

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 912/JP/2019
निर्धारण वर्ष/Assessment Years : 2015-16

Kumher Kriya Vikrya Sahakari Samiti Ltd. Kumber, Distt. Bharatpur-321001.	बनाम Vs.	The ITO, Ward-3, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAK2966J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajiv Goyal (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 08/04/2021
उदघोषणा की तारीख / Date of Pronouncement : 30/04/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Alwar dated 16.11.2018 relevant to assessment year 2015-16 wherein the assessee has challenged the denial of deduction amounting to Rs. 2,33,538/-U/s 80P of the I.T. Act.

2. Briefly the facts of the case are that the assessee is a Co-operative Society dealing in fertilizers, seeds, medicines, pesticides for supply them to its members for agriculture purposes. It filed its return of income on 30.10.2015 declaring nil income after claiming deduction

U/s 80P amounting to Rs. 14,29,037/-. The case of the assessee was selected for limited scrutiny on account of deduction claimed under Chapter VI and after issuing notice and calling for the information and explanation from the assessee, deduction U/s 80P so claimed by the assessee was restricted to Rs. 11,95,499/- thereby assessing the income at Rs. 2,33,540/- U/s 143(3) of the Act. On appeal, the same has been confirmed by the Id CIT(A) and the assessee is now in appeal challenging the same.

3. The relevant facts and findings of the Assessing Officer relating to denial of deduction u/s 80P are contained at para 3 of the assessment order and we deem it appropriate to reproduce the same as under:-

"3. Addition on account of interest income from bank:- On perusal of P & L account for the year ended 31.03.2015, it is noticed that the assessee has credited interest income of Rs. 2,33,538/-. On asking the details thereof, a copy of bank statement maintained with Axis Bank, Bharatpur has been submitted.

3.1 On perusal of trading activities and by laws of the society, it is noticed that the assessee is engaged in the trading activity of seeds, fertilizers, medicines, pesticides for supplying them to its members for agriculture purposes. Further, it is seen that the society had surplus funds during the year under consideration which were invested in the bank. The interest income on such surplus cannot fall within the meaning of expression "profit and gain of the Business" of the society therefore interest income would come in the category of "Income from other sources" and liable to the taxed under section 56 of the Act and not under section 28 of the Act and consequently the assessee was not entitled to get deduction under section 80P(2)(a)(iv) of the Act on such receipts. In view of the above fact, the assessee was required to show cause as to why interest income received from

Axis Bank should not be treated as non-business income and to be taxed under section 56 of the income tax Act, 1961. In reply to this, the assessee vide letter dated 13.11.2017 has submitted that in day to day business activities and normal course of business the business has maintained a saving bank account and the bank has provided the interest on the balance kept with them. The assessee is required to maintained the bank account under the IT Act for comply with the various provisions of the Act. The assessee has not invested any idle amount in the bank.

3.2 In support of its claim, the A/R of the assessee has quoted citations in the case of Narain Swadeshi Wyg Mills V CIT (1954) 26 ITR 765 (SC) and ACIT Vs. Brij Bhushan Lal & Sons on December, 1999.

3.3 I have carefully considered the reply of the assessee along with facts and surroundings of the case and found no merit in the argument of the assessee. The facts of the case laws cited by the assessee are not at all match with the facts and circumstances of the case. The assessee society had invested the surplus funds by way of investment as an ordinary investor which was not required for business purpose hence interest on such surplus money has got to be taxed under the head "Income from other sources. Such interest was not received from its members for providing credit facilities to them, therefore it was not eligible for deduction u/s 80P(2)(iv) of the Act. The assessee markets the product of IFFCO, KRIBCO and RAJFEED etc. whose sale proceeds at times were retained by it.

3.4 It is pertinent to mention here that the section 80P deals with deduction in respect of income of cooperative societies. Section 80P(i) states that where the gross total income of, a cooperative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the

total taxable income of the society. An income which is attributable to any of the specified activities in Section 80P(2) of the act, would be eligible for deduction. The work "Income" has been defined under section 2(24)(i) of the Act to include profits and gains. The sub-section is an inclusive provision. As stated above, assessee-society regularly invested funds not immediately required for business purpose interest income on such investments, therefore, cannot fall within the meaning of the expression "profit and gains of business". It cannot be said also to be attributable to the activities of the society namely the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supply them to its members. Such an amount which was retained by the assessee was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable to the activity mentioned in section 80P(2)(iv) of the Act. An important point needs to be mentioned here that the word "the whole of the amount of profits and gains of the business" emphasizes in Section 80P(2) that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. In this case, the evidences show that the assessee society earns interest on funds which are not required for business purposes at the given point of time, therefore, on the facts and circumstances, such interest income falls in the category of "Other Income" which are taxable under section 56 of the Act and consequently, deduction u/s 80P on such interest income of Rs. 2,33,538/- is disallowed. I draw support from the ratio laid down by the Hon'ble Supreme Court of India in the case of M/s Totgar's Co-op. Sale Society Ltd vs. Income Tax Officer, Karnataka pronounced on 08.02.2010."

4. On appeal, the findings of the Assessing Officer has been confirmed by the Id. CIT(A) and while doing so, has recorded his findings which read as under:

"5.3 I have considered the order passed by the AO and submissions filed by the appellant. The provision of clause (d) of sub-section (2) of section 80P is very clear that only interest and dividend from co-operative banks is allowable as deduction. Since the interest is earned from Axis Bank which is not a co-operative bank, hence, the AO has rightly disallowed the interest claimed as deduction u/s 80P of the Act. Accordingly, the addition is sustained and the appellant's ground of appeal on the issue is dismissed."

5. During the course of hearing, the Id. AR submitted that the Assessing Officer as well as the Id CIT(A) has not appreciated the facts of the assessee-society in correct perspective and has wrongly denied the deduction U/s 80P of the Act. It was submitted that the assessee-society has not invested any surplus funds in any fixed deposits with the Axis Bank rather the assessee society was maintaining a regular saving bank account with Axis Bank which was permitted to be opened by the assessee-society as an integral part of its business activities in which transactions were entered relating to such activities and interest accrued in such account or interest becoming payable to bank is a natural corollary of such business. The bank account is not alien but incidental to and inevitable part of the business activity of the assessee and resulting interest is profit or loss of its business activities which

would fall under the head "Income from business" and not under the head "Income from other sources" and therefore the interest accrued is eligible for deduction u/s 80P(2) of the Act which the assessee society has rightfully claimed and the same may thus be allowed. Further, the Id. AR has relied on the written submissions which read as under:-

"The assessee Co-operative Society is engaged in the marketing of agricultural produce of its members and the purchase of agriculture implements, seeds, live stock or other activities intended for agriculture for the purpose of supplying them to its members. In its case the whole of the amount of profits and gains of business attributable to such activities shall be deducted u/s 80P in computing the total income of the assessee. It maintained an account with the Axis Bank, Bharatpur as an integral part of its business activities in which transactions were entered relating to such activities and interest accrued in such account or interest becoming payable to bank is a natural corollary of such business. The bank account is not alien but incidental to and inevitable part of the business activity of the assessee and resulting interest is profit or loss of its business activities. It had not deposited any funds in any Fixed Deposit account. The Id. AO disallowed the amount of interest credited by the Bank in the assessee's bank account in the computation of its total income, treated the same as taxable income and levied tax thereon vide assessment order dated 21.11.2017 holding that interest income cannot fall within the meaning of the expression ' Profits and gains ' of the Co-operative society, the assessee was required to show cause why the interest income should not be treated as 'non-business income'. The assessee replied that the bank account is maintained in the course of the assessee's normal business and interest is earned, the same would fall under the head 'Income from business' and not as 'Income from other

sources' and therefore the interest accrued is entitled to deduction u/s 80P (2).

The AO has falsely stated in his assessment order that in this case the evidence shows that the assessee society earned interest on funds which are not required for business purposes. In fact, there is no such evidence available on the Department's record.

Contrary to the facts of the assessee society the Id AO relied on the Hon'ble Supreme Court verdict in The Totgars' Cooperative Sale Society Ltd. v. ITO, Karnataka which is distinguished on facts wherein the interest was earned on the fixed deposits. The Id CIT (Appeals) wrongly upheld the action of the Id ITO and dismissed the appeal.

GROUND OF APPEAL :

1. In the facts and circumstances of the case the Id CIT (Appeals) has erred in not adjudicating the assessee's ground that the Id AO has wrongly classified the business income as 'Income from other sources'.

The Id CIT (Appeals) mechanically upheld the wrong order of the Id AO without considering the true import of section 80P which reads as under : 80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

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

(a) in the case of a co-operative society engaged in—

(iii) the marketing of the agricultural produce of 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, the whole of the amount of profits and gains of such business;]

The interest accrued in the saving bank account maintained by the cooperative society for executing the day to day business activities is part of its income from 'profits and gains of business' and not 'income from other sources', not having arisen from fixed deposits.

2. In the facts and circumstance of the case the Id CIT (Appeals) has erred in not adjudicating the assessee's ground that the Id AO had ignored the existent facts and made the assessment on the non-existent facts.

The assessee society had maintained a saving bank in Axis Bank to execute its business activities and did not deposit any funds in any separately maintained 'fixed deposit account'. The Id AO contrary to actual facts wrongly stated that evidence shows that the society earned interest on funds which are not required for business purposes. The Id CIT (Appeals) did not dwell upon the appellant's ground and upheld by a non-speaking order the order of the Id AO.

3. That the Id CIT (Appeals) has disallowed the appeal and confirmed the wrong order of the Id AO making addition u/s 80P(2)(iv) taking recourse to an extraneous different provision of sec. 80P(2)(d) of IT Act and therefore his action is inconsistent and unsustainable.

The Id CIT (Appeals) wrongly approved the order of the Id AO disallowing the amount of interest on the wrong footing that it is not income covered u/s 80P(2)(d) of IT Act whereas the appellant society had not claimed benefit under that section.

4. In the facts and circumstances of the case the Id CIT (Appeals) has erred in not adjudicating the assessee's ground that Id AO made the assessment on the basis of Apex Court judgment which is distinguishable on facts and law and does not govern the appellant's case.

The appellant society's case is distinguishable on facts from The Totgars' Cooperative Sale Society Ltd. v. ITO, Karnataka relied upon by the Id AO and the Id CIT (Appeals) wrongly upheld the assessment order of the Id AO and did not dispose of the appellant's ground.

Deduction under s. 80P(2)(a)(iii)—In order to categorize an income under the head 'Profits and gains of business or profession' it is imperative that the income should have arisen from business carried on by the assessee—what is deductible under s. 80P is the amount of 'profits and gains' of business attributable to carrying on of the business of marketing of agricultural produce --Expression 'profits and gains of business' is wider in scope and encompasses not only the income chargeable under the head 'Profits and gains of business or profession' but also other incomes which have some relation with the business, though not arising directly from the carrying on of the business—Further, the term 'gain' is of wider import than the word 'profit'—Thus, the expression 'profits and gains' in s. 80P(2) also includes other items of income (as covered by 'gains') which have some relation with the business even though they do not fall under the head of business income—Therefore, 'interest on refund of tax' is covered within the expression —profits and gains of business" notwithstanding the fact that it falls under the head 'Income from other sources'—

Phrase 'attributable to' brings within its fold not only the items of income having direct nexus but also items of income having some commercial or causal connection with the source— Therefore, the assessee is entitled to deduction under s. 80P(2)(a)(iii) on the amount of interest received under s. 244A on the refund of tax"

It is therefore prayed that the appellant's society's appeal may kindly be allowed to subserve the interests of justice."

6. Per contra, the Id. DR submitted that the Assessing officer has nowhere stated that the assessee has opened fixed deposit and invested surplus funds. It was submitted that even in saving bank account maintained by the assessee with Axis Bank, there was surplus funds from time to time on which interest has accrued to the assessee society and such interest income has been rightly held as taxable under the head 'Income from other sources" u/s 56 and consequently not entitled to deduction u/s 80P(2)(iv) of the Act. It was further submitted that since the interest income is earned from Axis Bank which is not a Co-operative Bank, even the provisions of section 80P(2)(d) are attracted and rightly invoked by the Id. CIT(A) while confirming the action of the AO. She accordingly supported the findings of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. We find that the **Hyderabad Benches** of the Tribunal has dealt with a similar issue in case of **Vanam Mahila Sangam Limited, Hyderabad vs. ITO, Ward 2, Warangal** (*in ITA*

No. 1284/Hyd./2019 dated 6.01.2021) and the relevant findings read as under:

4. Having regard to rival contentions and material placed on record as well as case laws relied upon by the AO and the CIT (A), I find that the only issue before the Tribunal is whether the interest income earned by the assessee firm from the deposits in the Savings Bank is eligible for deduction u/s 80P(2) of the I.T. Act. The AO and the CIT (A) have relied upon the decision of the Hon'ble Supreme Court in the case of M/s Totgar's Co-Operative Sale Society Ltd to deny the deduction. However, I find that the said decision is distinguishable on facts and is not applicable to the facts of the case before this Tribunal. In the case of M/s Totgar's Co-Operative Sale Society Ltd, the interest income was earned on short term bank deposits and securities which were made out of the surplus funds of the members retained by the society and were not immediately necessary for the business of the assessee therein. But in the case before this Tribunal, the assessee society had to make the deposits into the Savings Bank A/c held with Kotak Mahindra Bank as a business requirement. Since the assessee's funds were available in the Savings Bank A/c, the assessee has earned certain interest income thereon. Thus, it can be seen that the interest income earned is not on fixed deposits, but it is on the funds which are available and which are required for the business purpose of the assessee. Therefore, the decision of the Hon'ble Supreme Court in the case of M/s Totgar's Co-Operative Sale Society Ltd is clearly not applicable to the case before the Tribunal. Further the Hon'ble

Andhra Pradesh High Court in the case of CIT vs. Andhra Pradesh State Coop. Bank Ltd in ITA No.86/03 and others dated 7.6.2011 has clearly held that the interest income earned on deposits in the Bank is also in the nature of business income which is eligible as deduction u/s 80P(2) of the I.T. Act.

5. Respectfully following the above, I hold that the reliance of the AO and the CIT (A) on the decision of the Hon'ble Supreme Court is misplaced and the assessee is eligible for deduction u/s 80P(2) of the Act on the interest income earned from the Savings Bank A/c held with the Kotak Mahindra Bank."

8. In the aforesaid decision, the Coordinate Bench has held that the assessee society had made the deposits into the Savings Bank A/c held with Kotak Mahindra Bank as a business requirement and since the assessee's funds were available in the Savings Bank A/c which are required for business purposes, by virtue of maintaining such an account, the assessee has earned certain interest income thereon which is eligible for deduction under section 80P(2) of the Act. In the said decision, the Coordinate Bench has also distinguished the decision of the Hon'ble Supreme Court in the case of M/s Totgar's Co-Operative Sale Society Ltd (supra) holding that in the said case, the interest income was earned on short term bank deposits and securities which were made out of the surplus funds of the members retained by the society and were not immediately necessary for the business of the assessee therein whereas in the instant case, the interest income earned is not on fixed deposits, but it is on the funds which are

available and which are required for the business purpose of the assessee. The said decision squarely applies in the instant case where the assessee has been permitted to maintain a saving bank account with Axis Bank to transact its regular business activities and being a saving bank account which by its very nature carries a specified rate of interest, interest income has accrued and has been credited by the Axis Bank to the account of the assessee. Therefore, by virtue of holding a bank account which by its very nature and since inception carries a specified rate of interest and wherein there are regular deposits and withdrawals made by the assessee during the year as part of its regular business activities, the funds so held in the said account cannot be termed as surplus and available for investment rather the funds are clearly held for its regular business purposes and in the process, where any interest is accrued and credited to the assessee's account by virtue of holding such an account, such interest income is clearly inherent and intrinsically linked to holding such an account for business purposes and is thus, an integral part and parcel of its business activities and cannot be delinked from its business activities and is in the nature of business income eligible for deduction under section 80P(2)(a)(iv) of the Act. Further, the funds lying in the saving bank account maintained for regular business activities cannot be termed as an investment for the purposes of earning interest income for the simple reason that the funds are required for business purposes at any given point in time and cannot be said to be invested and doesn't carry the necessary attributes of investment in terms of conscious decision and steps taken by the assessee by way of identifying a specified amount which can be withdrawn/identified and invested for a specified and defined period for

the purposes of earning interest income and therefore, the provisions of section 80P(2)(d) are clearly not attracted and infact, the same is not even the claim of the assessee before the AO or for that matter, invoked by the AO during the course of assessment proceedings. In light of aforesaid discussion and in the entirety of facts and circumstances of the case and following the principle of consistency where a similar view has been taken by a Coordinate Bench under identical set of facts and circumstances of the case, the order of the lower authorities are set-aside and the AO is directed to allow the claim of the assessee under section 80P(2)(a)(iv) of the Act.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 30/04/2021.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur
दिनांक / Dated:- 30/04/2021.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

***Santosh**

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

1. अपीलार्थी / The Appellant- Kumher Kriya Vikrya Sahakari Samiti Ltd. Bharapur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3, Bharatpur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 912/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar