

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 132 & 133/Asr/2018
Assessment Years: 2014-15 & 2015-16

M/s Athoula Co-op.
Agriculture Multipurpose
Service Society Ltd.
VPO Athoula, Jalandhar City

[PAN: AAKFA 9247K]

(Appellant)

Vs.

ACIT, Circle-4
Jalandhar

(Respondent)

Appellant by : None

Respondent by: Sh. Satbir Singh, Sr. DR

Date of Hearing: 24.02.2022

Date of Pronouncement: 02.03.2022

ORDER

Per Dr. M. L. Meena, AM:

These two appeals have been filed by the Assessee against the impugned order dated 11.12.2017 passed by Ld. Commissioner of Income Tax (Appeals)-2, Jalandhar, in respect of the Assessment Years 2014-15 & 2015-16.

2. The assessee has raised the following grounds of appeal in ITA No. 132/Asr/2018:

“1. That the order in question has been passed in an arbitrary manner and the matter has been disposed off in a mechanical manner without going into merits of the case, hence is not sustainable in law.

2. The Ld CIT(A) has erred in upholding ineligible u/s 80P(1) the interest earned of Rs. 163419 and Rs.6225 in Saving Bank Accounts with OBC Mand and UCO Bank Kohala resp. AND Rs.175564 on FDR with OBC Mand, and thus making a total ineligible amount of Rs.345208 by wrongly treating such amount as income from INVESTMENT and NOT from funds kept as working capital in the ordinary course of doing eligible business of banking i.e. when they are not immediately required to be lent to its members.

3. The Ld CIT(A) has erred in wrongly distinguishing the facts of the case of the assessee with the facts of the case of M/s Gattigedarara Credit Cooperative Society Ltd (I.T.A.No.29 of 2015) in para 4.7 of the order.

4. In spite of assessee's contention, the Ld CIT(A) has erred in keeping silent on the relevance of scope of words 'ATTRIBUTABLE' used in section 80P(2)(a), which is wide enough to include such interest earned by the assessee society in its fold as also affirmed by the Hon'ble Karnataka High Court in the judgement cited supra.

5. The Ld CIT(A) has erred in not allowing to set off, as an alternative the average cost of funds from the said interest earnings. The reasons given by AO for such disallowance are endorsed by the Ld CIT(A). Case law referred : CIT Vs Kudu Industries ITA No. 388 of 2014 (O&M)(P&H) which followed the decision of CIT Vs Abhishek Industries [2006] 286 ITR 1 (P&H).

6. The Ld CIT(A) erred in not setting aside the bifurcation of balance sheet of the assessee (duly audited by its auditors) done by the Ld AO on the basis of interest bearing funds and non interest bearing funds. Since the funds has no colour, such bifurcation is illogical.

7. The Penalty Proceedings initiated by the Ld AO u/s 271(l)(c) are requested to be dropped in light of the fact that impugned ineligibility of such interest u/s 80P(1) is resulting from difference of opinion only.

8. That the appellant reserve the right to advance any other argument at the time of hearing of the appeal. Beside this the appellant also reserve the right to file additional grounds of appeal during hearing.”

3. The assessee has raised the following grounds of appeal in ITA No. 133/Asr/2018:

- “1. That the order in question has been passed in an arbitrary manner and the matter has been disposed off in a mechanical manner without going into merits of the case, hence is not sustainable in law.
 2. The Ld CIT(A) has erred in upholding ineligible u/s 80P(1) the interest earned of Rs.180226/- and Rs.6471/- in Saving Bank Accounts with OBC Mand and UCO Bank Kohala resp. AND Rs.191906/- on FDR with OBC Mand, and thus making a total ineligible amount of Rs.378603/- by wrongly treating such amount as income from INVESTMENT and NOT from funds kept as working capital in the ordinary course of doing eligible business of banking i.e. when they are not immediately required to be lent to its members.
 3. The Ld CIT(A) has erred in wrongly distinguishing the facts of the case of the assessee with the facts of the case of M/s Gattigedarara Credit Cooperative Society Ltd (I.T.A.No.29 of 2015) in para 4.7 of the order.
 4. In spite of assessee's contention, the Ld CIT(A) has erred in keeping silent on the relevance of scope of words 'ATTRIBUTABLE' used in section 80P(2)(a), which is wide enough to include such interest earned by the assessee society in its fold as also affirmed by the Hon'ble Karnataka,High Court in the judgement cited supra.
 5. The Ld CIT(A) has erred in not allowing to set off, as an alternative the average cost of funds from the said interest earnings. The reasons given by AO for such disallowance are endorsed by the Ld CIT(A). Case law referred : CIT Vs Kudu Industries ITA No. 388 of 2014 (O&M)(P&H) which followed the decision of CIT Vs Abhishek Industries [2006] 286 ITR 1 (P&H).
 6. The Ld CIT(A) erred in not setting aside the bifurcation of balance sheet of the assessee (duly audited by its auditors) done by the Ld AO on the basis of interest bearing funds and non interest bearing funds. Since the funds has no colour, such bifurcation is illogical.
 7. The Penalty Proceedings initiated by the Ld AO u/s 271(l)(c) are requested to be dropped in light of the fact that impugned ineligibility of such interest u/s 80P(1) is resulting from difference of opinion only.
 8. That the appellant reserve the right to advance any other argument at the time of hearing of the appeal. Beside this the appellant also reserve the right to file additional grounds of appeal during hearing.”
4. Since there are similar grounds of appeal on common issues in both the appeals and hence these appeals are heard together and disposed by this common order for the sake of brevity. The issue involved in these

appeals are ineligibility under section 80 P of the act, of interest income earned on bank deposits deposits, FDRs and saving bank account and that allowability of set off against the business loss.

5. Briefly, the facts are that the AO noticed that the appellant assessee society had earned interest earned of Rs.180226/- and Rs.6471/- from Saving Bank Accounts with OBC, Mand and UCO Bank Kohala respectively and Rs.191906/- on FDR with OBC Mand, and thus he assessed a total ineligible amount of Rs.378603/- interest earned from commercial banks as income from other sources being investment and not from working capital as claimed by the assessee being kept in the ordinary course of doing eligible business of banking i.e. when they are not immediately required to be lent to its members.

6. Being aggrieved, with the assessment order, appeal was filed before the learned CIT appeal who confirmed the finding of the learned assessing officer by holding the interest income earned from the bank deposits and investments lying in Singh bank account as income from other sources and rejected the claim of the assessee to allow set off business loss against the said income from other sources.

7. None appeared for the assessee despite the notice being served upon and adequate opportunity of hearing has been granted. considering

the meagre amount of Quantum disputed under appeal of Rs.3,45,208/- and amount of Rs.3,78,603/- in respect of assessment year 2014-15 and 2015-16 respectively and as the law is well-settled on the issue, these appeals are heard. At the time of hearing, the Ld. additional CIT DR has presented the facts and explained the issue. He stands by the impugned order.

8. After hearing the Ld. DR and going through the records carefully, we dispose the appeal of the assessee on merits. The appellant assessee has raised contentions that the order in question has been passed in an arbitrary manner and the matter has been disposed off in a mechanical manner without going into merits of the case, is factually incorrect. The Ld. CIT(A) has passed a speaking order wherein he has discussed the facts of the case and the law applicable along with the judicial pronouncements relevant. The Ld CIT(A) has rejected the assessee's contention regarding its eligibility u/s 80P(1) for the interest earned in Saving Bank Accounts with OBC Mand and UCO Bank Kohala respectively and Rs.175564 on FDR with OBC Mand, and thus he holds total ineligible amount of Rs.345208 as income from INVESTMENT and NOT from funds kept as working capital in the ordinary course of doing eligible business of banking i.e. when they are not immediately required to be lent to its

members. The Ld CIT(A) has distinguishing the facts of the case of the assessee with the facts of the case of M/s Gattigedarara Credit Cooperative Society Ltd (I.T.A.No.29 of 2015) vide para 4.7 of the impugned order. The assessee's contention, that the Ld CIT(A) has erred in keeping silent on the relevance of scope of words 'ATTRIBUTABLE' used in section 80P(2)(a), which is wide enough to include such interest earned by the assessee society in its fold is not affirmed by the Hon'ble Karnataka High Court in the judgement cited supra as concluded by the authorities below. Again, the contention of the assessee that the Ld CIT(A) has erred in not allowing to set off, as an alternative the average cost of funds from the said interest earnings is without basis. The reasons given by AO for such disallowance are rightly endorsed by the Ld CIT(A). The appellant ground that the Ld CIT(A) erred in not setting aside the bifurcation of balance sheet of the assessee (duly audited by its auditors) done by the Ld AO on the basis of interest bearing funds and non interest bearing funds, since the funds has no colour, is not relevant as regards to taxability of the interest income from bank deposits.

9. It is admitted fact that the assessee society is registered under Punjab Cooperative Societies Act and receiving interest on deposits from commercial banks OBC and UCO Banks. The assessee, a co-op credit

society, was engaged in providing credit facilities to its members. The assessee had surplus funds which it invested in deposits with Commercial Banks. The question before us is whether the said interest earned on the said deposits was “business profits” when it is not engaged in banking business and so it is not eligible for deduction u/s 80P(2)(a)(i)?

10. The Id. AR for the contended in grounds and before the CIT(A) that its activity of providing credit facilities to its members was an “eligible activity” u/s 80P(2)(a)(i) and that as the investments were made not with the idea of investments, but for the reason that cash should be available with the appellant as and when it was needed for the purpose of its business.

11. The appellant assessee contention that that the interest on funds with OBC and UCO bank is exempted u/s. 80P(2) of the Act is rejected by the Id. CIT(A). He had confirmed the addition made by the Assessing Officer u/s 80P(2) of the Income tax Act, 1961 by observing that the assessee was indulging in banking business and was thus not entitled to this deduction u/s 80P(2) allowable to a society. Accordingly, the CIT (A) has held that the benefit of Section 80P is only admissible to the extent of business activity with members. Thus, the assessee was not entitled to deduction under section 80P(2)(d) in respect of investment made in OBC and UCO Bank.

12. On identical facts, in the case of “the NBI Employees Co-operative Non-Agricultural Thrift & Credit Society Ltd. Vs. Pr.CIT”, in ITA No. 275/(Asr)/2018 for Assessment Year: 2013-14, we have discussed the issue at length and decided the same in favour of department, following the Hon’ble Jurisdictional Punjab and Haryana High Court, in the case M/s Punjab State Co-operative Federation of Housing Building Societies Ltd., wherein the Hon’ble High Court, while following the judgment of Hon’ble Supreme Court, in the case of The Totgars Co-operative Sale Society Ltd. Vs ITO 2010(35) DTR 25, have held that interest received by the assessee from Commercial banks was not covered by Section 80P(2)(a)(i) of the Act and was taxable under section 56, being income from other sources. We held that such interest income is to be charged to Tax as income from other sources in the context of the assessee due to the non-availability of deduction u/s.80P(2)(d) on such amount.

13. In the backdrop of the above discussion, we find no infirmity in the order of the CIT(A)-1, Jalander in holding that the interest income was charged to Tax as income from other sources in the context of the assessee due to the non-availability of deduction u/s.80P of the act. The Income tax law is settled on the issue of set off business losses of the assessee under different heads. Considering the facts of the instant case,

we hold that assessee is not eligible for setoff of losses from the business head from the different head, the income from other sources in particularly.

14. In the above view, we find no merit and substance in the grounds of appeal of the assessee. Accordingly, both the issues of claim of deduction u/s 80P of the Act and set off against business by the assessee are decided in favour of department and against the assessee.

15. In the result, both the appeal filed by the assessee are dismissed.

Order pronounced in the open court on 02.03.2022

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

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Date: 02.03.2022

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy
By Order