आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR

श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1.	87/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Village- Gaurbhat, Arang, Raipur (C.G.)-493 441 PAN : AAAAG9799D	The ITO-1(2), Raipur (C.G.)	2017-18
2.	88/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Village-Champajhar, Raipur-493 992 PAN : AABAG0198B	The ITO-1(1), Raipur (C.G.)	2017-18
3.	89/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Village-Dharsiwa, Raipur (C.G.)-493 221	The ITO-1(2), Raipur (C.G.)	2011-12

Assessee by : None (written submissions)
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 24.05.2023
घोषणा की तारीख / Date of Pronouncement : 24.05.2023

आदेश / ORDER

PER RAVISH SOOD JM :

The captioned appeals filed by the aforementioned co-operative societies are directed against the respective orders passed by the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), dated 23.01.2023, 13.01.2023 & 18.01.2023, which in turn arises from the respective orders passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 23.11.2019 and 29.11.2019 for assessment years 2017-18 & 2011-12. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. I shall take up the appeal in ITA No.87/RPR/2023 for the assessment year 2017-18 as the lead matter, and the order therein passed shall apply mutatis-mutandis to the remaining cases. Before me the assessee has assailed the impugned order of the CIT(Appeals) on the following grounds of appeal:

> "1. That under the facts and law, the Ld. CIT (Appeals) NFAC Delhi further erred in not allowing deduction of income from interest from banking business u/s.80P(2)(a)(i) amounting to Rs.36,222/- confirming the order of the Ld. A.O. Prayed that appellant is eligible for deduction of above sum under the above section which kindly be allowed.
>
> 2. That under the facts and the law, the Ld. CIT (Appeals) erred in treating the surplus of PDS business amounting to Rs.22,649/-

> without allowing proportionate expenses of Rs.1,43,930/- as ineligible deduction u/s.80P(2). Prayed that the exemption u/s 80P(2) be allowed and delete the addition.
>
> 3 That under the facts and the law, the Ld. CIT (Appeals) erred in treating the dividend income amounting to Rs.69,629/-as ineligible deduction u/s.80P(2). Prayed that the dividend income is deductible u/s. 80P(2)(d) and delete the addition.
>
> 4 That under the facts and the law, the Ld. CIT (Appeals) erred in treating the other income amounting to Rs.1,66,716/- which was relates to recovery from provisions (Rs.1,45,070/-) and Paddy procurement received (Rs.21,646/-) as ineligible deduction u/s 80P(2). Prayed that the Other income is deductible u/s. 80P(2) and delete the addition.

3. Briefly stated, the assessee which is a primary agricultural co-operative society engaged in the business of banking, paddy procurement, sale of fertilizer, seeds, manures and pesticides as well as sale of controlled items under the Public Distribution System (PDS), had on 07.03.2017 filed its return of income for the assessment year 2017-18, declaring a total income of Rs. Nil (after claiming entire amount of its income as a deduction u/s 80P of the Act). Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act. Assessment was, thereafter, framed by the Assessing Officer vide his order passed u/s.143(3) of the Act, dated 23.11.2019, wherein the assessee's multi-facet claim for deduction under Sec. 80P of Rs.2,95,216/- was declined a/w. disallowance of its claim for credit of the amount of TDS on commission received on paddy procurement business, as under:

Sl. No.	Particulars	Amount in Rs.
1.	Disallowance of the assessee's claim for deduction of interest income u/s. 80P(2)(a)(i) of the Act.	Rs.36,222/-
2.	Disallowance of the assessee's claim for deduction of profit from PDS u/s.80P(2)(c)(ii) of the Act.	Rs.22,649/-
3.	Disallowance of assessee's claim for deduction of dividend income u/s.80P(2)(d) of the Act.	Rs.69,629/-
4.	Disallowance of the assessee's claim for deduction u/s. 80P(2) of the Act.	Rs.1,66,716/-

After making the aforesaid disallowances, the A.O vide his order u/s. 143(3) of the Act, dated 23.11.2019 assessed the total income of the assessee society at Rs. 2,45,216/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). However, the CIT(Appeals) not finding favour with the contentions advanced by the assessee upheld the assessment framed by the Assessing Officer and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me. On a perusal of the record, I find that the assessee appellant despite having been intimated about the hearing of the appeal had failed to put up an appearance before me, and had rather chosen to be represented by its written submissions.

6. I have heard the Ld. Departmental Representative (for short 'DR'), perused the orders of the lower authorities and the material available on record, as well as considered the written submissions that have been filed by the assessee before me.

7. Adverting to the disallowance of the assessee's claim for deduction of the interest on bank deposits of Rs.36,222/- u/s.80P(2)(a)(i) of the Act, it is stated by the assessee that the issue was squarely covered by the order of this Tribunal in ITA No.114/RPR/2016 & Ors., dated 23.02.2022 in the case of Gramin Sewa Sahakari Samiti Maryadit & Ors Vs. ITO, Ward-1(3), Raipur. It is further stated by the assessee that the facts and the issue involved in the present appeal as regards its claim for deduction remains the same as were there before the Tribunal in its aforesaid order.

8. Per contra, the Ld. DR conceded to the submissions put forth by the Ld. AR of the assessee.

9. I have given a thoughtful consideration to the issue in hand as well as considered the order of the Tribunal in ITA No.114/RPR/2016 & Ors (supra) that have been pressed into service by the assessee to drive home his contentions. As stated by the assessee in its written submissions, and, rightly so, the Tribunal in the case of Gramin Sewa Sahakari Samiti Maryadit & Ors Vs. ITO, Ward-1(3), Raipur in ITA No.114/RPR/2016 &

Ors., dated 23.02.2022 had after drawing support from the judgment of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Cooperative Ltd., ITA No.307/2014, dated 28.10.2014, on the basis of its exhaustive deliberations, concluded that the interest income earned on the surplus funds which were parked as deposits by the co-operative society in the normal course of its business of providing credit facilities to its members, i.e., at a point of time when there were no takers for the said funds was duly entitled for deduction under Sec. 80P(2)(a)(i) of the Act, observing as under:

> "13. We shall first advert to the assessee's grievance that the lower authorities had erred in declining its claim for deduction u/s. 80P(2)(a)(i) of the Act, i.e, as regards the interest income that was earned on the surplus funds which were deposited by it with Jila Sahakari Kendriya Bank, i.e, a co-operative bank. After deliberating at length on the issue in hand, we find that the aforesaid claim of the assessee hinges around the aspect that as to whether or not the interest income earned by it on its surplus funds which were parked as deposits in the normal course of its business of providing credit facilities to its members, i.e., at the point of time when there were no takers for the said funds, was eligible for deduction u/s. 80P(2)(a)(i) of the Act. We have given a thoughtful consideration to the contentions advanced by the Ld. Authorized representatives for both the parties. Before proceeding any further, we deem it fit to cull out the provisions of section 80P(2)(a)(i) of the Act, the scope and gamut of which is the primary bone of contention before us, which reads as under :
>
> **"80P.** (1) Where, in the case of an assessee being a co-operative society, the gross total income <u>includes any income referred to in sub-section (2)</u>, 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) to (iii)..."

(Emphasis by underlining supplied by us)

On a perusal of the aforesaid statutory provision, we find that the same, contemplates, that the income of a co-operative society from its business of banking or providing credit facilities to its members is eligible for deduction u/s. 80P(2)(a)(i) of the Act. Our indulgence in the present appeal is confined to the limited aspect, i.e, as to whether or not the interest income earned by the assessee-society by depositing its surplus funds with a bank can be brought within the meaning of *"income from carrying on the business of banking or providing credit facilities to its members"*, and thus, would fall within the realm of the deduction contemplated in Section 80P(2)(a)(i) of the Act. At this stage, we may herein observe, that it is the claim of the assessee, that as depositing of its surplus funds, i.e, the funds for which there were no takers at the relevant point of time, in the course of its business of providing credit facilities to its members, is inextricably interlinked; or in fact interwoven with its said stream of its business activity, therefore, the interest income received on such short-term deposits was duly eligible for deduction under the aforesaid statutory provision, i.e., Sec. 80P(2)(a)(i) of the Act. We may herein observe, that though the assessee-society in addition to its business of providing credit facilities to its members was also engaged in other multiple activities for its members, viz. business of paddy procurement, sale of fertilizers, seeds, manures and pesticides and sale of controlled items under Public Distribution System (PDS), however, it is neither the case of the revenue nor a fact discernible from the record that the funds deposited by the assessee-society with the bank, viz. Jila Sahakari Kendriya Bank (supra) were the amounts that were payable by the society to its members, and the same having being retained were for the time being invested as a short-term deposit/security with the bank. If that would have been so, then, the interest income earned on such short-term deposit/security with the bank would not have been eligible for deduction u/s.80P(2)(a)(i) of the Act. But then, as the amount deposited by the assessee-society with the bank, viz. Jila Sahakari Kendriya Bank (supra) was in the nature of simpliciter surplus or idle funds of the assessee society, for which there were no takers for the time being in course of its business of providing credit facilities to its members, therefore, depositing of the same by way of short-term deposits with the aforesaid bank, as stated by the ld. A.R, and rightly so, would clearly be inextricably interlinked, or in fact interwoven with its aforesaid primary business activity, i.e., providing of credit facilities to its members. At this stage, we may herein observe, that the Hon'ble Supreme Court in the case of M/s. Totgars Co-operative Sale Society Ltd. Vs. ITO, Karnataka, 322 ITR 283 (SC), had held, that in a case where the assessee-cooperative society apart

from providing credit facilities to its members was also in the business of marketing of agricultural produce grown by its members, and the sale consideration of the agricultural produce due towards its members was thereafter retained and invested as a short-term deposit/security with the bank, then, the interest income therein earned to the said extent could not be said to be attributable to its activity of providing credit facilities to its members. As is discernible from the aforesaid judicial pronouncement of the Hon'ble Supreme Court, we find the Hon'ble Apex Court had clarified beyond doubt that they have confined the judgment to the facts of the case before them, and the same was not to be considered as laying down of any law. Be that as it may, the aforesaid judgment of the Hon'ble Supreme Court in the case of M/s. Totgars Co-operative Sale Society Ltd. (supra) had thereafter been considered by the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Cooperative Ltd. (supra) in ITA No.307/2014, dated 28.10.2014, wherein the Hon'ble High Court had after exhaustive deliberations held as under :

> "6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs.1,77,305/- represents the interest earned from short term deposits and from savings bank account. The assessee is a cooperative society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard, it is necessary to notice the relevant provision of law i.e. section 80P(2)(a)(i):
>
> > "**Deduction in respect of income of cooperative societies:**
> >
> > **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—
> >
> > (i) carrying on the business of banking or providing credit facilities to its members, or
> >
> > (ii) xxx
> >
> > (iii) xxx

(iv) xxx

(v) xxx

(vi) xxx

(vii) xxx

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

7. The word 'attributable used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of CAMBAY ELECTRIC SUPPLY INDUSTRIAL CO. LTD. VS. COMMISSIONER OF INCOME TAX, GUJARAT-II reported in ITR Vol.113 (1978) Page 842 at Page 93 as under:

> As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the Legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General it has used the expression "derived from", as for instance in s. 80J. In our view since the expression of wider import, namely, "attributable to" has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.
>
> 8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A

cooperative society which is carrying on the business providing credit facilities to its members, earns profit and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd, on which reliance is placed, the Supreme Court was dealing with a case where the assessee co-operative society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-society 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 either to the activity mentioned in section 80P(2)(a)(i) of the Act or under section 80P(2)(a)(iii) of the Act. Therefore, in the facts of the said case, the Apex Court held the assessing Officer was right in taxing the interest income indicated above under section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore, it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore, they had deposited the money in a bank so as to earn interest. The said interest income is attributable to

carrying on the business of banking and therefore, it is liable to be deducted in terms of section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME TAX III HYDERABAD VS. ANDHRA PRADESH STATE COOPERATIVE BANK LTD. Reported in (2011) 200 TAXMAN 220/12. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly, it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:

Appeal is allowed.

The impugned order is hereby set aside. Parties to bear their own cost."

In the backdrop of the aforesaid observations of the Hon'ble High Court, we are of a considered view, that as in the case of the assessee before us the surplus funds parked by way of short-term deposit with the co-operative bank, viz. Jila Sahakari Kendriya Bank are inextricably interlinked, or in fact interwoven with its business of providing credit facilities to its members, therefore, the same as claimed by the Ld. AR, and rightly so, would duly be eligible for deduction u/s. 80P(2)(a)(i) of the Act. We, thus, in terms of our aforesaid observations, direct the Assessing Officer to allow deduction of Rs.7,98,705/- u/s. 80P(2)(a)(i) of the Act on the interest income earned by the assessee society on its deposits with the co-operative bank. Thus, the **Ground of appeal No.1** raised before us is allowed in terms of our aforesaid observations."

As stated by the assessee, as the facts and the issue involved in the present appeal, i.e. the assessee's claim for deduction under Sec. 80P(2)(a)(i) of the interest on bank deposits remains the same as were there in the aforesaid case, i.e. ITA No.114/RPR/2016 & Ors (supra.), therefore, I respectfully follow the same. I, thus, in terms of my aforesaid observations direct the AO to allow the assessee's claim for deduction under Sec. 80P(2)(a)(i) of

Rs.36,222/-. The **Ground of appeal No.1** raised by the assessee is allowed in terms of my aforesaid observations.

10. Adverting to the assessee's claim for deduction under Sec. 80P(2)(c)(ii) of the Act of the profit of Rs. 22,649/- from PDS activity, i.e distribution of essential commodities to the ration holders through fair price shop, it was submitted by the assessee that the said issue had already been adjudicated upon by the Tribunal in the case of Gramin Sewa Sahakari Samiti Maryadit & Ors Vs. ITO, Ward-1(3), Raipur in ITA No.114/RPR/2016 & Ors, dated 23.02.2022 and the matter was remanded to the file of the A.O with a direction to restrict the assessee's claim for deduction as regards its profit from PDS only to the extent of its net profit, i.e. after considering the proportionate expenses. The assessee in this case also had prayed for remanding of the issue to the file of the A.O with a similar direction.

11. The Ld. DR did not raise any objection to the request made by the assessee in its written submissions.

12. I have given a thoughtful consideration to the aforesaid issue in the backdrop of the contentions advanced by the assessee vide its written submissions, as well as those advanced by the Ld. DR. As stated by the assessee, and, rightly so, the Tribunal in the case of Gramin Sewa Sahakari Samiti Maryadit & Ors Vs. ITO, Ward-1(3), Raipur in ITA No.114/RPR/2016

& Ors., vide its order dated 23.02.2022, had after necessary deliberations on the issue in hand remanded the matter to the file of the A.O, with a specific direction, i.e, to restrict its claim for deduction as regards its profit from PDS only to the extent of its net profit, i.e. after considering the proportionate expenses, observing as under :

> "19. Before us, it is the claim of the assessee that as the profit from PDS activities after considering the proportionate expenses amounted to Rs.3,08,338/-, therefore, its claim for deduction u/s.80P(2)(c)(i) of the Act was liable to be restricted only to the said extent. After having given a thoughtful consideration to the claim of the Ld. AR, we though principally concur with his aforesaid claim, but then, the same cannot be accepted on the very face of it and would require factual verification. Therefore, for the said limited purpose, we restore the matter to the file of the Assessing Officer for doing the needful. During the course of the set-aside proceedings, the Assessing Officer is directed to restrict the assessee's claim for deduction as regards its profit from PDS only to the extent of its net profit, i.e., after considering the proportionate expenses. Needless to say, the assessee shall in the course of set-aside proceedings furnish the requisite details/documents as would be called for by the Assessing Officer. The **Ground of appeal No.3** is allowed for statistical purposes in terms of our aforesaid observations."

Considering the aforesaid observations in the order passed in ITA No.114/RPR/2016 & Ors, dated 23.02.2022, I on the same terms restore the matter to the file of the AO, with a direction to restrict the assessee's claim for deduction as regards its profit from PDS only to the extent of its net profit, i.e. after considering the proportionate expenses. Thus, the **Ground of appeal No.2** is allowed for statistical purposes in terms of my aforesaid observations.

13. I shall now deal with the grievance of the assessee that both the lower authorities had erred in law and the facts of the case in declining its claim for deduction of the dividend income received on the shares of Jila Sahakar Bank, for the reason that as per AO since a co-operative bank was not a co-operative society, hence, the dividend income received therefrom would not be eligible for deduction under Sec. 80P(2)(d) of the Act. Before me, it is the claim of the assessee that the aforesaid issue is squarely covered by the order of the Tribunal in the case of Gramin Sewa Sahakari Samiti Maryadit & Ors. Vs. the ITO, Ward-1(3), Raipur in ITA No.114/RPR/2016 & Ors, dated 23.02.2022. It was submitted by the assessee that the Tribunal in its aforesaid order, had observed, that the dividend income received by a co-operative society on the shares of a co-operative bank held by it would be eligible for deduction under Sec. 80P(2)(d) of the Act.

14. The Ld. DR conceded to the claim put forth by the assessee vide its written submissions.

15. I have given a thoughtful consideration to the aforesaid issue in hand. Admittedly, in the case of Gramin Sewa Sahakari Samiti Maryadit & Ors. Vs. the ITO, Ward-1(3), Raipur in ITA No.114/RPR/2016 & Ors., the Tribunal, had observed, that the dividend income received by a co-operative society on the shares of a co-operative bank held by it would be eligible for

deduction under Sec. 80P(2)(d) of the Act. It was observed by the Tribunal as under:

> "22. After having given a thoughtful consideration to the aforesaid issue in hand, we are unable to concur with the view taken by the lower authorities. In our considered view, as a Co-operative bank falls within the realm of the definition of "Co-operative Society" as contemplated in Section 2(19) of the Act, therefore, the view taken by the lower authorities that dividend income received by the assessee from Jila Sahakari Kendriya Bank, Raipur, i.e a Co-operative Bank, would not eligible for deduction u/s. 80P(2)(d) of the Act cannot be sustained. Our aforesaid view is fortified by the order of the ITAT, Mumbai in the case of M/s Solitaire CHS Ltd Vs. Principal Commissioner of Income Tax-26, ITA No. 3155/Mum/2019, dated 29.11.2019 (wherein one of us, i.e, the JM was a party), had after exhaustive deliberations held as under:
>
>> "6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order, or not. In our considered view, the issue involved in the present appeal revolves around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with co-operative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not co-operative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.
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>> 7. After necessary deliberations, we are unable to persuade ourselves to be in agreement with the view taken by the Pr. CIT. Before proceeding any further, we may herein reproduce the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us.

"80P(2)(d)

(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)..
(b)..
(c)..
(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;"

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term „cooperative society‟ had been defined under Sec. 2(19) of the Act, as under:-

"(19) "Co-operative society" means a cooperative 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;"

We are of the considered view, that though the co-operative banks pursuant to the insertion of subsection (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a co-operative bank continues to be 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, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

8. We shall now advert to the judicial pronouncements that have been relied upon by the ld. A.R. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

(i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum)
(ii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017
(iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.
(iv). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Insofar the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is concerned, we are of the considered view that the same being distinguishable on facts had wrongly been relied upon by him. The adjudication by the Hon"ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments/deposits parked with a co-operative bank. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka

in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we find, that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed, that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. We find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court‟s, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon‟ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a cooperative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

9. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and therein concluded that the assessee would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with co-operative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 for dislodging the same. In fact, as observed by us hereinabove, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum). Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we „set aside‟ his order and restore the order passed by the A.O under Sec. 143(3), date 14.09.2016.

10. Resultantly, the appeal filed by the assessee is allowed."

Backed by our aforesaid observations, we not being able to persuade ourselves to subscribe to the view taken by the lower authorities, therein vacate the disallowance of the assessee's claim for deduction

> of Rs.1,16,224/- u/s. 80P(2)(d) of the Act. The **Ground of appeal No.4** is allowed in terms of the aforesaid observations."

I find that as stated by the Ld. AR, and, rightly so, as the aforesaid issue in hand, i.e entitlement of a co-operative society for claim of deduction under Sec. 80P(2)(d) qua the dividend received on shares of a co-operative bank is squarely covered by the aforesaid decision of the Tribunal in ITA No.114/RPR/2016 & Ors (supra), dated 23.02.2022, therefore, principally concurring with the claim of the assessee, I herein vacate the disallowance of its claim for deduction of Rs.69,629/- u/s 80P(2)(d) of the dividend received on the shares of a co-operative bank, viz. Jila Sahakari Bank. Thus, the **Ground of appeal No.3** raised in appeal by the assessee is allowed in terms of my aforesaid observations.

16. Apropos the grievance of the assessee that the CIT(Appeals) had erred in treating the amount of Rs.1,66,716/- comprising of viz. (i) recovery from provisions: Rs.1,45,070/-; and (ii) paddy procurement receipt : Rs.21,646/- as ineligible for deduction u/s.80P(2) of the Act, I am of the considered view that as the assessee had neither come forth with any supporting documents to substantiate its aforesaid claim for deduction u/s 80P(2) before the lower authorities, nor placed any material before me to support its said claim of deduction, therefore, I uphold the view taken by the lower authorities who have rightly declined its unsubstantiated and hollow claim of deduction of Rs.1,66,716/-. I, thus, in terms of my aforesaid observations uphold the

disallowance of the assessee's claim for deduction of Rs. 1,66,716/- u/s 80P of the Act. Thus, the **Ground of appeal No.4** raised by the assessee is dismissed in terms of my aforesaid observations.

17. In the result, appeal of the assessee in ITA No.87/RPR/2023 for A.Y.2017-18 is partly allowed for statistical purposes in terms of my aforesaid observations.

ITA No(s). 88/RPR/2023
A.Ys. 2017-18

18. As the facts and issues involved in the captioned appeal remains the same as were there before me in the appeal of Gramin Sewa Sahakari Samiti Maryadit in ITA No.87/RPR/2023 for assessment year 2017-18 in Grounds of appeal Nos. 1 to 3, therefore, my order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeal, i.e., ITA No. 88/RPR/2023 for assessment year 2017-18.

19. Resultantly, the appeal filed by the assessee in ITA NO. 88/RPR/2023 is allowed in terms of my aforesaid observations.

ITA No(s). 89/RPR/2023
A.Ys. 2011-12

20. That as the facts and issue involved in Ground of appeal No. 1 in the present appeal, i.e entitlement of the assessee for claim of deduction of interest on its surplus funds with the banks remains the same as was there

before me in Ground of appeal No. 1 in ITA No. 87/Rpr/2023 for AY 2017-18, therefore, the order therein passed shall apply mutatis mutandis for disposing off the **Ground of appeal No. 1** in the present appeal.

21. The Ground of appeal No. 2 as stated by the assessee society in its written submissions is not being pressed. Accordingly, as per the concession of the assessee the **Ground of appeal No. 2** is dismissed as not pressed.

22. As regards the grievance of the assessee w.r.t part declining by the lower authorities of its claim for deduction of profit of paddy procurement business u/s.80P of the Act, it is fairly admitted by the assessee in its written submissions that it had failed to produce the documents before the lower authorities to substantiate how much paddy was procured from the members of the society, which would have a bearing on the quantification of its claim of deduction. It is requested by the assessee that the matter in all fairness be restored to the file of the AO with a liberty to the assessee to produce the requisite records/registers before him. The assessee had relied on the order passed by the Tribunal in ITA No. 114/RPR/2016, dated 23.02.2022, wherein involving identical facts the matter was restored to the file of the AO.

23. I have given a thoughtful consideration to the issue in hand. Admittedly, the assessee had not produced the requisite records/registers

in support of its claim of deduction of its profit from paddy procurement business u/s.80P of the Act. Although the assessee should have been more vigilant as regards discharging of the onus that was cast upon it as regards supporting its claim for deduction before the lower authorities, however, I find that involving identical facts the issue was restored to the file of the AO in ITA No. 114/RPR/2016, dated 23.02.2022, with a direction to restrict the declining of the assessee's claim for deduction u/s 80P(2)(a)(iii) of the Act to the extent the profit was relatable to marketing by the assessee society of the agriculture produce grown by non-members, as under:

> "17. After giving a thoughtful consideration to the aforesaid issue, we find substantial force in the claim of the Ld. AR that now when only a small fraction of the procurement of paddy was made by the assessee-society in the course of its paddy procurement business from non-members, therefore, restricting of its claim for deduction u/s. 80P(2)(a)(iii) of the Act to 35% of the profits earned from theee said business activity was not justified. Be that as it may, we are of the considered view that as the compilation of the paddy procurement by the assessee-society has been filed before us as additional documentary evidence, and the same was not there before the lower authorities, therefore, the matter in all fairness requires to be re-visited by the Assessing Officer. We, thus, in terms of the aforesaid observation set-aside the matter to the file of the Assessing Officer, with a direction to re-adjudicate the same after considering the additional documentary evidence that had been filed by the asssessee before us. The A.O shall after determining as to what extent the assessee society had facilitated the marketing of the agricultural produce grown by non-members, therein, restrict the assessee's claim for deduction u/s. 80P(2)(a)(iii) of the Act only to the extent of the profit relatable thereto. Needless to say, the assessee shall in the course of the set-aside proceedings furnish the requisite details/documents that are called for by the A.O. The **Ground of appeal No.2** is allowed for statistical purposes in terms of our aforesaid observations."

I, thus, on the same terms restore the matter to the file of the AO, who is directed to restrict the assessee's claim for deduction u/s 80P(2)(a)(iii) to the extent of its profit that are relatable to marketing of the agriculture produce of non-members. The **Grounds of appeal Nos. 3 & 4** are allowed for statistical purposes.

24. That as the facts and issue involved in Ground of appeal No. 5 in the present appeal, i.e entitlement of the assessee for claim of deduction of dividend income u/s 80P(2)(d) remains the same as were there before me in Ground of appeal No. 3 in ITA No. 87/RPR/2023 for AY 2017-18, therefore, the order therein passed shall apply mutatis mutandis for disposing off the **Ground of appeal No. 5** in the present appeal.

25. I shall now take up the grievance of the assessee that the lower authorities had wrongly declined its claim for deduction u/s 80P as regards its other incomes of Rs.2,29,065/-. The AO had declined the assessee's claim for deduction u/s 80P of Rs. 2,29,065/-, for the reason that on verification of the respective incomes it was found that those were not eligible for deduction under the said section. Nothing has been placed on our record to point out any perversity in the findings of the AO. I, thus, am constrained to uphold the disallowance made by the A.O of Rs. 2,29,065/- u/s 80P of the Act.

26. Resultantly, the appeal filed by the assessee in ITA No. 89/RPR/2023 for AY 2011-12 is partly allowed for statistical purposes in terms of my aforesaid observations.

27. In the combined result, the ITA No. 87/RPR/2023 for AY 2017-18 is partly allowed for statistical purposes; the ITA No. 88/RPR/2023 is allowed; and the appeal in ITA No. 89/RPR/2023 for AY 2011-12 is partly allowed for statistical purposes.

Order pronounced in open court on 24th day of May, 2023.

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 24th May, 2023
*#SB

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT(Appeals), Raipur (C.G)
4. The concerned CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.