mआयकर 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.	202/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Vill Dharsiwa, Dist. Raipur PAN : AABAG0436A	The ITO-1(2), Raipur (C.G.)	2012-13
2-3.	203/RPR/2023 204/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Vill Khauna, Dist. Raipur PAN : AAAAG9944J	The ITO-1(2), Raipur (C.G.)	2013-14 2016-17
4.	205/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Vill Lawan, Dist. Baloda Bazar, PAN : AAAAG9994J	The ITO, Bhatapara (C.G.)	2013-14
5.	206/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Vill Lawan, Dist. Baloda Bazar, PAN : AAAAG9994J	The ITO, Bhatapara (C.G.)	2015-16
6.	207/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Vill Lawan, Dist. Baloda Bazar, PAN : AAAAG9994J	The ITO, Bhatapara (C.G.)	2016-17

7.	208/RPR/2023	Gramin Sewa Sahakari Samiti Maryadit Vill Lawan, Dist. Baloda Bazar, PAN : AAAAG9994J	The ITO, Bhatapara (C.G.)	2017-18

Assessee by : None (Written Submissions)
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 24.08.2023
घोषणा की तारीख / Date of Pronouncement : 05.09.2023

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 Center (NFAC), Delhi 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') for assessment years 2012-13, 2013-14, 2015-16, 2016-17 & 2017-18. 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.202/RPR/2023 for the assessment year 2012-13 as the lead matter, and the order therein passed shall apply *mutatis-mutandis* to the remaining cases. The assessee has assailed the impugned order of the CIT(Appeals) on the following grounds of appeal:

> "1. That the learned CIT (Appeals) erred in confirming the addition of Rs.38,88,571/- which is Gross Profit in PDS a/c made by the learned AO though after considering proportionate expenses of Rs.36,07,768/-, there is profit of Rs.2,60,923/-. Prayed that the addition of Rs.38,88,571/- is unjustified and be deleted.
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> 2. That under the facts and the law, the Ld. CIT (Appeals) erred in treating the dividend income amounting to Rs.1,30,800/-as ineligible deduction u/s.80P(2). Prayed that the dividend income is deductible u/s 80P(2)(d) and delete the addition.
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> 3. That under the facts and the law, the Ld. CIT (Appeals) erred in treating the other income amounting to Rs.9,05,369/- as ineligible deduction u/s. 80P(2). Prayed that the other income is deductible u/s 80P(2) and delete the addition."

3. At the very outset of the hearing of the appeals, it transpires that the captioned appeals are time barred by 10, 35, 37 & 38 days respectively. The assessee society has filed respective condonation applications dated 07.06.2023 stating reasons which are similar in nature except for the days of delay involved in the aforementioned appeals. For the sake of clarity, reasons leading to the delay of 10 days involved in filing of appeal in ITA No.202/RPR/2023 are culled out as under:

> "1. That against the Order of the Ld. Assessing Officer u/s 143(3) dated 19.03.2015, the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi passed Order u/s 250 on 20.03.2023.

> 2. That the Appellant is residing in a remote village, namely Dharsiwa having population of about 5460. The Appellant is a primary agriculture cooperative society and is working for the benefit of the farmers, also providing items to below poverty line (BPL) people.
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> 3. That the appellant society is busy in procuring paddy from farmers and there is huge pressure at that time because the farmers is in queue to sale his crop to the society and society has to make proper arrangements of storage facility for the crops procured from farmers and thereafter for making arrangement to hand over the procured crops to the state government as per the it's of state government.
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> 4. That the above Order of CIT (Appeals) dt.20.03.2023 uploaded on portal could not be noticed by the Appellant on the same day, therefore, the Appeal which should have been filed by 18.05.2023 could not be filed. The appellant could notice the above Order in the 2nd week of May, 2023 in the portal. Thereupon, the Appellant tried to contact his counsel for consultation in the matter. However, due to involvement of society people in procuring paddy from farmers as per the policy of the State Government, necessary action could not be taken though Challan towards Appeal filing fees was paid on 26.05.2023.
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> 5. That the delay in filing the Appeal is for 10 days if taken from date of Order."

The reasons enshrined in the respective applications reveal that the delay was caused because of circumstances which could neither be attributed to any deliberate conduct of the assessee appellant nor smack of any lackadaisical approach on its part. The Ld. Departmental Representative (for short 'DR') did not raise any objection to the seeking of condonation of delay by the respective assessee-appellants. After going through the respective applications, I am satisfied with the reasons leading to the delay and condone the same.

4. 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 16.04.2013 filed its return of income for the assessment year 2012-13, 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 19.03.2015 wherein the assessee's muti-facet claim for deduction under Sec. 80P of Rs.53,62,432/- was declined a/w. disallowance 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.15,44,096/-
2.	Disallowance of the assessee's claim for deduction of profit from paddy procurement business u/s. 80P(2)(a)(iii) of the Act.	Rs.6,81,955/-
3.	Disallowance of the assessee's claim for deduction of profit from PDS u/s.80P(2)(c) of the Act.	Rs.38,88,571/-

5.	Disallowance of assessee's claim for deduction of dividend income u/s.80P(2)(d) of the Act.	Rs. 1,30,800/-
6.	Disallowance of deduction u/s.80P on account of other income.	Rs.9,05,369/-
Total		Rs.71,50,791/-

After making the aforesaid disallowances and proportionately allocating the expenses to the extent the same related to the amount which qualified for deduction u/s.80P of the Act, the A.O vide his order u/s. 143(3) of the Act, dated 19.03.2015 assessed the total income of the assessee society at Rs. 20,89,773/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) who partly allowed the appeal.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me. Although the assessee appellant despite having been intimated about the hearing of the appeal had failed to put up an appearance but it had filed written submissions.

7. 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 the written submissions filed by the assessee appellant before me.

8. Adverting to the assessee's claim for deduction under Sec. 80P(2)(c)(ii) of the Act of Rs.38,88,571/- i.e. profit from PDS activity; 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 on similar terms had requested for remanding of the issue to the file of the A.O.

9. The Ld. DR did not raise any objection to the submissions put forth by the assessee appellant.

10. I have given a thoughtful consideration to the aforesaid issue in the backdrop of the written submissions of the assessee appellant and the contentions 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.1** is allowed for statistical purposes in terms of the aforesaid observations.

11. 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 Sahakari Bank, for the reason that as the latter 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.

12. The Ld. DR fairly conceded to the submissions put forth by the assessee appellant.

13. 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:
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> > "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."

It is evident that as stated by the assessee, 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 ld. AR, I herein vacate the disallowance of the assessee's claim for deduction of Rs.1,30,800/- u/s 80P(2)(d) as regards the dividend received on shares of a co-operative bank, viz. Jila Sahakari Bank. Thus, the **Ground of appeal No.2** raised in appeal by the assessee is allowed in terms of the aforesaid observations.

14. I shall now take up the grievance of the assessee that both the lower authorities had erred in law and the facts of the case in treating its "other income" amounting to Rs.9,05,369/- which comprises of, viz. (i) recovery from NPA accounts :Rs.8,90,404/-; and (ii) receipts against paddy procurement : Rs.14,965/- as ineligible for deduction u/s.80P(2) of the Act.

15. It is submitted by the assessee that the A.O had declined the assessee's claim for deduction for the reason that no documents were furnished by the assessee society to substantiate its claim of such deduction. Rebutting the aforesaid observations of the A.O, it is submitted by the assessee that the Tribunal while disposing off the appeal 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, a similarly placed Co-operative society that was, inter alia, engaged in paddy procurement business, had though accepted the assessee's claim for deduction u/s.80P(2)(a)(iii), but had remanded the matter only for the purpose of quantification of the same. It is, thus, the claim of the assessee that now when the entitlement of a similarly placed co-operative society for deduction of its income from paddy procurement business u/s.80P(2)(a)(iii) of the Act had principally been accepted by the Tribunal in its aforesaid order in ITA No.114/RPR/2016 dated 23.02.2022, therefore, the declining of the assessee's claim of deduction under the said statutory provision by the lower authorities in the present case was liable to be vacated.

16. Per contra, the Ld. DR had relied on the orders of the lower authorities.

17. I find that the Tribunal while disposing off the appeal 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, while dealing with the assessee's claim for deduction of its income from paddy procurement business u/s.80P(2)(a)(iii) of the Act had remanded the issue to the file of the A.O observing as under:

> "16. Admittedly, the assessee as an 'agent' of Chhattisgarh Marketing Federation (CMF) had facilitated the procurement of paddy from the agriculturists, and for the said service was paid a fixed commission as per the rates prescribed by the Government. The gross profit of Rs.16,21,218/- that was earned by the assessee from its aforesaid stream of business activity, i.e., paddy procurement business was claimed by it as a deduction u/s. 80P(2)(a)(iii) of the Act. However, as per the mandate of Sec. 80P(2)(a)(iii) the deduction therein contemplated was only available qua the marketing of the agricultural produce grown by members of the society, therefore, the Assessing Officer in the course of assessment proceedings had called upon the assessee society to produce the register maintained in respect of its paddy procurement for the year under consideration. As the register produced by the assessee society did not reveal the requisite details which were required to identify the members and non-members, therefore, the Assessing Officer in the backdrop of the said fact had restricted the assessee's claim for deduction u/s.80P(2)(a)(iii) of the Act on an ad-hoc basis to 35% (i.e. nearly 1/3rd of the aforesaid gross profit) of the profit that was earned by it from paddy procurement business, and had disallowed assessee's claim for deduction as regards the balance amount of profit. Assailing the restriction of the assessee's claim for deduction u/s 80P(2)(a)(iii) to 35% of its income of Rs. 16,21,218/-, it is the claim of the ld. A.R before us that the same is highly exorbitant, for the reason, that the assessee had mainly procured paddy from its members only. It was submitted by the Ld. AR that though as per the policy of the Government the assessee-society is obligated to purchase paddy from each and every farmer, whether member or non-member, i.e whosoever approaches it, but transactions with the non-members during the year under consideration was minimal and by no means exceeded 25% of the total transactions. In order to buttress his aforesaid claim the Ld.

> AR had taken us through the compilation of paddy purchase by the assessee-society, Page 1 to 55 of additional documentary evidence that was placed on our record. By drawing support from compilation of paddy purchase from its members, i.e. Page 1A to 255 of the additional documentary evidences filed before us, it was submitted by the ld. A.R that only a small fraction of the paddy procurement was carried out by the assessee society from non-members. In the backdrop of his aforesaid contentions, the Ld. AR had claimed that the restriction of its claim for deduction u/s 80P(2)(a)(iii) to 35% of the profit from paddy procurement business so made by the Assessing Officer was not only on the higher side, but in fact exorbitant and unrealistic.
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> 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 the 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."

Considering the parity of the facts involved in the present case as against those which were involved in ITA No.114/RPR/2016 & Ors., dated 23.02.2022, I am of the considered view that as stated by the assessee, and rightly so, the assessee society in the present case was principally entitled

for deduction of its income from the business of paddy procurement u/s.80P(2)(a)(iii) of the Act. However, as observed by me while disposing off the appeals in ITA Nos.114/RPR/2016 & Ors (supra), the claim of deduction of the assessee society would be limited to the extent it had facilitated the marketing of the agricultural produce of its members. I, though concur with the claim of the assessee that the assessee society is entitled for deduction of its income from paddy procurement business u/s.80P(2)(a)(iii), but restore the matter to the file of the A.O for the limited purpose of restricting the said claim of deduction to the extent of the profit relatable to the marketing of the agricultural produce of the members of the assessee society. In the course of the set-aside proceedings the AO shall re-adjudicate the assessee's claim for deduction under Sec. 80P(2)(a)(iii) i.e. after determining as to what extent the assessee society had facilitated the marketing of the agricultural produce grown by its members, and thus, restrict it's claim for deduction u/s. 80P(2)(a)(iii) 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.

18. I shall now deal with the claim of the assessee that the lower authorities had erred in declining its claim for deduction u/s.80P as regards the recovery from accounts classified as "Non-Performing Assets" (NPA) in

the preceding years. It is stated by the assessee that as recovery of the amounts was in the course of its banking business of lending money to the members of the society and earlier no deduction in respect of provisions for such classification as NPA was claimed, therefore, the assessee society was duly entitled to claim the entire amount of such recovery as a deduction u/s.80P(2) of the Act.

19. On a perusal of the orders of the lower authorities, it transpires that the aforesaid claim of deduction was declined by them for the reason that as the assessee had failed to give specific details as regards the income classified as “other income”, therefore, the same was not open for verification. Once again, I find that the assessee except for harping on its entitlement for deduction u/s.80P qua the recovery from the loan accounts classified as NPA in preceding years, had failed to place on record the requisite details. Considering the aforesaid facts, I do not find any justifiable reason to dislodge the view taken by the lower authorities who in absence of requisite details had declined the assessee’s claim for deduction u/s.80P w.r.t. such part of its “other income”. Accordingly, the view taken by the CIT(Appeals) to the said extent is upheld. Thus, the **Ground of appeal No.3** raised by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

20. I, thus, in terms of my aforesaid observations set-aside the order of the CIT(Appeal) and partly allow/allow for statistical purposes the appeal of the assessee in terms of the aforesaid observations.

21. Resultantly, the appeal of the assessee in ITA No.202/RPR/2023 for the assessment year 2012-13 is partly allowed/allowed for statistical purposes in terms of the aforesaid observations.

ITA No.(s) 203/RPR/2023, 204/RPR/2023, 205/RPR/2023, 206/RPR/2023, 207/RPR/2023 & 208/RPR/2023
A.Ys. 2013-14, 2015-16, 2016-17 & 2017-18

22. As the facts and issues involved in the captioned appeals remains the same as were there before me in the appeal of Gramin Sewa Sahakari Samiti Maryadit in ITA No.202/RPR/2023 for assessment year 2012-13, therefore, the order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeals, i.e., ITA No.(s) 203/RPR/2023, 204/RPR/2023, 205/RPR/2023, 206/RPR/2023, 207/RPR/2023 & 208/RPR/2023 for A.Ys. 2013-14, 2015-16, 2016-17 & 2017-18.

23. In the combined result, all the captioned appeals of the aforementioned assessee's are partly allowed/allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 05th day of September, 2023.

Sd/-

(**रवीश सूद /RAVISH SOOD**)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 05th September, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, 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.