आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'A', CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SHRI SANJAY GARG, JM & SMT.ANNAPURNA GUPTA, AM

आयकर अपील सं./ **ITA No.1467/Chd/2016**
निर्धारण वर्ष / Assessment Year : 2009-10

The Ludhiana District Co-operative Milk Producers Union Limited, Milk Plant, Jagraon Road, Ludhiana. स्थायी लेखा सं./PAN NO.AABAT1196N	बनाम	The Addl. CIT., Range-VI, Ludhiana.
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Parveen Jindal, CA
राजस्व की ओर से/ Revenue by : Smt.Chanderkanta, Sr.DR
सुनवाई की तारीख/Date of Hearing : 18.10.2018/16/01/2019
उदघोषणा की तारीख/Date of Pronouncement: 31.01.2019

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-4, Ludhiana (in short 'CIT(A)' dated 7.10.2016 passed u/s 250(6) of the Income Tax At, 1961 (hereinafter referred to as 'Act').

2. The sole issue in the present appeal relates to denial of claim of deduction of interest income earned by the assessee cooperative society from another cooperative society amounting to Rs.49,90,022/- as per the provisions of section 80P(2)(d) of the Act.

3. Briefly stated, the assessee is a cooperative society running milk plant at Jagraon Road, Ludhiana. During the impugned assessment year the assessee had earned interest income amounting to Rs.49,90,022/- from The Punjab State Cooperative Milk Producers Federation Ltd. (Milkfed) and had claimed deduction of the same u/s 80P(2)(d) of the Act. The A.O. denied the same stating that the assessee had not explained the mechanism of transfer of funds to Milkfed so as to authenticate its claim that it had made investment in Milkfed from which interest income had been earned. The A.O. therefore, held that the transfer of funds to Milkfed did not qualify as investment and, for the said reason the assessee was not entitled to claim deduction of interest earned therefrom, since as per section 80P(2)(d) the interest derived from investments only qualified for deduction. The A.O. further held that even otherwise the earning of income could not be attributed to the activities of the society and was not in the nature of income derived from business and, therefore, also did not qualify for deduction u/s 80P(2)(d) of the Act. He, therefore, disallowed the assessee's claim of deduction u/s 80P(2)(d) of the Act amounting to Rs.49,90,022 adding the same to the income of the assessee.

4. The matter was carried in appeal before the Ld.CIT(A) who upheld the order of the A.O. stating that the assessee had paid more interest to Milkfed than earned interest therefrom and in nutshell therefore, had not earned any interest income to qualify for deduction u/s 80P(2)(d) of the

Act. The Ld.CIT(A) further reiterated the findings of the A.O. that in the absence of the mechanism of transfer of funds it cannot be said that the interest income had been earned from investments made by the assessee. Relevant findings of the CIT(A) at paras 6.2 and 6.3 of his order are as under:

> *"6.2 I have considered the observations of the A.O. as made by him in the assessment order while making impugned addition/disallowance. I have also considered written submissions filed by the assessee co-op society through its Ld. AR vide letter dated 08.06.2016 on the issue under reference. I have further considered various judicial pronouncements relied upon by the assessee co-op society as well as other material placed by it on record. On careful consideration of the assessment order, it has been noticed that the Assessing Officer has made the impugned addition in the hands of the assessee co-op society as in his opinion the interest income earned by the assessee co-op society is not derived from the investments made by it with another co-op society i.e. MILKFED but it is to be treated as income from other sources which's not qualified for deduction under section 80P(2)(d) of the Act. While making the impugned addition, the Assessing Officer also took support from the decision of the Honorable Supreme Court in the case of Totgars Co-operative Sales Society Limited Vs. Income Tax Officer reported at (2010) 322 ITR 283(SC). Another ground for making the impugned addition was that the assessee co-op society has not disclosed the mechanism for earning and paying the interest from/to MILKFED. On the other hand, the Ld. AR of the assessee co-op society has submitted that the assessee co-op society has correctly claimed the deduction under 80P(2)(d) of the Act as the interest was received from another co-operative society. To support his point of view, the Ld AR of the assessee co-op society has also upon the following judicial pronouncements:-*
>
> *(i). CIT Vs. Doaba Co-op Sugar Mills Limited - 230 ITR 774 (P&H) wherein it has been stated to be held that the deduction under section 80P(2)(d) is allowable on gross receipts and not on net receipts of interest.*
>
> *(ii). CIT Vs. Haryana Co-operative Sugar Mills Limited*
>
> *(iii). Addl. CIT Vs. UP Co-op Fedration Ltd. (1978) 7 CTR (All.) 293*
>
> *(iv). CIT Vs. Shri Amreli Shakari Kharid Vechan Sangh Limited (1991) 39 ITD 65 (Ahmedabad ITAT)*
>
> *Ld. AR of the assessee co-op society has further submitted that the ratio of the decision of the Honorable Supreme Court in the case of Totgars Co-operative Sales Society Limited Vs. Income Tax Officer reported at (2010) 322 ITR 283(SC) is not applicable to the*

facts of the case of the assessee co-op society as the facts of the case of the assessee co-operative society are different from the facts of the case of Totgars Co-operative Sales Society Limited. On careful consideration of the rival contentions, it has been noticed that the assessee co-operative has received interest of Rs.49,90,022/- from MILKFED and also paid interest to the extent of Rs.59,87,403/- to MILKFED. In nutshell, the assessee co-op society has not earned any interest income by giving surplus money to MILKFED but has paid more interest to MILKFED than earned by it. Moreover, the assessee co-operative society has not disclosed the mechanism for earning and paying- interest from/to MILKFED. In the absence of mechanism one cannot decide whether it has been earned on investments or not. Moreover, the assessee co-op society has not earned any interest income from MILKFED as the interest paid by it was more than the interest earned. As far as the judicial pronouncements relied assessee co-op society are concerned, I am of the opinion that the ratios of those decisions do not apply to the facts of the case of the assessee co-op society. In all the cases relied upon by the assessee co-op society, the interest was earned either from investments and that too from banks whereas in the case of the assessee, the interest has not been earned from any investment Moreover, in my considered opinion the assessee co-operative society has not earned any interest income which will be qualified for deduction under section 80P(2)(d) of the Act as it has paid more interest to MILKFED than earned by it from MILKFED. Under such circumstances, the action of the Assessing Officer in making an addition of Rs.49,90,002/- in this case on account of denial of deduction claimed by the assessee co-op society under section 80P(2)(d) of the Act cannot be said to be unjustified.

6.3 In view of the above stated facts and in the circumstances of the case, I am of the considered opinion that the Assessing Officer is fully justified in making an addition of Rs.49,90,002/- in this case on account of denial of deduction claimed by the assessee coop society under section 80P(2)(d) of the Act. The addition of Rs.49,90,002/- made by the Assessing Officer in this case on account of disallowance of deduction under section 80P(2)(d) of the Act is, therefore, upheld. In the result, grounds No. 3 and 4 of appeal taken by the assessee co-op society are dismissed."

5. Aggrieved by the same the assessee has come in appeal before us raising the following grounds:

"1. That the Ld. CIT(A) erred in law and on facts in not considering the submissions placed before him during the course of appellate proceedings. He has also erred in not considering the decisions cited before him of various Courts/Tribunals including decisions of Jurisdictional High Court.

2. *That the order passed by the Ld. Commissioner of Income Tax (Appeals)-4, Ludhiana is contrary to the facts and circumstances of the case.*

3. *That the Ld. CIT(A), therefore erred in law and on facts in confirming the additions for Rs.49,90,022/- made by the Addl. Commissioner of Income Tax, Range-VI, Ludhiana (AO) on account of disallowance of deduction u/s 80P of the Income Tax Act, 1961 for interest received by the assessee from Milkfed. In the facts and circumstances of the case, the additions made by the AO for Rs.49,90,022/- for disallowance of deduction u/s 80P for interest received from Milkfed ought to have been deleted.*

4. *The Ld. CIT (A) has erred in fact and in law, in not accepting the assessee's submissions that,-*

   a) *Provisions of Sec. 80P(2)(d) of the Income Tax Act, 1961 have not been construed properly by the Ld. AO, which has resulted in erroneous order and untenable conclusion.*

   b) *Funds/ Money transferred to Milkfed were investment of surplus funds out of the circulating capital of the assessee.*

5. *The appellate may be allowed to add, amend, alter or raise additional grounds of appeal."*

6. During the course of hearing before us the Ld. counsel for assessee contended that it had been denied its claim of deduction u/s 80P(2)(d) of the Act for the following reasons:

i) That the mechanism of transfer of funds had not been explained.

ii) that in any case, the funds transferred to Milkfed did not qualify as investment.

iii) that it had paid more interest to Milkfed than earned frorm Milkfed and therefore, it had not earned any interest income.

7. The Ld. counsel for assessee thereafter contended that all the above contentions were incorrect. Taking up the first contention that it had not disclosed the mechanism for earning interest from Milkfed, the Ld. counsel for assessee pointed out that during appellate proceedings it had filed reply dated 8.6.2016 wherein under the head "reply on

merits", it had disclosed the mechanism of transfer of funds stating that the assessee cooperative society had given advances to Milkfed as it was arranging for raw material and other items on behalf of the assessee as the assessee had not separate working capital limit for this purpose from bank etc. and further this arrangement was in line with the byelaws of the assessee society. It was further explained that as per the prescribed procedure the assessee used to transfer the money collected from the sale of its products in a routine manner after keeping the funds required for its immediate use and thus in this way it earned interest income on the surplus funds invested with Milkfed at the agreed rate of 8%. Our attention was drawn to point No.5 of the submissions made in writing before us in this regard as under:

> *"5. That The Ld. CIT (Appeals) has observed at Para-6.2 of his order that the assessee co-operative society has not disclosed the mechanism for earning interest from MILKPED. In this connection, the appellant contends that mechanism for earning interest from MILKFED was duly disclosed by the assessee in its reply dated 08 06 2016 during appellate proceedings wherein at Point-2 under the heading 'Reply on Merits' in the matter of disallowance of deduction u/s 80P(2)(d), the assessee stated as under:*
>
> *"2. That one of the reason for disallowance of deduction u/s 80P(2)(d) was that AO did not consider the advances made to Milkfed as 'Investment' within the meaning of clause (d) of sub-section (2) of Sec. 80P of the I.T. Act. In this connection, the assessee contends that the said interest of Rs.49,90,022/- has been received on advances given to Milkfed as it was arranging for raw material and other items on behalf of the assessee as it (assessee) has no separate working capital limit for this purpose from banks etc. This arrangement was in line with the Bye-laws of the assessee's society and as per the instructions of the Registrar of Co-operative Societies and Milkfed being the Apex Institution of the assessee.*
>
> *Further, as per the prescribed procedure, the assessee used to transfer the money collected from sale of its products in a routine manner after keeping the funds required for its*

immediate use and in this way the surplus funds invested out of the circulating capital also earned interest income as per the agreed terms and conditions with the Milkfed including for rate of interest (which was 8%) etc.

The appellant reiterates it's above submissions as made above before the Ld. CIT(A) for the mechanism for interest received from MILKFED."

8. Ld.Counsel for the assessee further filed before us copy of account of "Interest paid to Milkfed" in its books to support its claim that it had earned interest from MILKFED on advances made to it for procuring goods on its behalf. Referring to the same it was contended that it had earned interest for the period from October 2008 to March 2008 when there was credit balance of MILKFED, while for the rest of the year it had paid interest on account of there being debit balance of MILKFED. The Ld. counsel for assessee thus contended that the mechanism for transfer of funds had been duly explained to the authorities below as being in the nature of advances given to Milkfed for arranging supply of raw material for the assessee . Thereafter the Ld. counsel for assessee contended that these advances qualified as "investments" for the purpose of claim of deduction u/s 80P(2)(d) of the Act and relied upon the following case laws in support of its above contention pointing out that in these case laws it had been held that even advance made for purchase of goods would be treated as investment and that it included investment of circulating capital:

1) CIT, Lucknow Vs. U.P. Co-operative Federation Ltd., 176 ITR 435 (SC).

2) CIT Vs. Haryana Co-operative Sugar Mills Ltd.

3) Addl.CIT Vs. UP Co-operative Federation Ltd. (1978) 7 CTR (All) 293.

4) CIT Vs. Shri Amreli Zilla Shakari Kharid Vehcan Sangh Ltd. (1991) 39 ITD 65.

9. The Ld. counsel for assessee thereafter contended that the Hon'ble Jurisdictional High Court in the case of CIT Vs. Doaba Co-operative Sugar Mills Ltd., 230 ITR 775,had held that the gross interest income qualified for deduction u/s 80P(2)(d) of the Act and not the net interest income. Copy of the order was placed before us. The Ld. counsel for assessee, therefore, contended that the advances made by it to Milkfed qualified as investment and gross interest income earned therefrom amounting to Rs.49,90,022/- thus had been rightly claimed as deductible under the provisions of section 80P(2)(d) of the Act and the action of the lower authorities in denying the same was not justified in law and needed to be set aside.

10. The Ld. DR, on the other hand, relied upon the orders of the lower authorities.

11. After the conclusion of the hearing on 13-10-18, it came to the notice of the Bench that the Hon'ble Jurisdictional High Court had in the case of MILKFED itself held that only net interest income was eligible for deduction u/s 80P(2)(d) of the Act in the following two cases:

1. *The Punjab State Cooperative Milk Producer's Federation Ltd. Vs. Commissioner of Income Tax-II, Chandigarh and another (2016 238 Taxman 207 (P&H).*

2. *The Punjab State Cooperative Milk Producers Federation Ltd. Vs. Commissioner of Income-Tax and another [2011] 336 ITR 495(P&H).*

And that even the Apex court had held that it was only the net income which was eligible for deduction u/s 80P in the case of *Sabarkantha Zilla Kharid Vechan Sangh Ltd. vs. CIT (1993) 114 CTR (SC) 459 : (1993) 203 ITR 1027 (SC)*

12. The appeal was therefore refixed for confronting the said decisions to the concerned parties and seeking clarification from them, on 11/01/19. On the said date the hearing was adjourned to 16-01-19 on the request of Ld.Counsel for the assessee. On the said date when confronted with the said decisions, Ld.Counsel for the assessee stated that he was unaware of the said decisions and accordingly sought time to file reply to the same. It was pointed out to him that the Hon'ble High court had considered the decision in the case of Doaba (supra) in the said decisions while holding that only net interest was eligible for deduction and it was also pointed out that the decisions had been rendered in the context of MILKFED from which the assessee had earned interest . The Ld.Counsel for the assessee was therefore asked to file reply by the 21st of January 2019, failing which it would be deemed that he had nothing to say on the matter. No reply was received by the said date.

13. We have heard the rival contentions and perused the orders of the authorities below . We do not find merit in the contention of the Ld. counsel for assessee that the entire interest income earned by it from Milkfed was eligible for

deduction u/s 80P(2)(d) of the Act. Undeniably the assessee had explained to the authorities below that the interest income had been earned on advance made to Milkfed which arranged the raw material required by the assessee and the mechanism of transfer of funds was also explained as the surplus collected by it from sale of its products being transferred to Milkfed as advance for arranging raw material for it and the surplus remaining with Milkfed earning interest thereon. It was also pointed out that the said arrangement was as per the terms and conditions agreed between the two parties and in consonance to the byelaws of the assessee society. The Revenue has not controvered the above facts before us. Therefore we hold that the findings of the Ld.CIT(A) that the assessee had failed to explain the mechanism of transfer of funds to MILFED is incorrect. Further we have also gone through the decisions cited by the Ld. counsel for assessee before us, and find that it has been held by courts that loans and advances given for arranging purchases qualify as investment for the purpose of section 80P(2)(d) of the Act. In the case of CIT, Lucknow vs U.P Co-operative (supra), the Hon’ble Apex court held that amounts advanced to member cooperative societies for enabling them to carry out work entrusted to them by the assessee qualified as investments and interest earned thereon was eligible for deduction u/s 14(3)(1)(ii) of the Income Tax Act,1922,which is para materia with clause (d) of section 80P of the Income Tax Act,1961. The Hon'ble Apex Court held as under:

“We shall now deal with the other question. Dealing with it, the High Court stated:

"The facts relating to the case for exemption in respect of the two amounts of Rs. 51,295 and Rs. 58,937 (the second amount is no more in dispute) covered by question No. (3) may be stated. We shall begin by referring to facts relating to advances made in relation to the sugar business. The assessee was appointed as one of the wholesale dealers for distribution of sugar in this State. It had, in pursuance of an agreement entered into between it and the State Government, to arrange for lifting, handling, storing and distributing to the retailers the stocks of sugar released by the Government of India. The district co-operative development federations of Deoria, Garhwal, Tehri Garhwal, Pilibhit, Etawah and Allahabad, entered into agreements with the assessee to work as agents for the wholesale distribution of sugar in their districts. A sample of the agreement entered into between the assessee and these various district cooperative development federations .....' The assessee was to make necessary investments by way of payment of price of sugar to be procured from the factories and also to pay the administrative charges incurred for the distribution of sugar. This administrative charge was, however, recouped by the agents and paid over to the assessee. The delivery of the sugar from the various factories was to be taken by the various district co-operative development federations which had entered into agreements with the assessee on behalf of the assessee as soon as the release orders were issued by the Government of India. The sugar so received was to be stored in godowns and was to remain under the custody of godown-keepers of the assessee or the bankers of the assessee. The salaries of the godownkeepers and the chowkidars appointed for safe custody of the stocks of sugar were to be paid by the agents . . ."

“The sugar so stored was to be released to the agents as and when required by them on full payment of its price at the rate fixed by the State Government or the District Magistrate concerned. The stocks of sugar taken over by the agents was to be sold by them to retailers, and permit holders who were to be nominated by the District Magistrate or the officer authorised by him. The wholesalers' margin on the sugar sold for the period beginning September 1959, onwards with which we are concerned was Rs. 2.06 per bag. The share of the assessee and the district cooperative development federations in this amount is set out in cl. 18 of the agreement . . ."

The High Court extracted the terms and came to hold:

"It appears from a letter dt. 30th Sept., 1959, that the various district co-operative development federations were not in a position to arrange the entire finances for the business and accordingly the assessee agreed to arrange for finances of the business on certain terms and conditions. The terms and

conditions on which the finances were to be arranged may be extracted: . . . . .

(5) the money invested in the business will earn interest at 6 per rent per annum . . ."

It will be seen that money which the assessee made available to the district co-operative development federations was to be utilised for the purchase of the stocks of sugar which the district co-operatives sold as agents of the assessee. In the accounting year in question, the assessee realised the the following amounts of interest from the district co-operative development federations mentioned below:

Name	*Amount*
	Rs.
(i) District Co-operative Development Federation Ltd., Deoria.	*4,694.16*
(ii) District Co-operative Development Federation Ltd., Garhwal.	*15,797 60*
(iii) District Co-operative Development Federation Ltd., Tehri Garhwal	*5,557.50*
(iv) District Co-operative Development Federation Ltd., Etawah.	*2,984 24*
(v) District Co-operative Development Federation Ltd., Pilibhit.	*2,616.21*
(vi) District Co-operative Development Federation Ltd., Allahabad.	*19,645 53*
Total	*51,295.24*

8. The dispute covered by the second question to be answered is over this amount. The ITO as also the two appellate authorities, relying upon the decisions of the Bombay High Court in Sir Chinnubhai Madhavlal vs. CIT (1937) 5 ITR 210 (Bom) : TC 14R.384 and CIT vs. Bombay State Co-operative Bank Ltd. (1966) 59 ITR 31 (Bom) : TC26R.691, held that the amount on which interest had been earned under the agreement did not constitute investment and, therefore, was not covered by s. 14(3)(iii) of the Act.

9. Sec. 14(3) provides that tax shall not be payable by a co-operative society in certain situations. Clause (i) under its six sub-clauses refers to specific classes of co-operative societies in whose cases there is total exemption. Clause (ii) exempts income in respect of profits and gains of business of co-operative societies not covered by cl. (i) up to Rs. 15,000. Clause (iii) exempts interest and dividends and income derived from investments with any other co-operative society. Clause (iv) exempts income derived from letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities while cl. (v) exempts interest on securities chargeable under s. 8 or any income from property

chargeable under s. 9, where the total income of the co-operative society of specific types mentioned therein does not exceed Rs. 20,000.

10. There can be no dispute on the conclusion reached by the High Court that the money provided by the assessee was by way of investment. In fact, if this money had not been made available, the business as stipulated under the scheme could not have been carried out and perhaps there would have been no business. "Investment" has not been defined in the Act. P. Ramanatha Aiyar's Law Lexicon (Reprint Edition 1987) states:

"The term 'invest' is used in a sense broad enough to cover the loaning of the money but is not restricted to that mode of 'investment' or loans made on commercial paper. The word 'invest' has been judicially defined as follows:

'To place property in business; to place so that it will be safe and yield a profit. It is also commonly understood as giving money for some other property (as) investing funds on lands and houses. 'Investment' means, in common parlance, putting out money on interest, either by way of loan, or by purchase of income producing property..."

In the facts of the present case, the money provided by the assessee was necessary to run the business and generate profits; under the agreement, interest has been earned. In the peculiar situation appearing in the case as found by the High Court, the provision of money by the assessee, the purpose for which the money was provided, the stipulation for earning of interest, were all relevant considerations to be taken into account and it becomes difficult to take a view different from that of the High Court that the funding was investment and under the agreement, interest has been earned. Admittedly, the funding was to other co-operative societies. In our opinion, therefore, the amount of Rs. 51,295 squarely came within s. 14(3)(iii) of the Act. The High Court, therefore, was right in its conclusion that no tax was payable on the said amount. We would like to point out that under s. 14(3), provision has been made to extend certain advantages to co-operative societies in order that the legislative purpose of providing incentives to the co-operative movement may be fulfilled. The High Court was right in holding that the provisions contained in s. 14(3) should be liberally construed.

11. Our answer to the second question, therefore, is that, on the facts and in the circumstances of the case and on a true and correct interpretation of the various clauses of the agreement, the sum of Rs. 51,295 received as interest on advances in the assessee's income from sugar business was exempt under s. 14(3) of the IT Act, 1922.

14. Relying on the aforesaid decision of the apex court, the ITAT, in the case of Amreli Zila Sahkari Kharid Vehcan

Sangh Ltd.(supra) held that interest received by a co-operative society from state marketing federation from loans given for purchase of goods on their behalf would come within the purview of section 80P(2)(d) of the Act, the funds provided qualifying as investment with other cooperative societies. The relevant findings of the ITAT at para 6.4 of its order are as under:

> *"6.4. We have considered the submissions made by the learned representative's and have also gone through the relevant paras of the CIT(A)'s order and other documents to which our attention was drawn during the cross of hearing. A perusal of the printed balance sheet at page 25 there of reveals that in the interest account appearing in the ledger folio No. 254 credit in interest account was Rs. 16,40,882.95 ps. The debits in this interest account was Rs. 14,03,572.33 ps. Thus there was a net credit in interest account of only Rs. 2,37210. The details of credits in interest account aggregating to Rs. 16,40,882 placed at page 17 of the paper book reveals that the assessee received by way of interest an amount of Rs. 13,93,250 from, Gujarat State Sahakari Marketing Federation Ltd. For Loan given by the society for purchase of groundnut, groundnut seeds, (HPS) and Til, etc. The CIT(A) granted deduction under s. 80P(2)(d) on the aforesaid amount of interest of Rs. 13,93,250 received from said Marketing Federation. In our view the nature of interest income received by the assessee from Gujarat Sate Sahakari Marketing Federation Ltd. for loan given for the purchase of goods on their behalf would clearly come within the scope of, exemption provided under s. 80P(2)(d). The funds provided by the society for purchase of goods on behalf of the said Federation would be treated as investments with the other co-operative society and interest income derived therefrom will be eligible for grant of exemption under this section. This view is fully fortified by the decision of Hon'ble Supreme Court in the case of CIT vs. U.P. Co-operative Federation Ltd. (1989) 76 CTR (SC) 22: (1989) 176 ITR 435 (SC)."*

13. The Ld. DR has been unable to distinguish the said decisions before us. Therefore, the advances given by the assessee society to Milkfed, we hold qualify as investment for the purpose of section 80P(2)(d) of the Act.

14. Having said so, we however ,do not agree with the contention of the Ld.Counsel for the assessee that the gross

interest income would qualify for deduction u/s 80P(2)(d) of the Act, in view of the decision of the apex court in *Sabarkantha Zilla Kharid Vechan Sangh Ltd. vs. CIT (1993) 114 CTR (SC) 459 : (1993) 203 ITR 1027 (SC* and that of the jurisdictional High Court in the case of MILKFED itself ,as pointed out to the Ld.Counsel for the assessee ,in preceding years wherein interest earned by it from district cooperative societies like the assessee by virtue of the arrangement as explained in the present case, was held to be deductible net of expenses incurred and not gross. The Hon'ble High court followed the decision of the apex court in the case of Sabarkantha (supra) and further has also distinguished the decision rendered in the case of Doaba Cooperative as under:

> *"12.The assessee is entitled to deduction under s. 80P(2)(d) of the Act after excluding the expenditure attributable to the earning of such income. The apex Court in Sabarkantha Zilla Kharid Vechan Sangh Ltd.'s case (supra), where the High Court while rejecting the claim of the assessee had held that the assessee who was engaged in the purchase of agricultural implements, seeds, live-stocks etc. was entitled to deduction under s. 81 of the Act from tax only in relation to net profit and not gross profits. It was held as under :*
>
> *"The said provision, as seen therefrom, undoubtedly exempts an assessee-co-operative society, which carries on the business envisaged therein, from payment of income-tax on profits and gains of such business. But the controversy which relates to the said provision is, whether the income-tax not payable thereunder, falls to be calculated either with reference to the full amount of profits and gains of the co-operative society's business, as contended on behalf of the assessee or with reference to the net amount of profits and gains of the co-operative society's business, as otherwise computable under the provisions of the IT Act for the purpose of charging income-tax thereon, as contended on behalf of the Revenue. If the relevant provisions of the IT Act providing for charging a person including a co-operative society with income-tax on "profit and gains" of such person's business show that it is the net profits and gains, i.e., income of such business computed in accordance with the provisions of the IT Act, which is includible in such person's total income liable to charge of income-tax, it must flow therefrom, as a necessary*

corollary thereof, that the "profits and gains" for which exemption from income-tax is envisaged under s. 81(i)(d) of the IT Act, ought to be net profits and gains, i.e. income of business computed in accordance with the provisions of the IT Act which is includible in such person's total income for charging income-tax thereon."

13. It may be noticed that s. 80P was inserted in place of s. 81 which was simultaneously deleted by Finance (No. 2) Act, 1967, w.e.f. 1st April, 1968.

14. Further, s. 14A was inserted in the Act by Finance Act, 2001 w.e.f. 1st April, 1962. The said section provides that any expenses incurred by the assessee for earning income which does not form part of total income under the Act, shall not be an allowable expenditure. The apex Court in Walfort Share & Stock Brokers's case (supra), defining the scope of s. 14A of the Act, incorporated retrospectively from 1st April, 1962, had laid down as under :

"The insertion of s. 14A with retrospective effect is the serious attempt on the part of the Parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which does not form part of the total income under the Act against the taxable income (see Circular No. 14 of 2001 dt. 22nd Nov., 2001). In other words, s. 14A clarifies that expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. In many cases the nature of expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. In the absence of s. 14A, the expenditure incurred in respect of exempt income was being claimed against taxable income. The mandate of s. 14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail the tax incentive by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. The basic reason for insertion of s. 14A is that certain incomes are not includible while computing total income as these are exempt under certain provisions of the Act. In the past, there have been cases in which deduction has been sought in respect of such incomes which in effect would mean that tax incentives to certain incomes was being used to reduce the tax payable on the non-exempt income by debiting the expenses, incurred to earn the exempt income, against taxable income. The basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure. On the same analogy the exemption is also in respect of net income. Expenses allowed can only be in respect of earning of taxable income. This is the purport of s. 14A. In s. 14A, the first phrase is 'for the purposes of computing the total income under this Chapter' which makes it clear that various heads of income as prescribed under Chapter IV would fall within s. 14A. The next phrase is, 'in relation to income which does not form part of total income under the Act'. It means that if an

income does not form part of total income, then the related expenditure is outside the ambit of the applicability of s. 14A. Further, s. 14 specifies five heads of income which are chargeable to tax. In order to be chargeable, an income has to be brought under one of the five heads. Secs. 15 to 59 lay down the rules for computing income for the purpose of chargeability to tax under those heads. Secs. 15 to 59 quantify the total income chargeable to tax. The permissible deductions enumerated in ss. 15 to 59 are now to be allowed only with reference to income which is brought under one of the above heads and is chargeable to tax. If an income like dividend income is not a part of the total income, the expenditure/deduction though of the nature specified in ss. 15 to 59 but related to the income not forming part of total income could not be allowed against other income includible in the total income for the purpose of chargeability to tax. The theory of apportionment of expenditures between taxable and non-taxable has, in principle, been now widened under s. 14A. Reading s. 14 in juxtaposition with ss. 15 to 59, it is clear that the words "expenditure incurred" in s. 14A refers to expenditure on rent, taxes, salaries, interest, etc. in respect of which allowances are provided for (see ss. 30 to 37)."

15. Adverting to the judgments relied upon by the learned counsel for the assessee, the same do not advance its case. Suffice it to notice that the Doaba Co-operative Sugar Mills case (supra) was a case prior to insertion of s. 14A by Finance Act, 2001 retrospectively from 1st April, 1962 and would, thus, be of no assistance to the assessee. Further, this Court in King Export's case (supra), on consideration of facts involved therein had concluded that there was no expenditure which had been incurred by the assessee for earning the income and the same did not form part of total income. That is not the situation in the present case.

16. In view of the above, the substantial questions of law are answered against the assessee and in favour of the Revenue."

15. In view of the same we have no hesitation in applying he said case laws to the facts of the present case and thereby uphold the order of the Ld.CIT(A) holding that the net interest income qualified for deduction u/s 80P(2)(d) of the Act.

16. In view of the above facts and the position of law in this regard, we hold that the advances given by the assessee cooperative society to Milkfed qualifies as investment for the purpose of deduction u/s 80P(2)(d) of the Act and the net

interest income earned therefrom is eligible for deduction under the said section. Since in the facts of the present case no net interest income was earned by the assessee, the assessee, we hold, was not entitled to any claim of deduction u/s 80P(2)(d) of the Act. The order of the CIT(A) upholding the denial of claim of deduction u/s 80P(2)(d) of the Act of Rs.49,90,022/- is, therefore, upheld

In view of the above, the grounds raised by the assessee are dismissed.

17. In the result, the appeal of the assessee is dismissed. Order pronounced in the Open Court.

Sd/-	Sd/-
संजय गर्ग	**अन्नपूर्णा गुप्ता**
(SANJAY GARG)	**(ANNAPURNA GUPTA)**
न्यायकि सदस्य/ Judicial Member	**लेखा सदस्य/ Accountant Member**

दिनांक /Dated: 31 January, 2019

रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar