

**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. No. 126/ASR/2018
(Assessment Year: 2010-11)**

The Baghapurana Cooperative Marketing Society Ltd. Kale-Ke Road, Baghapurana, Distt. Moga [PAN- AAAAT2727J] (Appellant)	Vs.	Income-tax Officer 2, Moga (Respondent)
--	------------	---

Appellant by	None
Respondent by	Sh. S. M. Surendranath, Sr. DR

Date of Hearing	18.05.2022
Date of Pronouncement	12.07.2022

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal is directed against the order of Ld. Commissioner of Income Tax (Appeal)-4, Ludhiana {in brevity CIT(A)} bearing appeal no. 331/ROT(379)/IT/CIT(A)-4/LDH/2014-15, order passed on dated 22.12.2017, passed

u/s. 250(6) of the Income Tax Act, 1961 (in brevity of the Act) for the assessment year 2010-11. The impugned order was originated from the order of Income Tax Officer -II, Moga (in brevity A.O) passed u/s.143(3) of the Act, date of order 01.03.2013.

2. The ground of the assessee is extracted as follows: -

1. *That on the facts & circumstances of the case, the order of the Ld. A.O. is bad in law.*
2. *That the Ld. Assessing Officer is not at all justified in rejecting deduction u/ s 80P of the Income Tax Act, 1961 amounting Rs.2,73,342/— on account of interest received from various Banks other than Co—operative Bank. However, it is worthwhile to mention that the interest earned on the deposits with banks does not arise out of one or more of the activities specified in 80P (2)(a)(i) but the interest received by the appellant on the bank deposit is ancillary and incidental to carrying on the business of providing credit facility to its members and, as such, exempt under the aforesaid provisions.*
3. *That the Ld. Assessing Officer is also erred in disallowing provision for repair & maintenance expenses amounting Rs.1,12,660/-& insurance expenses amounting Rs. 16,697 / without any solid reason.*
4. *That the Ld. Assessing Officer is not at all justified by disallowing gratuity reserve amounting Rs. 2,76,000/— debited to P & L A/c. without any solid reason. However, as per section 40A(7), where any provision of gratuity (to meet liability of gratuity in future) is made by way of any contribution towards any approved gratuity fund is exempt u/ s 40A(7) and fully allowable expenditure.*
5. *Kindly stay the demand.*

6. *That the Ld. CIT (A) -4 is not at all justified in dismissing the appeal of assessee.*
7. *That the assessee craves to leave to add/ alter any of the grounds of appeal on or before the date of hearing."*

3. The brief fact of the case is that appellant is Society filed its return u/s. 139(1) declaring total taxable income at NIL. During assessment proceedings, the Id. AO found that assessee received interest total amount of Rs.6,69,669/- from Bank from surplus funds invested in the bank and in Central Cooperative Bank which did not relate to the member of society. The Id. AO treated the interest u/s. 56 of the Act and disallow the exemption claimed u/s. 80P(2) claimed by the assessee treating its income under the head "Business and Profession". The considering fact, the assessee added back the interest 2,73,342/- on account of income from other sources by invoking section 56 of Act. Interest which was added u/s. 56 was received from Scheduled bank, Axis Bank, Baghapurana and Punjab National Bank. The Id. AO also made addition of Rs.1,29,357/- disallowing the repair expenses and pre-paid insurance debited to the Profit & Loss account of the assessee's society on account of personal use. The Id. AO also made

addition of Rs.2,76,000/- by disallowing the expenses for payment to gratuity debit to the Profit & Loss account of the assessee's society by invoking the provisions of section 40A (7) of the Act. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of Id. A.O. Being aggrieved assessee filed an appeal before us for further adjudication.

4. The detail observation was made by the Id. AO in his Order in para no. 2. The extract of order is reproducing as below:-

"2. During the course of assessment proceedings, while examining the profit & Loss account it reveals that the assessee society has received interest of 6.69.669/- from bank from surplus fund invested in the Bank and in CCB which is not related to the member of the society vide order sheet entry dated 22.01.2013, the Counsel of the assessee was asked to plain why above interest of Rs.6,69,669/- may not be assessed as income from other r sources u/s. 56 of the I.T. Act, and treated it as income under the head business or profession u/s. 28 as this income is received from the investment of surplus fund in the light of the case. The Totgar cooperative Sales |Society Ltd. Vs. ITO 322 ITR 283(SC)(2010) which was also discussed. On 01.03.2013 Sh Yogesh Thakur, counsel of the assessee has furnish the party reply regards to deduction claimed u/s.80P(2)(d) i.e. investment in CCB amounting to Rs.3.96.327/- (Rs.3,85,984 + Rs.10,343) and balance amount of invested and deposited in Axis Bank of Rs.2,72,509/- and Rs.833/- in PNB Bank is not except claimed u/s.80P(2)(a)(i) as income received from surplus fund as interests is not relates to member of the society. Reliance is placed on The Totgar Cooperative Sale Society Ltd. Vs. ITO 322 ITR 283(SC)(2010) which is against the

assessee. Hence, I hereby made an addition of Rs.2,73,342/- on account of income from other sources and assessed u/s. 56 of the IT Act, 1961 and not treated as income from business or profession u/s.28 of the IT Act 1961. Penalty u/s. 271(1)(c) of the I.T. Act, 1961 is being initiated for giving inaccurate particular of income & claiming wrong deduction.”

5. As per the findings of the Id. AO related to interest from Axis Bank and PNB amount to Rs. 2,72,509/- and Rs.833/- respectively which were added back with the total income of the assessee by invoking the provisions of section 56 of the Act. As per the respectful observations of the case of M/s. Totgar Cooperative Sale Society Ltd. Vs. ITO 322 ITR 283(SC)(2010), the assessee is a cooperative society engaged in the business to provide credit facility to its members and to the market the agricultures product of its member. The Appellant is also cooperative society dealing in fertilizers and agricultural inputs etc. The interest was earned by the appellant. Interest from Nationalised bank like Axis Bank and PNB is not allowable u/s. 80P (2) of the Act but invoking section 56, the interest would be taxable in the assessee's hands.

5.1. The Id. DR also argued in the same line and relied on the order of Revenue Authority. The Id. AO correctly pointed out that the interest which is only related to the bank is liable to be taxed by invoking section 56 under the head "Income from other sources".

5.2. In the result the ground no. 2 of the assessee is dismissed.

6. Here we are adjudicating the disallowance of provisions for repair and maintenance expenses Rs.1,12,660/- & prepaid insurance expenses Rs. 16,697/- and Gratuity reserve payment to Rs. 2,76,000/- which were added back with the total income of the assessee.

6.1 We carefully considered the fact and relied on the documents available in the record. As per Audit report filed by the assessee in Form No. 3CD and in column no. 17(b), the expenditure relating to Repair & Maintenance and prepaid Insurance had been clarified as expenses of Personal nature. The assessee was unable to file an corrigendum from the Chartered Accountant against the observations of Chartered

Accountant in the Tax Audit Report during proceeding before the fiscal.

6.2 In case of Gratuity Reserve payment Rs.2,76,000/-, the assessee was unable to produce any particular before any of the fiscal that the payment was made to the approved Gratuity fund. The contributions made by the assessee to the gratuity fund which will be allowable expenditure if fund is approved gratuity fund. In both the cases, assessee was unable to bring any record to prove before the Bench relating the expenses are allowable expenditure. Both the Revenue Authorities have discussed the issue in detail. The assessee was unable to submit any document/proof before any the authority. As the assessee is Society and continuing the business as cooperative society. We feel not to intervene in the order of revenue authorities. The addition made by the Id. AO are accepted by us. The Id. DR also accepting the facts and prayed for addition of the expenses. But considering the natural justice the assessee should get another opportunity to file its evidence related the additions, made by the Id. AO before the Ld. CIT(A).

7. Accordingly ground no. 3 & 4 are setting aside before the Id. CIT(A) for further adjudication. The assessee should get reasonable opportunity to substantiate its claim.

8. In the result, ground nos. 1, 4 & 5 are general in nature. Ground No. 3 need not be adjudicated in this case. Ground no.2 is dismissed. Ground nos. 3 & 4 are allowed for statistical purpose.

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

Order pronounced in the open court on 12.07.2022

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

Sd/-
(Anikesh Banerjee)
Judicial Member

Copy of the order forwarded to:

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

True Copy

By Order