

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 619/Kol/2022
Assessment Year: 2018-19

Bhaintgarh Nachinda Samabay Krishi Unnayan Samity Limited Nachinda Bazar Contai Purba Medinipur - 721444 [PAN : AAAAB0943N]	Vs	Income Tax Officer, Ward- 27(1), Haldi
--	----	---

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
------------------------	--	--------------------------

Assessee by :	Shri Sidhharth Agarwal, Advocate
Revenue by :	Shri P.P. Barman, Addl. CIT Sr. D/R

सुनवाई की तारीख/Date of Hearing : 10/05/2023
घोषणा की तारीख /Date of Pronouncement: 23/06/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This is an appeal preferred by the assessee against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the Id. CIT(A)"], passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 06/09/2022 for the Assessment Year 2018-19.

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

"1. For that the Ld. CIT(A) was not justified in confirming the action of the A.O. treating interest income of Rs.1,16,17,861/- received from banks as "Income from other sources" and denying the benefit of deduction u/s 80P thereon.

2. For that the Ld. CIT(A) ought to have considered that corresponding interest expenses are required to be allowed against the gross interest received from banks (other than co-operative banks) of Rs.1,16,17,861/-."

3. Brief facts of the case are that the assessee is a primary agricultural credit co-operative society and is engaged in the business of providing credit facilities to its members, purchase and sale of agricultural implements. E-return filed on 24/10/2018 declaring income of Rs.37,20,620/- after claiming deduction u/s 80P of the Act at Rs.1,76,47,069/-. Case of the assessee was selected for complete scrutiny under CASS on the issue of "Deduction from Total Income under Chapter VI-A". Notice u/s 143(2) and 142(1) of the Act duly served upon the assessee. The Id. Assessing Officer called for various details regarding claim of deduction u/s 80P of the Act and also examined the various heads of income and came to the conclusion that interest from FDR held with Axis Bank and Bandhan Bank at Rs.1,16,17,861/-, is not entitled to deduction u/ 80P of the Act and has to be treated as income from other sources and accordingly made the addition thereof and assessed the income at Rs.1,53,38,480/-.

3.1. Aggrieved the assessee preferred appeal before the Id. CIT(A) but failed to succeed as the Id. CIT(A) confirmed the view of the Assessing Officer observing that interest from deposits with the bank other than co-operative banks, has to be assessed as income under head 'income from other sources'.

4. Aggrieved the assessee is now in appeal before the Tribunal.

5. The Id. Counsel for the assessee vehemently argued referring to the detailed written submissions filed before us as well as the Id. CIT(A) as well as the statement of facts and the crux of his arguments are that the loans taken from the members is being utilised for making

FDRs and the interest earned therefrom is paid to the members and it is not the case that surplus funds have been accumulated in the form of fixed deposits with the scheduled banks. It was also submitted that interest income is from operating funds and not surplus funds, therefore, are eligible for deduction u/s 80P (2)(a)(i) of the Act.

6. On the other hand, the ld. D/R vehemently argued supporting the findings of both the lower authorities and stated that it is judicially settled that interest income from fixed deposit with scheduled banks is not eligible for deduction u/s 80P of the Act and has been rightly assessed as income from other sources.

7. We have heard rival contentions and perused the material placed before us. The sole issue for our consideration is whether the ld. Assessing Officer was justified in denying the claim of deduction u/s 80P(2)(a)(i) of the Act alleged that the interest income of Rs. 1,16,17,861/- received from fixed deposits held with Axis Bank and Bandhan Bank is income from other sources and not a business income. Before we embark upon the facts of the case, we take note of the judgment of the Hon'ble Supreme Court in the case of *The Totgars' Cooperative Sale Society Ltd. v. ITO* reported in 322 ITR 283 (SC), wherein the Hon'ble Court held that scope of special deduction must relate to operational income of the assessee providing credit facilities to its members and the interest earned on investment in short term deposit out of surplus funds, not immediately required for business activity, is not business income but income from other sources u/s 56 of the Act and the same is not entitled to deduction u/s 80P of the Act.

This view of the Hon'ble Apex Court has been referred to by the Assessing Officer while denying benefit u/s 80P of the Act. From going through the ratio laid down by the Hon'ble Apex court, we notice that the same refers to the funds not immediately required for business activity i.e., not utilised for operational income and if such sum has been utilised for operational purposes and for the purpose of carrying out the business activity then such income is eligible for deduction u/s 80P of the Act.

7.1. Before us, the Id. Counsel for the assessee has pleaded that the alleged interest income is not from the surplus fund but it is from the operational funds of the society. To examine this contention, we need to peruse the financial statement of the assessee society and the details of the same are available at page 1 to 26 of the paper book. We notice that the assessee society is engaged in three types of activities. Firstly, providing credit facility, secondly aqua shop and third is retail outlet. Consolidated profit and loss account has been prepared which shows that the major activity is from the aqua shop and retail outlet which are engaged in selling of petroleum products, pesticides and fertilizers and the gross turnover of these two types of business activity is Rs.85.36 Crores and the gross profit earned during the year is Rs.2.53 Crores, approx. Moving further, we notice that for carrying out these business activities assessee society has taken credit facility from bank (outstanding as on 31/03/2018 at Rs.3.78 Crores) as well as unsecured loans from its members (outstanding as on 31/03/2018 at Rs.30.45 Crores). Apart from the credit limit from the bank and unsecured loan,

the other funds are accumulated reserves and the capital. All these funds are found to be applied in the business of aqua shop and retail outlets and also purchase of fixed assets. So far as the credit facility business is concerned, the assessee has to pay interest to its members on the loans taken for the business activities. In the course of carrying out the business activity, some of the operational funds have also been held as deposits with the co-operative banks/scheduled banks and the gross interest received during the year is Rs.2,59,26,175/- and out of this interest income assessee has paid interest on deposits and borrowings totalling to Rs.2,11,72,145/-. So the effective net interest income left with the assessee is only Rs.47,54,030/- and that too from carrying out operational activity since the funds are regularly required for the business activity of aqua shop and retail outlet.

8. Before us, the Id. Counsel for the assessee has pleaded that out of the alleged interest income of Rs. 1,16,17,871/- the interest paid to the members on borrowings is Rs.1,12,00,955/- and the remaining interest income is only Rs.4,16,906/- and even if a minimum of 5% of administrative charges is attributed to earning of alleged interest income, the same will amount to Rs.5,08,833/- and which will thus bring to Nil income. Though we have already discussed above that the alleged interest income is from operational funds and not from surplus funds, even for the sake of arguments, this presumption that the interest income from FDRs are surplus funds then also considering the fact that interest has been paid to the members to the tune of Rs.1.12

Crores and also considering administrative expenses @5%, no income will be left out of the alleged interest income.

9. Therefore, considering the ratio of law laid down by the Hon'ble Supreme Court in the case of *The Totgars' Cooperative Sale Society Ltd. v. ITO (supra)* and also considering the fact that in the instant case nothing has been brought on record to show that the alleged interest income is only from surplus funds rather perusal of the audited financial statement clearly indicates that the alleged interest income is from the operational funds which are regularly needed for carrying out multiple business activities carried out by assessee, we hold that the alleged interest income is business income and thus, is eligible for deduction u/s 80P of the Act. The finding of the ld. CIT(A) is set aside and all the effective grounds raised by the assessee are allowed as per terms indicated hereinabove.

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

Order pronounced in the Court on 23rd June, 2023 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 23/06/2023

**SC Sp/P*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata