

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA Nos.654&655/Ind/2017

Assessment Year: 2013-14 & 2014-15

Kesla Poultry Sahakari Maryadit Pradan Campus Sukhtawa Itarsi Tehsil, Dist. Hoshangabad (M.P.)	बनाम/ Vs.	ACIT Circle Itarsi(M.P.)
(Appellant)		(Revenue)
P.A. No.AAAAK2388N		

Appellant by	Shri Hitesh Chimnani, A.R.
Respondent by	Shri K.G. Goyal, Sr. D.R.
Date of Hearing:	13.08.2019
Date of Pronouncement:	27.09.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

These two appeals by the assessee are directed against common order of the CIT(A)-1, Bhopal dated 11.8.2017 for the assessment years 2013-14 & 2014-15. Since the issues are same and grounds are identical, the appeals

were taken up together and are being disposed of by way of this consolidated order. First we take up ITA No.654/Ind/2017. In this appeal, the assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the appellant's case and in law, the Ld. CIT(A) erred in confirming the disallowance of Rs.11,68,222/- made by the Ld. A.P. u/s 80P(2)(vi) as claimed by the appellant in its return of total income.*
2. *Without prejudice to above, the Ld. CIT(A) failed to decide and consider the alternate claim of deduction u/s 80P(2)(a)(iii) of the Income Tax Act as claimed by the appellant society.*

2. The brief facts of the case are that the assessee is a cooperative society which is engaged in the business of poultry farming. During the course of scrutiny proceedings, the A.O. observed that the assessee had claimed deduction of Rs.11,68,222/- u/s 80P(2)(a)(vi) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). The A.O. on scrutiny, disallowed the claim of deduction u/s 80P(2)(a)(vi) of the Act. Aggrieved against this, the assessee appeared before the Ld. CIT(A), who after considering the submissions of the assessee confirmed the order of the A.O. by observing as under:

5. I have carefully considered the facts of the case, assessment orders and the submissions filed by the appellant. All the grounds of appeal are being taken up together. From the assessment order it is seen that for both the assessment years under appeal i.e. A.Y. 2013-14 and 2014-15, the A.O. has held that income on sale of birds is not eligible for full deduction u/s 80P(2)(a)(vi) of the Act. As per section 80P(2)(a)(vi) of the Income Tax Act, 1961,

"Where, in the case of an assessee being a co-operative society, the gross total income includes any income of a co-operative society engaged in the collective disposal of the labour of its members, there shall be deducted the whole of the amount of profits and gains of business attributable to such activity in computing the total income of the assessee."

6. Looking to the provisions of section 80P(2)(a)(vi), the A.O. has held that the society is not eligible for claiming deduction under the same as:

"there is no direct utilization of labour of the members in earning the income of the society. The members of the society are rearing birds which are then sold in the market resulting in profits. The society has not earned income through rearing of birds, but the income has been earned through price realized from sale of chicken. Therefore, the income of the society has nothing to do with collective disposal of labour of its members which is exerted in rearing of birds".

7. The A.O. has also relied on the case laws in the case of Nilagiri Engineering Co-operative Society Ltd. vs Commissioner of Income Tax [(1994) 208 ITR 326], where the Hon'ble High Court of Orissa as held that the eligibility to earn exemption is where the whole amount of profits and gains of a business is attributable to the collective disposal of the labour of its members. The words are very clear and only mean that the earning of the society must have been through utilization of the actual labour of its members. Further, the Hon'ble Kerala High Court in ITA No. 141 of 2014 has held that *"Though, there is some merit in the contention that there was collective disposal of labour while tapping the toddy, yet the fact remains that the tapping of the toddy, per se, has not generated any income to these societies. Thus these assessee societies have not generated income from the activity of tapping of toddy, which might involve collective disposal of labour. In fact, these societies have generated income only through sale of toddy. Therefore, the income of the society has nothing to do with the collective disposal of the labour of its members, but is entirely from out of the price realized by it for the sale of toddy through the society's own toddy shops."*

8. The appellant has not been able to give any argument in his submissions to counter the findings given by the A.O. The case laws given by the appellant are distinguishable from the facts in the present appeal. The case laws quoted by the A.O. are clearly applicable in the case of the appellant. In the case of the appellant also the collective disposal of the labour of its members has not been utilized to earn the income of the society. The members of the society are rearing birds. The society has not earned income through the rearing of birds by the members, but the income has

been earned through the sale of chicken. Hence, the income of the society is not connected with the collective disposal of labour of its members which is exerted in rearing of birds. Therefore, looking to the totality of the facts and circumstances of the case, the contention of the appellant is not accepted and the disallowance of deduction u/s 80P(2)(a)(vi) of the Act of Rs.11,68,222/- in the A.Y. 2013-14 and of Rs.15,63,594/- in the A.Y. 2014-15 is hereby confirmed.

9. In the result, the appeals for A.Y. 2013-14 & 2014-15 are dismissed.

3. Aggrieved against this order, the assessee is before this Tribunal.
Ld. Counsel for the assessee submitted a written synopsis which is reproduced as under:

Synopsis in the case of appeals filed by the assessee:

Background and brief facts

The appellant is registered under the M.P State cooperatives Act, primarily engaged in the activity of poultry farming through collective disposal of labour of its 992 women member producer i.e. schedule tribes, schedule castes poor and dalit women. The assessee is a producer's cooperatives society in which it imparts facilities of financial assistance and technical know-how to its members for effective running of small holder poultry production through collective disposal of their labour. It provides chicks, feeds, medicines etc. for upkeep of said poultry production and also engages in marketing of boilers being produced by their members for better pricing of output. (kindly see pg 63 of PB for role of society and page 83 of PB for history of registration)

The members of the assessee society grow birds on their farm, and society provides them guidance and other support. The assessee during assessment proceedings contended that so far as the income on sale of birds is concerned, such income is attributable to collective disposal of labour of its members and therefore, eligible for full deduction u/s 80P(2) of Income tax Act, 1961.

The present appeal lies against the order dt. 11.08.2017 of Ld. CIT(A)-I, Bhopal for the assessment year 2013-14 and 2014-15.

During the course of assessment complete details were filed in respect of collective disposal of labour by the members of the society.

Explanations were filed in response to queries raised by AO.

Ground No.1 for AY2013-14 and AY2014-15

The CIT -(A), Bhopal has maintained the disallowance of Rs. 11,68,222/- made by the LD. AO in respect of the assessee cooperative society from claiming deduction under section 80P(2)(a)(vi) of the Income tax Act, 1961 for the assessment year 2013-14. of For the assessment year 2014-15. The said figure is Rs. 15,63,594/- on same lines.

Ground no.2 for A.Y 13-14 and A.Y 14-15

The Id CIT(A) failed to decide and consider the alternate claim of deduction u/s 80P(2)(a)(iii) of The Income Tax Act as claimed by the appellant towards “marketing of agricultural produce” by relying on decision of Hon’ble AP High Court in the case of Mulkanoor Co-op Rural Bank Ltd. in both the respective assessment years.

Additional ground for A.Y 13-14 ^{and A.Y. 14-15} (filed on 2/5/18)

Claim of deduction u/s 80(P)(2)(a)(i) (as an alternative claim)

- The relevant pages of the orders of AO and CIT(A) as well as the compilation are tabulated for ready reference as below:

AO(pgs)	CIT(A)(pgs)	Compilation	Remarks/Brief submissions
1-3	2-7	1,2-31 (particular reference to pgs 6-7, 13-14 and 27) Pages 63,69,83,86	<ul style="list-style-type: none"> • Case of registered cooperative society. Duly Audited Accounts • Disallowed to claim deduction u/s 80P(2)(a)(vi). Alternative claims u/s 80P(2)(a)(iii) and 80(P)(2)(a)(i) of the Income tax Act, 1961 • Income on sale of birds is attributable to the collective disposal of labour of its members i.e. women of schedule tribes and schedule castes. • Reliance has been placed on the decision of Hon’ble AP High court in the case of CIT v/s Mulkanoor Coop. Rural Bank Ltd. wherein it is held that <u>the poultry farming is also an extended form of agriculture</u> and therefore the same qualify to be treated as agricultural produce • Any surplus from mutual concerns is exempt from income tax. (Pg 13-14 of PB Bye-laws 18,20,21. Page 27 of PB bye law-45) • Main objective of the society is to make livelihood of its members by poultry rearing. 100% members are women coming from BPL Group. • Assessment order dt. 23.11.2007 passed u/s 143(3) by Ld DCIT, Circle Satna (M.P.) in case of Mahila Murgi Palak Sahakarita Maryadit, Sarra Tehsil, Sidhi for assessment yr 2005-06 wherein claim of deduction u/s 80P on similar activity run by cooperative society has been allowed.

			<ul style="list-style-type: none"> • Whole amount of <u>profits attributable to the marketing of the agricultural produce grown by the members of the society is deductible u/s 80(P)(2)(a)(iii).</u> • Labours are collectivized under the cooperative to run the activity as such small holder poultry cannot survive in the highly competitive poultry market.
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1. A co-operative society is not defined specifically for the purpose of Section 80P.

The word "Co-operative Society" has been defined in the Act in Section 2(19), which read as under:

"Co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies

Further as per Circular No. 319, dated January 11, 1982 a regional rural bank (to which provisions of the Regional Rural Banks Act, 1976, apply) is deemed as co-operative society.

2. **Section 80P**- Deduction for co – operative societies

The provisions of section 80P are reproduced here under:

80P (relevant part only)

(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 to in sub-section (1) shall be the following, namely :—

(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 :

3. Applicability of Section 80P

Section 80P deduction is available only to primary agricultural credit society or primary co-operative agricultural and rural development bank.

4. 100% deduction is available under Section 80P towards Profit and Gains attributable to following activities :

1. Co-operative society carrying on the business of banking or providing credit facilities to the members of the society.
 2. Co-operative society engaged in cottage industry.
 3. Co-operative society engaged in providing marketing of agricultural produce grown by its members.
 4. Co-operative society engaged in the purchase of articles intended for agricultural like seeds, livestock etc. which would be supplied to the members of co-operative society.
 5. Co-operative society engaged in the processing of the agricultural produce of its member, where, the process is undertaken without the aid of power.
 6. Co-operative society is providing collective disposal of the labor of its members.
 7. Co-operative society is providing fishing or allied activities with the intention of supplying it to the members. Example of allied activities are catching, curing, processing, storing, marketing of fish and even purchase of material and equipment connected with it.
 8. Co-operative society, being a primary society, who is engaged in supplying products like milk, oilseeds, fruits and / or vegetables. Such products are grown by the members of the co-operative society and the same is supplied to below mentioned categories of person –
 - Federal Co-operative Society engaged in the business of above mentioned products;
 - Government or local authority;
 - Government Company, a corporation engaged in supplying above mentioned products.
5. A perusal of various provisions of Section 80P indicates that the provisions are meant for deductions in respect of income of the co-operative societies. It is noted that various words /terms used in the section have not been defined in the Act except the definitions of co-operative society, co-operative bank and primary co-operative agricultural and rural development bank. Therefore, other terms used in the section will have to be interpreted by using the common meaning of those words and the interpretations made by various judicial forums such as ITAT, High Courts and the Hon'ble Supreme Court. In order to have a clear and easy understanding of various provisions of the section, the provisions are being discussed in the order it appears in the section

6. Reading of the above provision shows that in the case of a co-operative society, if the gross total income includes any income generated out of the collective disposal of the labour of its members, such income shall be deducted in accordance with and subject to the condition in the proviso to the section in computing the total income of the society.
7. Assessee is a cooperative society is eligible to claim deduction u/s 80P(2)(a)(vi) of the income tax Act 1961, "Where, in case of an assessee being a cooperative society, the gross total income includes any income of a cooperative society engaged in the **collective disposal of the labour of its members**, there shall be deducted the whole of the amounts of the profits and gains of the business attributable to such activity in computing the total income of the assessee.
8. The eligibility to earn exemption is where the whole amount of profits and gains of a business is attributable to the collective disposal of the labour of its members. The words are very clear and only mean that the earning of the society must have been through utilisation of the actual labour of its members. The guiding factor must be that the earning of the society must be through utilisation of the particular kind of labour in which the members are specialised. *Case of Nilagiri Engineering Co-operative society Ltd. vs. Commissioner of Income tax [(1994) 208 ITR 326]*
9. Assessee society has **tribal and Dalit women as its members**. These women grow birds in their farms and society provides those facilities /guidance and other support as mentioned in the bye laws of the society. The income from the sale of birds is attributable to the **collective disposal of labour** of its members. Members of the society are engaged in rearing of birds, then the society itself to be held to be engaged in collective disposal of labour of its members. Birds grown are exclusively marketed by the society and the society also bears the expenses. **Such income is therefore attributable to the collective disposal of labour of its members therefore eligible for deduction u/s 80(P)(2)(a)(vi).**
10. It is noteworthy, that the total working of the society is subject to the **labour constraint of members and entirely dependent on the members labour** i.e. activity of rearing. **The society supervises and coordinates the activities** of producer members for sustainability in market, by exploring labour efficiency of its women members by way of rearing of birds, also by providing inputs along with basic training for rearing of birds. The **assessee society also imparts facilities of financial assistance and technical know how to its members** for effective running of small holder poultry production through collective disposal of their labour. It provides chicks, feeds, medicines etc. for upkeep of said poultry production and also engages in marketing of boilers being produced by their members for better pricing of output.
11. The following excerpts from the judgement of *Nilagiri Engineering Co-operative society Ltd. vs. Commissioner of Income tax [(1994) 208 ITR 326]* may be gainfully reproduced-

“Reading of the judgments of the Orissa High Court and this Court make it clear that the earning of the society must be through utilisation of the particular kind of labour in which the members are specialised. It is also clear that it is only when collective disposal of a disposable commodity over which the society has control is made, the benefit is earned by the society. Such disposal shall be of the labour of the members of the society. This position is also clear from the judgment of this Court in *Uralungal labour Contract Cooperative society.*”

- a. The objective of the assessee cooperative society is to bring about **empowerment of its members**; especially from the **weaker sections** of the society through economic and social progress by means of self-support and mutual cooperative through poultry farming. (kindly Refer by laws pg. 2-31 of PB)
- b. Whole amount of profits attributable to the marketing of the agricultural produce **grown by the members** of the society is deductible u/s 80(P)(2)(a)(iii). “Agricultural produce of its members”, s.80P(2)(a)(iii) The language adopted in section will admit of the interpretation that the society engaged in marketing of agricultural produce of its members as agricultural produce ‘belonging to’ its members which is not even necessarily raised by its members. – Assam cooperative Apex Marketing Society Ltd. v. Addl. CIT, (1993) 201 ITR 338 (SC).

12. Section 80 is a **benevolent provision** which is enacted by the parliament in order to encourage and promote growth of cooperative sector in the economic life of the country.

Therefore such a provision has to be read liberally, reasonably and in favour of the assessee. It is also trite that such a provision has to be construed as to effectuate the object of the legislature and not to defeat it.

Clause (a) of sub section (2) gives exemption of whole of the amounts of the profits and gains of the business attributable to such activities.

13. **Principles of mutuality:** The basic principle underlying the principle of mutuality is that **no one can make profit out of himself.** *CIT Vs. Royal Western India Turf Club Ltd., 24 ITR p.241 (SC) has laid down that the essence of mutuality lies in the return of what one has contributed to common fund, and if profits are distributed as shareholders, the principle of mutuality is not satisfied.*

14. Whole system is based on Mutuality concept. Members are getting back as per its contributions. Assessee society is not sharing its profits to the outsiders.

In the view of said circumstances, and judicial precedents, it is most humbly prayed that the disallowances made in the case of a registered cooperative society be deleted in full, allowing assessee to claim deductions under section 80P.

It is most humbly prayed in view of alternative claims of the assessee the Id AO be very kindly be directed to allow deduction u/s 80P as per appropriate clause as deemed fit by your honours.

For this act of kindness your appellant assessee shall forever remain obliged.

4. The Ld. D.R. opposed these submissions and relied on the order of the Ld. CIT(A).

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The contention of the Ld. Counsel for the assessee is that the A.O. ought to have allowed deduction. It is stated that assessee is a co-operative society engaged in the collective disposal of labour and also engaged in providing marketing of agricultural produce grown by its members. It is

contended that the authorities below have not considered the submissions in right perspective. Ld. Counsel submitted that if the assessee was not eligible for one clause, it would certainly be eligible for another clause of the same section. It is incumbent upon the assessing officer to provide deduction, if it is available.

6. We have considered the submissions of the assessee. Facts on record suggest that the submissions of the assessee ought to have been considered by the authorities below. We therefore, set aside the impugned order of the Ld. CIT(A) and restore the issue to the file of the A.O. to decide after considering all the submissions of the assessee and verifying its claim. The grounds raised in the appeal are allowed for statistical purposes.

7. Now we take up assessee's appeal in ITA No.655/Ind/2017 for the A.Y. 2014-15. The assessee has raised following grounds of appeal:

- 1. That on the facts and in the circumstances of the appellant's case and in law, the Ld. CIT(A) erred in confirming the disallowance of Rs.15,63,594/- made by the Ld. A.O. u/s 80P(2)(a)(vi) as claimed by the appellant in its return of total income.*
- 2. Without prejudice to above, the Ld. CIT(A) failed to decide and consider the alternate claim of deduction u/s 80P(2)(a)(iii) of the Income tax Act as claimed by the appellant society.*

8. At the outset, Ld. Counsel for the assessee has submitted that the facts are identical as were in the assessment year 2013-14. He submitted that the facts are similar except the figure. Ld. D.R. also adopted the same argument as were in ITA No.654/Ind/2017 for the A.Y. 2013-14.

9. We have heard the Ld. representatives of the parties and perused the materials on record. The facts are identical as were in ITA No.654/Ind/2017, wherein we have decided the issue of allowance of deduction, wherein

we have restored the issue of allowance of deduction u/s 80P(2) of the Act for decision afresh to the A.O. by observing as under:

“5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The contention of the Ld. Counsel for the assessee is that the A.O. ought to have allowed deduction. It is stated that assessee is a co-operative society engaged in the collective disposal of labour and also engaged in providing marketing of agricultural produce grown by its members. It is contended that the authorities below have not considered the submissions in right perspective. Ld. Counsel submitted that if the assessee was not eligible for one clause, it would certainly eligible for another clause of the same section. It is incumbent upon the assessing officer to provide deduction if it is available.

6. We have considered these submissions of the assessee. Facts on record suggest that the submissions of the assessee ought to have been considered by the authorities below. We therefore, set aside the impugned order of the Ld. CIT(A) and restore the issue to the file of the A.O. to decide after considering all the submissions of the assessee and verifying its claim. The grounds raised in the appeal are allowed for statistical purposes.”

10. Taking a consistent view, the issue in this year is also restored to the file of the A.O. for taking decision afresh.

11. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order was pronounced in the open court on 27.09.2019.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 27/09/2019
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore