

**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. 524/Asr/2018
Assessment Year: 2015-16**

The Ferozepur Cantt Primary Co-operative Agricultural Development Bank Ltd. Near Malwa Khalsa School Shaheed Udham Singh Chowk Ferozepur City. [PAN:-AAAJT2366E] (Appellant)	Vs.	DCIT, Circle-3, Ferozepur. (Respondent)
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Appellant by	Sh. P.N. Arora, Adv.
Respondent by	Sh. S. M. Surendranath, Sr.DR.

Date of Hearing	18.07.2023
Date of Pronouncement	26.07.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income-tax (Appeals), Bathinda, (in brevity 'the CIT (A)') order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2015-16. The impugned order was emanated from the order of the Id. Dy. Commissioner of Income Tax Circle-3 Ferozepur, (in brevity the Id. AO) order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“Grounds of appeal No.1

That the learned CIT (A), Bhatinda was not right in confirming the action of DCIT, Range-III, Ferozepur in which the AO has confirmed action of addition of Rs.2110786/- in the income of the assessee viz., The Ferozepur Cantt., Primary Agricultural Coop., Development Bank Ltd (PLMB) in the limited scrutiny case as per notice received from CASS, by relying upon the Judgment of Punjab State Co-operative Milk Producer Federation Ltd.,V, CIT (2011)336 ITR 495 by whereas the assessee has already distinguished this judgment on last date of hearing before the AO and the same has also been incorporated in the decision of the AO of dated 20.12.2017.

Grounds of appeal No.2

That the assessing officer cum DCIT, Bhatinda wanted to convert the case FULL scrutiny during the assessment proceedings then the Permission from Commissioner/ principal Commissioner has to be obtained as per the CBDT instructions. Since the assessing officer has not mentioned in his order the permission to convert the limited Scrutiny case into full scrutiny case hence orders of assessment passed by the Assessing Officer. Range III, Ferozepur was ab initio void and illegal. Hence it is prayed that the same may please be quashed.

Grounds of appeal No.3

That the Assessing Officer has applied the provisions of section 14A of ITACT, 1961 whereas the assessee has not claimed the

deduction under 80P(2)(d) of the IT. Act, 1961 whereas the Assessee has claimed deduction under 80P(2)(a)(i) of the Income Tax Act, 1961 as who per NAMBARD, Hence, it is prayed that whole the addition may kindly be deleted.

Ground of appeal No. 4 That the assessee craves to add or amend any grounds of appeal before the appeal is finally disposed off.”

3. The brief fact of the case is that the assessee is a Cooperative Bank Society and registered under the cooperative society. During the year the assessee invested the amount and earned interest amount of Rs.9,53,46,487/- which is debited in the profit and loss account. On one hand, the assessee is paying interest year after year and amount taken on the other hand also investing in shares within Apex Society SADB and is earning exempted income. The ld. AO initiated proceeding with contravening section 14A r.w.s. 8D of the Income Tax Rule 1962 and calculated the amount of Rs.21,10,786/- which was added with the total income of the assessee. The aggrieved assessee filed an appeal before the ld. CIT(A). After considering the submission of the assessee the ld. CIT(A) had taken a view that M/s Punjab State Co-operative Milk Producer's Federation Ltd., vs. CIT-II, (2016) 67 taxmann.com 27, the Jurisdictional High Court is against the assessee. So, the entire addition made by the ld. AO was duly confirmed. Being aggrieved assessee filed an appeal before us.

4. The Id. AR, Mr. P.N. Arora, Advocate has first withdrawn the ground nos. 1 and 2. He only placed the ground no. 3. So, only ground no. 3 is for adjudication. The prayer of the Id. AR is that the assessee has more capital than investment amount so, assessee is liable for earning interest which is not at all attracted the section 14A of the Act.

4.1 The Id. AR further placed that the same issue was adjudicated by the Id. CIT(A) for A.Y. 2017-18 and accepted the assessee's plea and allowed the appeal. The Id. AR further relied on the order of **Hon'ble High Court of Bombay** in the case of **CIT-2, Mumbai vs HDFC Bank Ltd. 366 ITR 505 (Bom)**. The relevant paragraph is reproduced as below:-

“5. We find that the facts of the present case are squarely covered by the judgment in the case of Reliance Utilities & Power Ltd. (supra). The finding of fact given by the ITAT in the present case is that the Assessee's own funds and other non-interest-bearing funds were more than the investment in the tax-free securities. This factual position is not one that is disputed. In the present case, undisputedly the Assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in the tax-free securities. In view of this factual position, as per the judgment of this Court in the case of Reliance Utilities & Power Ltd. (supra), it would have to be presumed that the investment made by the Assessee would be out of the interest-free funds available with the Assessee. We therefore, are unable to agree with the submission of Mr Suresh Kumar that the Tribunal had erred in dismissing the Appeal of the Revenue on this ground. We do not find that question (A) gives rise to any substantial question of law and is therefore rejected.”

He further relied on the order of the CIT vs. Reliance Utilities 313 ITR 340 (Bom).

5. The Id. DR vehemently argued and relied on the order of the Id. AO the relevant paragraph is reproduced as below:

4. From the perusal of the reply, it is seen that the assessee entity has objected to the treatment put forth as per show-cause stating that no expenditure has been booked in the profit and loss account in relation to the income which does not form part of total income and thus, no expenditure is admissible as regards to section 14A. However, the submission of the assessee entity is found not tenable as the provisions of section 14A shall also apply in a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Income Tax Act. The extract of section 14A is reproduced as under:-

"14A(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act."

4.1 The assessee entity in its reply, denied the applicability of the judgment of the judgment of the Hon'ble Punjab & Haryana High in the case of Punjab State Co-operative Milk Producers Federation Ltd. Vs. CIT & Another (2011) 336 ITR 495 (P&H) stating that it was in receipt of interest income from farmers on account of loans and advances given to them against their agricultural land and dividend income from SADB, Chandigarh as per bye laws of the society. However, as per Profit & Loss account, it is seen that the assessee entity is having interest income from deposits with SADB, Chandigarh which is also a cooperative society. However, the assessee had not made any disallowance u/s 14A read with rule 8D of the Income Tax Act, 1961 as it was earning such income from investments with other cooperative society and accordingly, the submission of the assessee is found again not tenable.

4.2 The assessee entity has also relied on the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Mumbai Vs. Walfort Share & Stock Brokers (P.) Ltd. [2010] 192 Taxman 211 (SC)/[2010] 326 ITR 1 (SC)/[2010] 233 CTR 42 (SC). However, in the said judgment it was held that *"for attracting section 14A, there has to be a proximate cause for*

मेसेज दी फिरोज़पुर कैट प्राइमरी कोऑपरेटिव
एग्रीकल्चरल देवेलोपमेंट बैंक लिमिटेड
शहीद उधम सिंह चौक, फिरोज़पुर सिटी (AAAJT2366E)
आदेश द्वारा 143(3) निर्धारण वर्ष 2015-16

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disallowance, which is its relationship with the tax exempt income and also stated that pay-back or return of investment is not such proximate cause. However, the said judgment is not applicable in the present case. The facts of the case law cited by the assessee are totally different from the present facts of the case, as in the case law cited, the assessee was a member of stock exchange and the assessee had earned dividend on mutual funds, thereby reducing the value of NAV of the unit of mutual fund. The difference was said to be expenditure incurred to earn the dividend in that case. However, the facts of the present case are entirely different. Thus, the ratio laid down by the Hon'ble Supreme Court in Commissioner of Income Tax, Mumbai Vs. Walfort Share & Stock Brokers (P.) Ltd. [2010] 192 Taxman 211 (SC)/[2010] 326 ITR 1 (SC)/[2010] 233 CTR 42 (SC) is not applicable to the present case of the assessee.

5. Thus the disallowance u/s 14A read with rule 8D of the Income Tax Rules, 1962 is attracted in this case. The method prescribed as per Rule 8D(i) is not applicable in the present case, as no direct expenditure has been incurred by the assessee entity but the method prescribed as per Rule 8D(ii) and 8D(iii) are applicable in the present case. The assessee entity has debited interest of Rs.9,53,46,487/- in the P& L account. On one hand the assessee entity is paying interest year after year on loans taken and on other hand is also investing in shares with its apex society SADB and is earning exempt income on it. Hence, disallowance is calculated as under:-

Value taken:-

- A = Rs.9,53,46,487/- [Interest amount debited to P&L account]
- B = Rs.10,77,35,952/- [1. Average of Rs.9,79,62,407 as on 31.03.2014
(including Deposits with SADB at
Rs.7,84,38,407/- and Share invested with
SADB at Rs.1,95,24,000/-)
AND
2. Rs.11,75,09,496/- as on 31.03.2015
(including Deposits with SADB at
Rs.9,59,85,496/- and Share invested with
SADB at Rs.2,15,24,000/-)]
- C = Rs.1,40,84,05,249/- [Average of Rs.1,34,82,16,591/- (total assets
as on 31.03.2014) and Rs.1,46,85,93,907/-
(total assets as on 31.03.2015)]



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By applying formula, the disallowance amount is calculated as under :-

Rule applicable	Formula	Amount calculated
8D(ii)	$\frac{A \times B}{C}$	Rs.72,93,530/-
8D(iii)	½% of 10,77,35,952/-	Rs.5,38,680/-
	Total	Rs.78,32,210/-

Hence, disallowance of Rs.78,32,210/- u/s 14A read with Rule 8D, is being calculated on account of expenditure incurred for earning exempt income. However, following the judgment of Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. Vs. Commissioner of Income Tax in ITA-117/2015 dated 25.02.2015, the disallowance is restricted to the amount of Rs.21,10,786/- i.e. to the extent of income which does not form part of total income. Therefore, disallowance of Rs.21,10,786/- is being made on account of expenditure incurred for earning exempt income.

6. In view of the above facts, income of the assessee is computed as under:-

Income of the assessee is computed as under:-

Income declared	Rs.NIL
Addition: As per Para 4 above	Rs.21,10,786/-
Assessed Income	Rs.21,10,786/-
Rounded off u/s 288A	Rs.21,10,790/-

I am satisfied that the assessee has furnished inaccurate particulars of income by claiming wrong deduction of Rs.21,10,790/- u/s 80P of the Income Tax Act, 1961. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for furnishing inaccurate particulars of income are being initiated separately.

Assessed at total income of Rs.21,10,790/-. Charge tax and interest. Issue demand notice challan and copy of this order. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for furnishing inaccurate particulars of income are initiated separately.



5.1 He further relied on the order of the Id. CIT(A) the relevant paragraph is reproduced as below:

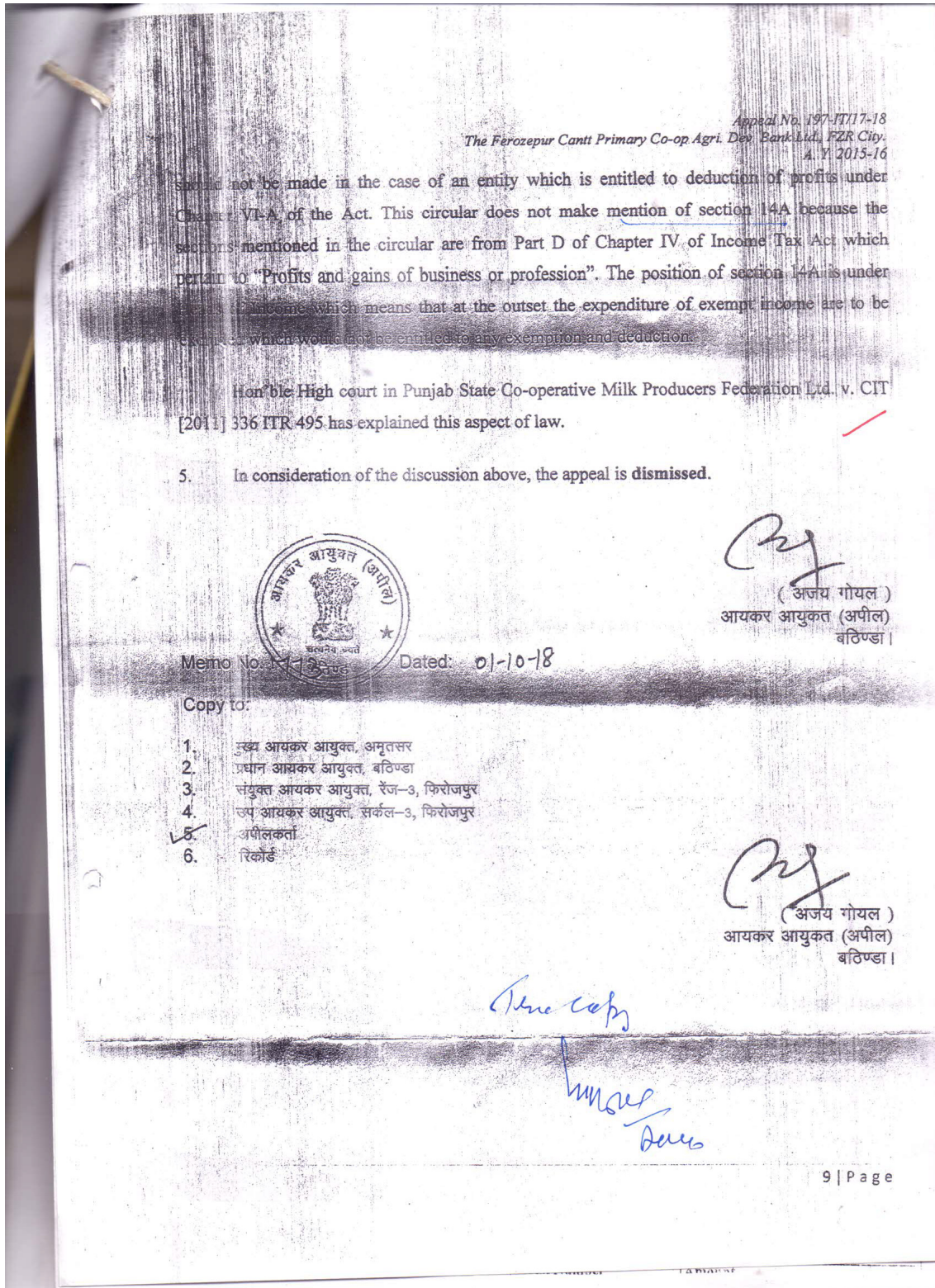
Hon'ble Jurisdictional High Court in the case of **Punjab State Co-operative Milk Producers Federation Ltd. v. CIT [2011] 336 ITR 495 (Punj. & Har.)** decided it against the assessee in favour of revenue.

Once again vide order dated 14th December 2015 in *M/s Punjab State Cooperative Milk Producers Federation Ltd. Vs. Commissioner of Income Tax-II, Chandigarh [2016] 67 taxmann.com 27*, Hon'ble court reiterated its earlier decision despite the pleadings that Hon'ble Delhi High Court in *CIT v. Kribhco [2012] 349 ITR 618/209 Taxman 252/23 taxmann.com 312* has taken a contrary view and Special Leave Petition against the said judgment was dismissed vide order dated 15.2.2013 in *CIT v. Kribhco SLP(C) No.3604 of 2013*.

The contention of the appellant that the facts of *M/s Punjab State Cooperative Milk Producers Federation Ltd.* were different as in that case the investment made was not compulsive but in the present case the appellant was under obligation to purchase shares of Markfed and Co-operative Banks would not change the situation because the applicability of section 14A is independent of the fact as to what was the motive behind investment resulting in income which is exempt.

In consideration of the above position, the decision of Hon'ble Jurisdictional High Court has a binding effect upon the undersigned and it has to be followed.

The appellant is further not entitled to benefit of Circular of CBDT No. 37 dated 02.11.2016 which makes mention that disallowance of Section 32, 40(a)(ia), 40A(3), 43B etc



6. We heard the rival submissions and considered the documents available in the record. The asseesee claimed the interest expenses amount of Rs

9,53,46,487/-in impugned assessment year. The assessee earned dividend from share investment in SADB. The Id. AO calculated proportionate expenses related exempted income and calculated amount to Rs.21,10,790/- U/R 8D of Income tax Rule, 1962 for contravening section 14A and added back the amount with total income. The revenue respectfully relied on the order of **High Court of Punjab and Haryana** in the case of **Punjab State Cooperative Milk Producers Federation Ltd.v.Commissioner of Income-tax-II, Chandigarh, [2016] 67 taxmann.com 27 (Punjab & Haryana)**. Held that.

“Section 14A, read with section 80P of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (In case of deduction under section 80P) - Assessment year 2011-12 - Whether provisions of section 14A are applicable even to income claimed as deduction under section 80P(2)(d) - Held, yes”.

With due regards on the order of the Hon'ble High Court of Punjab and Haryana that 14A is applicable in case of claim of deduction u/s 80P. But the Id. AR has taken view that the investment for earning dividend is allowed from excess fund of assessee which is not interest bearable. He respectfully relied on the order of **CIT-2, Mumbai vs HDFC Bank Ltd (supra)**. The Id. AR had not made any comment against the observation of jurisdictional high court. But the investment of excess fund was duly agitated firsttime before the bench. As the issue is fully factual basis the revenue should get opportunity to adjudicate the issue. We

remit back the appeal to the file of the ld. AO to determine that the investment made by assessee in tax free income generating fund whether is covered as assessee's own fund which is not interest-bearing fund. Needless to say, the assessee should get the reasonable opportunity in set aside proceeding. The matter is disposed off with terms indicated above.

7. In the result, appeal of the assessee **ITA No. 524/ASR/2018** is allowed for statistical purpose.

Order pronounced in the open court on 26.07.2023

Sd/-

Sd/-

(Dr. M. L. Meena)
Accountant Member

(ANIKESH BANERJEE)
Judicial Member

AKV

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