23,74,716/-.

Prayed, without prejudice to Ground No. 1 , interest paid to its members on their deposit at Rs 13,06,258/- be deducted from Rs. 23,74,716.

- 1.3. That under the facts & laws the Id CIT(Appeals) further erred in confirming the addition of Rs 2,66,499/- being overdue interest received from the members, made by the Ld. AO.

Prayed that Rs. 2,66,499 is deductible u/s 80P(2)(a)(i) & be deleted.”

3. The facts of the case in brief are that the assessee is a primary Agricultural Cooperative Society engaged in carrying out the business of banking; paddy procurement; sale of fertilizers, seeds, manures and pesticides and sale of controlled items under Public Distribution System. It filed its return of income on 24th March, 2013 declaring total income at Rs. Nil, after claiming 100% deduction u/s 80P of the Income-tax Act from the above activities. The Assessing Officer during the course of assessment proceedings observed that one of the activities of the society is carrying out banking business like borrowing, raising or taking up money and lending or advancing of money for the purpose of agriculture, sale and purchase of seeds and urea to its members. The assessee Cooperative society avails credit facility from cooperative banks for doing banking business. The source of income of cooperative society from

banking business is interest on loan advanced to its members and interest on deposit in cooperative bank. The Assessing Officer observed from the Profit & Loss Account of the assessee that it has shown receipt of interest from the following sources, the details of which are as under:-

“Interest on loans & Advances	:	Rs. 16,63,105/-
Interest on deposits with Bank	:	Rs. 23,74,715/-
Excess interest from Banks	:	Rs. 2,66,499/-

In the P& L account, the assessee has debited expenditure on account of the following interest amounts:

Interest on loans	:	Rs. 8,68,505/-
Interest on deposits	:	Rs.13,06,258/-
Interest on Rakshit Nidhi	:	Rs. 11,768/-“

4. He observed that the assessee has claimed the entire income of cooperative society from banking business as deductible u/s 80P(2)(a)(i) of the IT Act, 1961. Since the assessee is carrying on the business of banking and providing credit facilities to its members, the Assessing Officer held that the deduction claimed u/s 80P(2)(a)(i) is allowable only in respect of transactions with its members and not with outsiders. He observed that the assessee has shown an amount of Rs.23,74,716/- as interest income on bank deposits and excess interest from banks of Rs.2,66,499/-. The assessee society had invested the surplus funds as and by way of investment as an

ordinary investor. He, therefore, held that interest on such investment has got to be taxed under the head 'Income from other sources.'

4.1. On being questioned by the Assessing Officer, it was argued that it had invested the funds on short-term basis as the funds were not required immediately for business purpose and consequently such act of investment constituted a business activity by a prudent businessman. Therefore, such interest income was liable to be taxed u/s 28 and not u/s 56 of the IT Act and, consequently, the assessee is entitled to deduction u/s 80P(2)(a)(i) of the IT Act. It was argued that what is sought to be taxed u/s 56 of the Act is the interest income arising on the surplus investment in short-term deposits and securities which surplus was not required for business purposes. Various decisions were also brought to the notice of the Assessing Officer for the above proposition.

4.2. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. Relying on various decisions including the decision of Hon'ble Supreme Court in the case of *Totgar's Cooperative Sale Society Ltd. vs. ITO reported in 188 Taxman 282 (SC)*, the Assessing Officer held that interest that accrues on funds not required immediately by the assessee for its business purposes and which have been only invested in specified securities, all such investments cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or in section 80P(2)(a)(iii) of the Act. Alternatively, the Assessing Officer held that even if such interest income is profit and gains of business, even then, the same would be ineligible for deduction u/s 80P of the Act. He observed that the assessee deposits its

surplus funds with cooperative banks at a certain interest rate which, in turn, lend the same to its customers/third parties at a higher rate. The difference of the interest rate charged by the cooperative bank from the customers and that paid to the assessee society is the gross interest income of the bank from such activity. He noted that the provisions of sub-section (4) of section 80P of the Act and held that the interest income derived by the cooperative bank by lending the money received from the assessee society is not eligible for deduction u/s 80P of the Act. A part of the non-eligible income is retained by the bank as its margin and rest is passed on to the assessee society. The income is thus ultimately earned from third parties/customers of the cooperative bank and not from the activities with the members of the assessee society. Therefore, it is clearly ineligible for deduction u/s 80P of the Act. The Assessing Officer accordingly, made addition of Rs.23,74,716/- being interest income on bank deposits and Rs.2,66,499/- being excess interest from banks as income from other sources not eligible for deduction u/s 80P(2)(a)(i).

5. Before the CIT(A), the assessee challenged the addition made by the Assessing Officer by rejecting the claim of deduction u/s 80P(2) of the IT Act. It was argued that: (i) the funds invested in FDRs/savings account with cooperative banks are own funds of the assessee society; and (ii) members' funds and the relevant cost of funds and direct interest cost should be deducted from the gross interest received at Rs.26,41,215/-. Therefore, the net interest income earned by the assessee society from the banking activities carried on for its members only would be Rs.13,34,957/- which

is clearly eligible for the deduction u/s 80P(2)(a)(i). It was argued that the Assessing Officer has wrongly applied the decision of the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society (supra) which is on different set of footings and not applicable to the case of the assessee society. It was argued that in that case, it was held that where the assessee cooperative society, apart from providing credit facilities to its members, was also in the business of marketing of agricultural produce grown by its members, the sale consideration received from marketing agricultural produce to its members was retained in many cases and the said retained amount, which was payable to its members, from whom produce was bought was invested in a short-term deposit/security and such an amount which was retained by the assessee society was a liability and 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 activities mentioned in section 80P(2)(a)(i) or section 80P(2)(a)(iii). It was argued that the assessee society is not engaged in or involved in purchase and sale of agricultural produce i.e., paddy from its members and has not shown any kind of liability in its balance sheet on this count. Therefore, the said decision is not applicable to the facts of the present case.

6. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and confirmed the action of the Assessing Officer by observing as under:-

“2.3. Thus as seen in above facts, the appellant has filed appeal against the disallowance of deduction under Section 80P in respect of interest of

Rs.26,41,215/- and dividend of Rs. 1,40,839/- on investments . It contends that income computed by the AO is totally wrong and on wrong interpretation of the provisions of the Act. Its contentions are in short, that the interest income is out of the investments made out of its own surplus funds and the facts in Totgars (supra) are different. Regarding the paddy procurement business, the AO has presumed that 35% business is done in respect of non-members. As per this presumption is not correct. Further, dividend income is specifically exempt u/s 80P(2)(d). Lastly the AO has not allowed general deduction of Rs.

Section 80P provides for deduction from certain income of cooperative societies. These income are listed in sub-section (2). Interest received from banks and dividend has not been listed as income exempt under the said section. Although interest and dividend from investment with another cooperative society is exempt as per clause (d) of sub-section (2), but in the present case these incomes are not from another cooperative society. Appellant claims that the investments were made out of own funds, therefore interest and dividend should be treated as income from its activities. However, I find that interest and dividend received by the appellant is not entitled to deduction under Section 80P(2)(a)(i) because, deduction under said clause is available in respect of profits and gains of business attributable to the activity of the co-operative society whereas the interest and dividend income is not the income from carrying on of activity of the co-operative society which are accepting of deposits and advancing of loans to its members and working as agricultural cooperative society. The appellant is not a cooperative bank but is a cooperative society and its activity is receiving deposits from members and providing them credit facilities. Income from this activity has been duly allowed by the AO as exemption. But the same exemption cannot be allowed to the income on investments with banks which is not interest income received from members. Moreover, the appellant also provides other services of paddy procurement, PDS etc. and surplus is generated out of these activities. There are many decisions pronounced by various courts in the cases of cooperative banks in whose case these incomes have been held as derived in the course of normal business activities. However, these are applicable to cooperative banks and not a cooperative society which is the status of the assessee. These decisions are CIT Vs Nawanshahar Central Cooperative Bank Ltd (2007) 289 ITR 6 (SC), Bihar State Cooperative Bank Ltd (1960) 39 ITR 114(SC), CIT Vs Karnataka State Cooperative Apex Bank (2001) Supp.(2) SCR 35;(2001)251 ITR 194(SC) and CIT Vs Ramanathapuram District Cooperative Central Bank Ltd (2002) 255 ITR 423 (SC) which are all in the status of cooperative banks. In none of the cases of any cooperative society, income of interest and dividend has been held as

exempt u/s 80P. It is due to the reason that cooperative societies do not stand on the same footing as cooperative banks. The appellant has, during the hearing contended that cooperative banks are also cooperative credit societies due to which any decision which is applicable to a cooperative bank would also be applicable in case of cooperative society. This contention on behalf of appellant is misplaced. It is true that cooperative banks are also cooperative societies but these are the cooperative societies which have been given banking license and are subjected to stringent compliance. Assessee is a credit cooperative society and its case will not be covered by these decisions. On careful perusal of the sub-clause (i) to clause (a) of section 80P(2) i.e. “carrying on the business of banking or providing credit facilities to its members” it can be understood that the provisions indicates that the deduction is available in respect of a Co-operative Society which is engaged in (i) carrying on the business of banking or providing credit facilities to its members. The word ‘or’ has been used between ‘carrying on the business of banking’ the scope of this expression is much wider and is applicable to the Co-operative Banks carrying on all the activities mentioned in the Banking Regulation Act, 1949 which a bank is entitled to carry on. Whereas, the scope of the expression - “providing credit facilities to its members” is restricted and narrow, & confined only to providing credit facilities to its members which is applicable to the Cooperative Societies. Thus the legislature has kept both the entities distinct by using the word ‘or’ in between the two activities. As a result of insertion of section 80P(4) by the Finance Act, 2006 w.e.f. 01.04.2007, the Co-operative Banks have been deprived of the benefits of section 80P, whereas the Co-operative Societies are enjoying the benefits of the said section.

According to the section 5(b) of the Banking Regulation Act, 1949, Banking is “*the accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque draft or otherwise,*” and according to the section 6 of the Banking Regulation Act, 1949 the business a bank can carry on are summarized into three categories:

- i. *Main business i.e. Banking i.e. borrowing, taking or lending money, dealing in Bill of exchange, Bills of lading and Debentures, issuing letters of credit, buying/selling foreign exchange, acquiring or underwriting stocks.*
- ii. *Allied business: Acting as agent / trustee/ administrator, carrying on guarantee business, providing safe custody.*

- iii. *Dealing in property is restricted to (i) property coming in satisfaction of claims or as security and (ii) property necessity for its own sake.*

Thus it is crystal clear that the Co-operative banks carry on the banking business which normally includes all the activities of a banking business as enumerated above & that too with the public at large; whereas the Co-operative Societies carry on the business activity of providing credit facility that too is restricted only to its members.

Thus it is obvious that Co-operative Banks cannot be said to be at par with the Co-operative Societies. As such, the interest income and income from dividend earned on the investments made in Sindhudurg Central Co-operative Bank is hereby disqualified.”

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

8. The ld. counsel for the assessee strongly challenged the order of the CIT(A). Referring to page 5 of the paper book, he submitted that the assessee has received interest income from the Jilla Sahakari Kendriya Bank amounting to Rs.23.74 lakhs and the Assessing Officer has added the whole of the amount without netting the same by deducting the interest paid to members on deposit of Rs.13.06 lakhs. Referring to page 31 of the paper book, he drew the attention of the Bench to provisions of section 2(d) of the NABARD Act, 1981 and submitted that Central Cooperative Bank is a cooperative society. Referring to the provisions of section 2(19) of the Income-tax Act, 1961, he submitted that cooperative society means a cooperative society registered under the Cooperative Act, 1912 or under any other law for the time being in force in any State for the registration of cooperative societies. He submitted that the

definition of District Central Cooperative Bank is not given in the Income-tax Act, but, they are given under the Banking Regulation Act. He also drew the attention of the Bench to sections 2, 3, 56, 56(a)(i) and 56(c)(i) – (cci), (ccii), (ccvii) of the Banking Regulation Act, 1949. He drew the attention of the Bench to provisions of Section 2(d) of the NABARD Act, 1981 which defines Central Cooperative Bank and which read as under:-

“central co-operative bank means the principal co-operative society in a district in a State, the primary object of which is the financing of other co-operative societies in that district:

Provided that in addition to such principal society in a district, or where there is no such principal society in a district, the State Government may declare any one or more cooperative societies carrying on the business of financing other co-operative societies in that district to be also or to be a central co-operative bank or central co-operative banks within the meaning of this definition.”

9. Similarly, he drew the attention of the Bench to provisions of section 2(f) of NABARD Act, 1981 which defines ‘cooperative society’ as under:-

“co-operative society means a society registered or deemed to be registered, under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies for the time being in force in any State.”

10. Relying on the following decisions, he submitted that the Id.CIT(A) was not justified in denying the claim of deduction u/s 80P(2)(a)(i):-

- Tumkur Merchants Souharda Credit Cooperative Limited. Vs. ITO
ITA No. 307 of 2014 Karnataka HC Dt. 28.10.2014
- Lalitamba Pattina Souharda Sahakari Niyamita Vs. ITO
ITA No. 100004 of 2018 Karnataka HC Dt. 19.02.2018
- The Vavveru Co-operative Rural Bank Ltd. Vs. CCIT
WP No. 12727 of 2016 Dt. 15.03.2017 APHC

- Loknete Shankarrao Balaji Waje Gramin Bigersheti Sahakari Patsanstha *ITA No. 1631 /PN 72016 IT AT Pune Dt. 11.11.2016*
- SBI Officers Coop. Credit Society Ltd. Hyderabad Vs. ITO Hyderabad. *ITA No. 673/Hyd/2017 Dt. 15.12.2017 Hyderabad Bench*
- The Padne Service Co-operative Bank Ltd. Vs. ITO
ITA No. 584, 585 / Coch/2017 Cochin ITAT Dt. 11.01.2018
- The Totgars Co-operative Sale Society Ltd. Vs. ITO
(2010) 322 TTR 0283 SC
- Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO Mumbai
ITA 6547 / MUM/2017 Dt. 25.04.2018 ITAT Mumbai.
- Broach Dist. Co-operative Cotton Sales, Ginning & Pressing Society Ltd., *177 ITR 0418 (1989) SC.*

11. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

12. We have considered the rival arguments made by both the sides and perused the relevant material available on record. We have also considered the various decisions cited before us. We find the assessee in the instant case is a primary agricultural cooperative society engaged in carrying out business of banking apart from other businesses which have already been mentioned in the preceding paragraphs. While doing the activity of banking business, the assessee has earned interest on loans and advances from members of Rs.16,63,105/-, interest on deposit with the banks & Rs.23,74,716/- and excess interest received from District Cooperative Bank at Rs.2,66,499/-. Similarly, the assessee in its P&L Account has debited interest paid on loans at Rs.8,68,505/-, interest on deposits Rs.13,06,258/- and interest on Rakshit Nidhi Rs.11,768/-. We find the Assessing Officer rejecting the various explanations

given by the assessee brought to tax the interest on deposits received from Jilla Sahakari Kendriya Bank at Rs.23,74,716/- and excess interest from banks Rs.2,66,499/- on the ground that the same are “income from other sources” since it was earned from third parties/customers of cooperative bank and not from the activities with the members of the assessee society and, therefore, not eligible for deduction u/s 80P of the Act. We find the Id.CIT(A) upheld the action of the Assessing Officer the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Id. counsel for the assessee that netting should have been allowed to the assessee. In his alternative contention, it is also his argument that the Central Cooperative Bank is also a cooperative society. The definition of District Central Cooperative Bank was not given in the Income-tax Act, but, it has been given in the NABARD Act. We find the assessee has not argued this aspect before the lower authorities for which they did not have the benefit of discussing this issue elaborately. Further, although the assessee has argued for netting of interest income, however, this aspect was also not thoroughly examined by the lower authorities since the assessee has not given the nexus between earning of the interest from deposit with the banks and payment of interest to members on deposits. Although the Assessing Officer had given the items appearing in the receipt side and expenditure side, however, the nexus has neither been proved by the assessee nor adjudicated by the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh by giving an

opportunity to the assessee to substantiate the nexus between earning of such income and the incurring of expenditure. The ground of appeal No.1 of the assessee's appeal is, accordingly, allowed for statistical purposes.

13. Ground No.2 of the assessee reads as under:-

2. Paddy Procurement Business:

Under the facts & laws the Ld. CIT (Appeals) further erred in confirming the disallowance @ 35% out of income in paddy procurement business made by the Ld. AO claimed by the appellant U/S 80P(2)(a)(iii) out of Rs. 11,65,714 observing that paddy is also procured from other than the members.

Prayed that paddy has been procured from members of appellant society & therefore provision of Sec. 80P(2)(a)(iii) is applicable, disallowance of Rs. 4,08,000/- being 35% of Rs 11,65,714/- be deleted.

14. Facts of the case in brief are that the assessee in its Profit & Loss Account has shown gross profit under the head 'Paddy Procurement Business' at Rs.8,46,794/-. The Assessing Officer observed that the assessee has claimed an amount of Rs.3,18,920/- in the trading account on account of TDS which being a disallowable item for arriving at the GP was added back and the GP from paddy procurement was arrived at Rs.11,54,612/-. On being questioned by the Assessing Officer, it was stated that the Government purchases paddy from agriculturists through its agency, namely, Chathisgarh Marketing Federation. The Assessing Officer noted that primary agricultural credit societies act as an agent of Marketing Federation for Procurement of Paddy and for such services The MARKFED pay a fixed commission to the society at the rate prescribed by the Government. The assessee has claimed the income from the

above business as deductible u/s 80P(2)(a)(iii) of the IT Act. Since the assessee has claimed the entire income from paddy procurement business as income exempt, the Assessing Officer held that the onus was on the assessee to prove with positive evidence that all such transactions were with members or if it claims that only 25% of such transactions were with non-members, the onus was also on the assessee to substantiate such claim with positive evidence. Since the assessee failed in discharging the onus cast on it, the Assessing Officer held that 1/3 of the gross profit from paddy procurement business i.e., Rs.4,08,000/- is not eligible for deduction u/s 80P of the Act. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer.

15. The Id. counsel for the assessee, at the time of hearing, filed certain additional evidences such as the details of paddy procured from members and non-members. He submitted that these additional evidences which go to the root of the matter should be admitted and the matter may be restored to the file of the Assessing Officer for verification and adjudication of the issue afresh.

16. The Id. DR, on the other hand, while opposing the filing of the additional evidences, submitted that he has no objection if the matter is restored to the file of the Assessing Officer.

17. After considering the totality of the facts of the case, we admit the additional evidence filed by the assessee under Rule 29 of the ITAT Rules. Since these evidences were not examined by the Assessing Officer, therefore, considering the

totality of the facts of the case and in the interest of justice, we deem it appropriate to restore the above issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per facts and law. We hold and direct accordingly. The ground raised by the assessee is accordingly allowed for statistical purposes.

18. Ground No.3 raised by the assessee reads as under:-

3. PDS Business

That the Ld. CIT (Appeals) further erred in confirming the addition of Rs. 43,970/- which is Gross Profit in PDS a/c made by the Ld. AO.

Prayed that in PDS account, after considering proportionate expense of Rs. 1,06,122/-, there is loss of Rs. 62,153/-. Prayed that addition of Rs. 43,950/- is unjustified & be deleted.

19. The facts of the case in brief are that the Assessing Officer, during the course of assessment proceedings, noted that the assessee society has also undertaken PDS activity during the year i.e., distributing essential commodities to the ration card holders through fair price shops. The gross profit under the head was Rs.43,970/- which was claimed as exempt u/s 80P. Since this activity does not qualify for deduction u/s 80P of the Act, the Assessing Officer rejected the claim u/s 80P. While holding so, he further noted that the assessee is not a consumer cooperative society and, therefore, the provisions of section 80P(2)(c)(i) does not apply.

20. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer on the ground that it is not an activity between the society and its members. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

21. After hearing both the sides, we do not find any infirmity in the order of the CIT(A) on this issue. It is an admitted fact that PDS activity is not an activity between the assessee and its members, therefore, the provisions of section 80P will not be applicable to this business. However, the Id. counsel for the assessee in his alternate submission argued that the expenses attributable to such PDS business should be allowed and only profit, if any, has to be added back to the total income of the assessee. Since this aspect has not been considered by the lower authorities, therefore, we deem it appropriate to restore this issue to the file of the Assessing Officer with a direction to verify the proportionate expenses which has got direct nexus with earning of such PDS business income and allow the same as a deduction from such business activity. The assessee shall substantiate to the satisfaction of the Assessing Officer regarding the nexus of such expenditure incurred for earning the PDS business income. The ground raised by the assessee is accordingly allowed for statistical purposes.

22. Ground No.4 of the assessee reads as under:-

4. Dividend Income:

That the Ld CIT(Appeals) further erred in confirming the rejection of claim of exemption of dividend received from Jila Sahkari Kendriya Bank Ltd., Raipur at Rs. 1,40,839/- U/S 80P(2)(d).

Prayed that dividend is exempt and the addition of Rs 1,40,839/- be deleted.

23. The facts of the case, in brief, are that the assessee during the year under consideration earned dividend income of Rs.1,40,839/- on account of dividend from shares of the Jilla Sahakari Bank. The Assessing Officer held that as per the provisions of section 80P(2)(d) of the IT Act, interest or dividend derived by the cooperative society from its investment with any other cooperative society, the whole of such income shall be deductible. He held that Jilla Sahakari Bank is not a cooperative society and, therefore, no deduction is allowable. Rejecting the various explanations given by the assessee, the Assessing Officer added back the amount of Rs.1,40,839/- to the total income of the assessee.

24. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer on the ground that the assessee's funds have not been kept with a cooperative society. It is the submission of the Id. counsel for the assessee that cooperative bank is also a cooperative society. Therefore, the dividend income earned by the assessee should be given the benefit of section 80P of the IT Act. We find the assessee has not argued before the lower authorities that the cooperative bank is also a cooperative society. We, therefore, restore this issue to the file of the Assessing Officer with a direction to the assessee to substantiate before the Assessing Officer that the Jilla Sahakari Bank, from where the assessee has received or earned dividend income, is a cooperative society. If the assessee is able to satisfy the Assessing Officer with evidence that the

Jilla Sahakari Bank from which the assessee has earned dividend income from shares purchased by it is a cooperative society, the Assessing Officer, subject to his satisfaction, will allow the claim as per fact and law. The ground raised by the assessee is accordingly allowed for statistical purposes.

25. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 22.10.2018.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 22nd October, 2018

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sr. Private Secretary
For Asstt. Registrar, ITAT, Raipur