

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 68 to 71/Jodh/2022  
Assessment Years: 2013-14 to 2016-17**

HanumangarhKendriyaSahakari Bank Ltd. Hanumangarh. [PAN: AAAJH0302C]  <b>(Appellant)</b>	<b>Vs.</b>	Commissioner of Income Tax (Appeals), NFAC, Delhi.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>None. (Written Submission)</b>
<b>Respondent by</b>	<b>Sh. Rajesh Ojha, CIT. DR</b>

<b>Date of Hearing</b>	<b>10.10.2023</b>
<b>Date of Pronouncement</b>	<b>12.10.2023</b>

**ORDER**

**Per: Bench:**

A batch of four appeals of the assessee society were filed against the order of the Id. Commissioner of Income Tax (Appeals) NFAC, Delhi, [in brevity the ‘CIT (A)’] order passed u/s 250 of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2013-14 to 2016-17. The impugned orders were emanated from the order of the Id. Income Tax Officer, Ward-1, Hanumangarh, (in brevity the AO) order passed u/s 143(3) of the Act.

At the outset, all the appeals are common in facts and have a common issue related to disallowance of deduction u/s 80P(2)(d). Therefore, all the appeals are taken together, heard together and disposed of together. For the sake of convenience, we taken **ITA No. 68/Jodh/2022** as the lead case.

### **ITA No. 68/Jodh/2022**

2. The assessee has taken the following grounds which are reproduced as below:

*“1) Whether Department is bound to follow the order of Jurisdictional ITAT(Jodhpur) in the case of assessee itself pertaining to following years on the same issue of deduction u/s 80P.*

<i>Appeal No.</i>	<i>Assessment Year</i>	<i>Date of Order</i>
<i>341/Jodh/2013</i>	<i>2009-10</i>	<i>24.09.2014</i>
<i>055/Jodh/2015</i>	<i>2010-11</i>	<i>14.03.2016</i>
<i>056/Jodh/2015</i>	<i>2011-12</i>	<i>14.03.2016</i>
<i>240/Jodh/2017</i>	<i>2012-13</i>	<i>16.08.2017</i>

*By these orders it was held that -*

*A CO-OPERATIVE SOCIETY CAN ENGAGE ITSELF IN MORE THAN ONE ACTIVITY AS ENUMERATED IN SECTION 80P(2) FURTHER A CO- OPERATIVE SOCIETY WHICH IS DOING THE BUSINESS OF BANKING (CALLED AS A CO-OPERATIVE BANK) CAN INVEST ITS FUND IN ANOTHER CO-OPERATIVE SOCIETIES IN ORDER TO EARN INTEREST/*

*DIVIDEND INCOME AND CAN SHOW THE SAME AS INCOME FROM OTHER SOURCES AND IS ELIGIBLE FOR DEDUCTION U/S 80P(2)(d) OF THE INCOME TAX ACT.*

*FURTHER MORE IT WAS ALSO BEING HELD THAT THE WORDS THIS SECTION IN RELATION TO ANY CO-OPERATIVE BANK AS USED IN SUB SECTION (4) OF SECTION 80P MEANS SUB SECTION (2)(a)(i) OF SECTION 80P OF THE INCOME TAX ACT.*

*2) Whether assessee Co-operative Bank is functioning at par with the Commercial Banks because as per by-laws it can give loan only to its members and not to public at large, So provisions of section 80P(4) is applicable to it or not?"*

3. Brief fact of the case is that the assessee is a cooperative bank. The amount was invested in cooperative society and cooperative bank in impugned assessment year. The dividend and interest are generated. The assessee claimed that the dividend & interest income are eligible for deduction u/s 80P(2)(d) of the Act. In assessment, the ld. AO disallowed the deduction and treated interest and dividend income from other sources and added back with the total income of the assessee. Here is the yearwise chart for disallowance of interest and dividend which was claimed as deduction u/s 80P (2)(d) is inserted as below:

**“Hanumangarh Kendriya Sahakari Bank**

Sl. No.	A.Y.	ITA No.	Disallowance of claim u/s 80P(2)(d)
1.	2013-14	68/Jodh/2022	Rs.3,32,90,254/-

2.	2014-15	69/Jodh/2022	Rs.5,30,38,860/-
3.	2015-16	70/Jodh/2022	Rs. 2,26,50,941/-
4.	2016-17	71/Jodh/2022	Rs. 2,07,00,717/-

Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

4. When the appeal was called for hearing, none was present on behalf of the assessee. The assessee placed the written submission, and no adjournment petition was filed. Considering the issue, the matter is taken for adjudication as *ex parte* for assessee after hearing the ld. DR.

5. The ld. DR vehemently argued and fully relied on the order of the revenue authorities. The ld. DR also invited our attention in the appeal order. The relevant para of the said order is reproduced as below:

*“With regards to the case of the appellant, the interest and dividend income earned by the appellant bank is admittedly out of the investment of surplus funds and not in the course of normal business. The rationale of the above said decision is squarely applicable in the case of the appellant.*

*Thus, the appellant is a co-operative society and engaged in honking business and the section 80P(4) says that the provision of section BOP shall not apply in relation to any co-operative bank other than a primary agriculture credit society or a primary agricultural and rural development bank. The appellant is not a primary agricultural credit*

*society or a primary Co-operative agricultural or a rural development bank.*

*In view of the above, these grounds of appeal are, accordingly, dismissed and the addition made by the Ld. AO on this account is, hereby, dismissed.”*

6. We heard the submission of the revenue, consider the submission of the assessee and perused the order of the revenue authorities. The assessee submitted the written submission which is placed in the record. The assessee placed that the assessee is a cooperative bank and normally eligible for claim of deduction u/s 80P. The dividend was earned from the investment in cooperative society and other cooperative bank. The issue was also agitated during the assessment year 2018-19 and the Id. NFAC has taken the view in favour of the assessee. The same issue was also taken by the **ITAT Jodhpur Bench** in the assessee's own case bearing **ITA No. 55 & 56/Jodh/2015 order dated 14.03.2016.**

*“5. We have considered the submissions. On perusal of the order of the learned CIT (A) shows that the learned CIT (A) has followed the decision of the co-ordinate Bench of this Tribunal in assessee's own case in ITA No. 341/Jodh/2013 dated 24-09-2014 for assessment year 2009-10 wherein the Tribunal has deleted the disallowance of the benefit u/s 80P(2) (d) of the Act by reversing the view taken by the learned CIT (A) in his order dated 12-03-2013 in appeal*

*No.244/Bikaner/2011-12. As it is noticed that the learned CIT (A) has followed judicial discipline by deleting the disallowance by following the decision of the co-ordinate Bench of this Tribunal in assessee's own case for the immediately preceding year and as the Revenue has not been able to show any distinguishable facts, we are of the view that the finding of the learned CIT (A) is on right footing and does not call for any interference. As a result ground No.1 in both the Revenue's appeal stands dismissed."*

The issue is well adjudicated by the **Hon'ble Apex Court** in the case of

**Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer, [2023] 154 taxmann.com 305 (SC)**, the relevant paragraph is reproduced as below:-

*"15.13. Further, under the provisions of the State Act, 1984, 'agricultural and rural development bank' means the Kerala Cooperative Central Land Mortgage Bank Limited, registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951, which shall be known as Kerala State Co-operative Agricultural and Rural Development Bank Limited i.e. the appellant herein. Thus, from a conjoint reading of all the relevant statutory as alluded to hereinabove, it is quite clear that the appellant is not a co-operative bank within the meaning of sub-section (4) of Section 80P of the Act. The appellant is a co-operative credit society under Section 80P(2)(a)(i) of the Act whose primary object is to provide financial*

*accommodation to its members who are all other co-operative societies and not members of the public.*

*15.14. Therefore, when the definition of “co-operative bank” in Section 56 of BR Act, 1949 is viewed in terms of Sections 2(u) of the NABARD Act, 1981, it is clear that only a state co-operative bank would be within the scope and meaning of a banking company under Section 2(c) of the BR Act, 1949 on obtaining licence under Section 22 of the said Act.*

***Conclusion:***

*In the instant case, although the appellant society is an apex cooperative society within the meaning of the State Act, 1984, it is not a co-operative bank within the meaning of Section 5(b) read with Section 56 of the BR Act, 1949.*

*In the result, the appeals filed by the appellant are allowed and the order(s) of the Kerala High Court and other authorities to the contrary are set aside. Consequently, we hold that the appellant is entitled to the benefit of deduction under Section 80P of the Act. The questions for consideration are answered accordingly.”*

The order of the coordinate bench has followed the earlier order of assessee's own case. But we respectfully follow the higher judicial observation to ascertain the issue. The status of the cooperative bank where the investment was parked, and the income was generated was never ascertained by the revenue authorities. Here, to

determine the taxability of the income of assessee from investment first to ascertain the status of the bank and assessee. The ld. DR was unable to bring any specific observation during the hearing. In our considered view, the appeal of the assessee is remanded back to the file of the ld. CIT(A) to determine the income in the light of discussion indicated above. Needless to say, the assessee should get reasonable opportunity in set aside proceeding. We order accordingly.

The ITA No 68/Jodh/2022 is *mutatis mutandis* applicable to ITA Nos. 69 to 71/Jodh/2022 and will be followed accordingly.

7. In the result, the appeals of the assessee bearing ITA No. 68 to 71/Jodh/2022 are allowed for statistical purpose.

**Order pronounced in the open court on 12.10.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(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