

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 5545/DEL/2019

[Assessment Year: 2015-16]

M/s Bhai Mati Dass Co-Operative (Urban) Thrift & Credit Society Ltd., 1054/8, Near Aggarwal Dharamshala, Mehrauli, New Delhi-110030.	<u>Vs</u>	Income-tax Officer, Ward-32(3), New Delhi
PAN-AAAAB0243P		
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	21.09.2023	
Date of pronouncement	27.09.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-11, New Delhi, dated 29.05.2019, pertaining to the assessment year 2015-16. The assessee has raised following revised grounds of appeal:

“1. That the Ld. CIT(A) has erred in law and on facts, in denying the deduction claimed by appellant u/s 80P and making an addition of Rs 2,38,071/- to the returned income of the appellant.

2. That the Ld. AO has erred in law and on facts, by ignoring the fact

that the appellant's primary business is to grant loans to members and creation of funds to lent to the members and these activities are covered under section 80P and appellant is eligible for the deduction.

3. *That the Ld. AO has erred in law and on facts, by ignoring the fact that appellant had invested the idle funds with other co-operative banks in the light of provisions of sec-80P(2)(d) of the Income Tax Act 1961 and income from such investment from cooperative bank is eligible for deduction.*

4. *That the Ld. AO has erred in law and on facts, by ignoring that the amounts which could not be given as advance to the members where kept as deposits in the normal course of business and act of investing such funds in FDR or savings deposits is conducive to the normal course of business.*

5. *That the appellant reserves the right to add, alter or amend the grounds of appeal before the appeal is decided.”*

2. At the time of hearing no one attended the proceedings. It is seen from the records that there was no representation on behalf of the assessee on last occasions i.e. 14.06.2023, 13.07.2023 and 25.08.2023. On 21.09,2023 also no one appeared on behalf of the assessee. Therefore, the appeal was taken up for hearing in the absence of the assessee and is being decided on the basis of material available on record.

3. Facts giving rise to the present appeal are that the assessee is a cooperative society, duly registered with the Registrar, Co-operative Societies, Delhi Administration vide registration dated 20.03.1987. The case was taken up for scrutiny assessment and the AO determined the income at Rs. 4,20,000/- vide order dated 20.12.2017. Thereafter the assessee filed an application u/s 154 of the

Income-tax Act, 1961 (hereinafter referred to as the “Act”), seeking rectification of mistake regarding two issues i.e. (i) disallowance of depreciation; and (ii) addition of interest earned out of savings bank account. The AO allowed depreciation, however, in respect of interest he rejected the application. Aggrieved against the order dated 18.06.2018 the assessee preferred appeal before the learned CIT(A), who sustained the addition.

4. Learned DR apropos to the grounds of appeal raised two fold objections –

Firstly, that the application so made for rectification of mistake in respect of addition made qua interest earned on savings account is beyond the scope of Section 154 of the Act, as it is not a mistake. On the contrary the AO has taken a conscious decision by following the judicial precedent; and

Secondly, the learned DR Shri Om Parkash submitted that the issue is no more res-integra as the interest earned out of savings account of the assessee society would be chargeable u/s 156 of the Act. In this regard he placed reliance on the judgment of the Hon’ble Supreme Court rendered in the case of Totagars Cooperative Sales Society Vs. ITO 322 ITR 283 (SC). He, thus supported the orders of the authorities below.

5. I have heard learned DR and perused the material available on record. The contention of the assessee through the grounds of appeal and the submissions made before the lower authorities is that the interest earned on savings bank account is

not taxable in terms of provisions of Section 80B of the Act. The learned CIT(A) has decided the issue in para 6.2 of the order as under:

*“6.2 I have carefully considered the observations of AO and submissions of : appellant. Hon hie Supreme Court in the ca.se of **Totgars, Co-operative Sate \ Society Ltd. vs. Income-tax Officer, Karnataka 322 ITR 283** have held that 1 interest earned by a co-operative credit society assessee would come in category of 'Income from other sources' taxable under section 56 and .would not qualify for deduction as business income under section 80P(2)(a)(i). It held as under:*

“To say that the source of income is not relevant for deciding the applicability of section ... SOP of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in section 80P(2)(a j of the Act. Art important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee-Society earns interest on funds which are not required for business purposes at the given point of time.

Hon'ble PUNJAB AND HARYANA High Court in the case of Punjab State Co-operative Milk Producers Federation Ltd. v. Commissioner of Income-tax 336 ITR 501 have held that assessee-society was not entitled to deduction under section 80P(2)(d) m respect of interest received on advances provided to its member co-operative societies as the credit facility which was provided by the assessee to its members was relating to the outstanding dues to the assessee of the milk unions and was ancillary to its main object and it was not carrying on the business of banking or providing credit facilities to its members and, therefore, was not entitled to the benefits of section 80P(2)(a)(i).”

5.1 The objection of learned DR regarding the issue makes beyond scope of section 154 of the Act is not emanating from the impugned order. Moreover, the Revenue has not filed any cross-objection in this regard. Therefore, the objection

of learned D.R. cannot be sustained. Regarding chargeability of interest on savings bank account, held by the assessee, the issue is covered by the judgment of the Hon'ble Supreme Court in the case of Totagars Cooperative Sales Society (supra). Therefore, I do not see any reason to interfere in the finding of learned CIT(A). The ground raised by the assessee are dismissed.

6. The appeal of the assessee is dismissed.

Order pronounced in open court on 27th September, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**