

आयकर अपीलीय अधिकरण, पीठ "A-SMC" , कोलकाता
**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "A-SMC" KOLKATA**

Before: Shri Manish Borad, Hon'ble Accountant Member

आयकर अपील सं.य/ ITA No. 111/Kol/2022 Assessment Year: 2017-18		
Bhairabnala Samabay Krishi Unnayan Samity Ltd. Vill-Bhairabnala Post: Hatbele, Block-Kalnai, Dist-Purba Bardhaman- 713409.	<u>बनाम</u> V/s.	I.T.O., Ward 1(1), Burdwan Aaykar Bhawan, Court Compound, Burdwan
PAN: AACAB7492G		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant		Shri A.N. Chatterjee,FCA & Shri S.D Bandyopadhyah, FCA, Ld.AR
प्रत्यर्थी की ओर से/By Respondent		Shri Vijay Kumar, Addl.CIT/Ld.DR
सुनवाई की तारीख/Date of Hearing		12-12-2022
घोषणा की तारीख/ Date of Pronouncement		15-12-2022

आदेश /O R D E R

The instant appeal of the assessee for the assessment year 2017-18 is directed against the order dt. 29-12-2021 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter, referred to as 'the Act'] by the Id. Commissioner of Income-tax, Appeals [in short, hereafter referred to as 'the 'Id. CIT(A) (National Faceless Appeal Centre), Delhi

2. The assessee has raised the following grounds of appeal:-

Ground-1. For that in the facts and in the circumstances of the case Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, has erred in Law ignoring the fact that, Primary Agricultural Credit Societies(PACS) are entitled to get deduction of the Interest received from other cooperative societies under section 80P(2)(d) of the Income Tax Act 1961.

Ground- 2. For that in the facts and in the circumstances of the case Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, has erred for not considering the fact that appellant is a Primary Agricultural Credit Society enjoying the special provisions in the West Bengal Cooperative Societies Act 2006 as credit structure entity in Cooperative banking for banking for providing credit facilities to its members and the Interest Income arising from the banking activities are eligible for deduction under section 80P(2)(a)(i).

Ground- 3. For that in the facts and in the circumstances of the case Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, has erred in fact of considering the applicability of section 80P(4) of the Income Tax Act 1961

Ground- 4. For that in the facts and in the circumstances of the case Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, has erred in not considering the provisions of section 80P(2)(d) and not allowing benefit to your appellant also by not considering the decision of the Apex Court in the case of National Thermal Power Company Limited vs. CIT(1998) 229 ITR 383, that point of law can be raised before any authority.

Ground- 5. For that in the facts and in the circumstances of the case Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, has erred in considering the issue as debatable one based on the judgment of Hon'ble Apex Court delivered in Totgar's Cooperative Sale Society Limited vs. ITO 322 ITR 283(S.C.) which is not applicable to your appellant.

Ground- 6. For that in the facts and in the circumstances of the case Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, has erred in not providing your appellant the natural justice.

Ground- 7. For that the assessee craves leave to alter, add, amend, moderate, substitute or delete anyone or more of the ground or grounds of appeal at any time before or in course of hearing.

3. Though the assessee has raised seven(7) grounds of appeal, but the main grievance of assessee is with regard to allowability/allowable of deduction u/s. 80P(2)(d) of the Act for the interest income earned on the investments held with other co-operative society.

4. Brief facts of the case are that the assessee is a cooperative society registered under the West Bengal Co-operative Societies Act, 1983 and it is a Primary Agricultural Credit Co-operative Society. Nil income declared in the return filed on 25-03-2018 after claiming deduction u/s, 80P of the Act. During the course of assessment proceedings being carried out after selecting the case for scrutiny through CASS for examining the deduction u/s. 80P followed by serving of valid notices u/s. 143(2)/142(1) of the Act, the Id. AO found that the assessee earned interest income on short term deposit and recurring deposit from Burdwan Central Co-operative Bank Ltd. at Rs. 16,04, 004/-. The Id. AO asked the assessee as to why the said interest income should not be excluded from the deduction u/s. 80P of the Act. The submissions filed by the assessee was considered, but not found acceptable by Id.AO and addition of Rs.16,04,004/- was made treating the income earned from 'other sources' along with minor additions of Rs.201/- and Rs.19,543/-. Income assessed at Rs.16,23,748/-. Thereafter, the assessee moved an application u/s. 154 of the Act stating that there are some apparent mistakes in the assessment order passed u/s. 143(3) of the Act dt. 05-12-2019 wrongly treating the interest income received from investments made in cooperative bank as income from 'other sources'. Mistakes as pointed out by the assessee were partly rectified and as per order

passed u/s. 154 r.w.s 143(3) of the Act dt. 20-02-2020 after necessary rectification, assessed income recomputed at Rs.14,02, 814/-.

5. The assessee challenged the order passed u/s. 154 of the Act before the Id. CIT(A), but failed to succeed as the Id. CIT(A) held that firstly the assessee is not eligible for deduction u/s. 80P(2)(a)(i) of the Act for the alleged interest income, the issue which is pointed out is not apparent mistake subject to rectification and lastly directed the Id.AO that if the profits and gains from the activities of credit facilities and banking increases due to Interest Income being considered separately under other head, the appellant/assessee would be entitled to deduction u/s. 80P of the Act.

6. Aggrieved, now the assessee is in appeal before this Tribunal.

7. The Ld. Counsel for the assessee stated that the alleged interest income is received from investments made in co-operative bank and eligible for deduction u/s80P(2)(d) of the Act and Id. CIT(A) ought to have given said relief.

8. Per contra, the Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities.

9. We have heard the rival contentions and perused the records placed before us.The effective issue before us is that whether the assessee is eligible for deduction u/s. 80P of the Act for the interest earned on fixed deposits and recurring deposits held with Burdwan Central Co-operative Bank Ltd. Though this issue of deduction u/s. 80P(2)(d) of the Act was not raised before the authorities below, but in view of the judgment of Hon'ble Apex Court in the case of National Thermal Power Corporation Ltd. 229 ITR 383, I admit this legal ground.

10. Now before proceedings to adjudicate the issue I would like to pursue the provisions of section 80P of the Act, which reads as under:-

4.

Deduction in respect of income of co-operative societies.

80P. (1) *** *** ***

(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 :

Provided *that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—*

(1) *the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;*

(2) *the co-operative credit societies which provide financial assistance to the society;*

(3) *the State Government;*

(b) *in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to—*

(i) *a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or*

(ii) *the Government or a local authority; or*

(iii) *a Government company⁵³ as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),*

the whole of the amount of profits and gains of such business;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,—

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and

(ii) in any other case, fifty thousand rupees.

Explanation.—In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under [section 22](#).

Explanation.—For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under [section 80HH](#) or [section 80HHA](#) or [section 80HHB](#) or [section 80HHC](#) or [section 80HHD](#) or [section 80-I](#) or [section 80-IA](#) or [section 80J](#), the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under [section 80HH](#), [section 80HHA](#), [section 80HHB](#), [section 80HHC](#), [section 80HHD](#), [section 80-I](#), [section 80-IA](#), [section 80J](#) and [section 80JJ](#).

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal

object of which is to provide for long-term credit for agricultural and rural development activities.

11. As far as section 80P(4) of the Act, it only provides that provisions of section 80P shall not be applied in relation to any co-operative bank other than agricultural credit society or any agricultural rural bank. In simple words such cooperative Bank cannot claim deduction u/s.80P(2) & 80P(3) of the Act. Since the assessee is not a cooperative bank, but a Primary Agricultural Credit Society therefore, provisions of section 80P(4) of the Act is not applicable and thus, it is entitled to deduction u/s. 80P of the Act to the extent allowable as per relevant provisions.

12. Now the alleged interest income of Rs. 16,04,004/- is earned from idle funds invested in the bank and as far as deduction u/s. 80P(2)(i) is concerned, which refers to income earned from carrying on banking business or providing credit facilities to its members, I find that the alleged interest income is not earned by the assessee from its members and therefore, not eligible for deduction u/s. 80P(2)(i) of the Act.

13. However, on going through the provisions of section 80P(2)(d) of the Act the co-operative society is eligible for deduction of income in respect of any income by way of interest or dividends derived from its investments with any other co-operative society, Now the assessee has earned interest income from Burdwan Central Co-operative Bank Ltd. Though the Burdwan Central Co-operative Bank Ltd is having license under the Banking Regulation Act, 1949 to carry on Banking Business, but basically it is a cooperative society, which has been allowed to do banking business under the said Banking Regulation Act, 1949. Section 80P(2)(d) only refers to word

'co-operative society' and it has not been specifically mentioned under the said provisions of the Act that investments made in cooperative banks are to be excluded. In my humble understanding since the cooperative banks are basically co-operative societies only therefore, the words 'cooperative society' mentioned in Sec. 80P(2)(d) of the Act includes these cooperative societies also which are carrying on banking business as cooperative banks. Therefore, I am of the considered view since the assessee has earned interest of Rs. 16,04,004/- from other cooperative society, which in this case is a cooperative bank, is eligible for deduction u/s. 80P(2)(d) of the Act. I, therefore, reverse the findings of the Id. CIT(A) and allow the sole issue raised by the assessee. Thus, the effective grounds on merits raised by the assessee are allowed.

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

Sd/-

(MANISHBORAD)
ACCOUNTANT MEMBER

Dated :15 -12-2022

****PP/SPS**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1.अपीलार्थी/Appellant/Bhairabnala Samabay Krishi Unnayan Samity Ltd. Vill-Bhairabnala Post: Hatbele, Block-Kalnai, Dist-Purba Bardhaman-713409.

**2. प्रत्यर्थी/Respondent/I.T.O., Ward 1(1), Burdwan
Aaykar Bhawan, Court Compound, Burdwan**

3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata

6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

**Assistant Registrar
ITAT, Kolkata**