

**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.273/Asr/2023
Assessment Year: 2017-18**

The Dhamai Cooperative Agriculture Service Society Ltd. VPO Dhamai Garshankar, Hoshiarpur. [PAN: -AACAT8630J] (Appellant)	Vs.	ITO Hoshiarpur. (Respondent)
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Appellant by	Sh. J. S. Bhasin, Adv.
Respondent by	Smt. Ratinder Kaur, Sr. DR

Date of Hearing	06.11.2023
Date of Pronouncement	09.11.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’], order passed u/s 250 of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y.

2017-18. The impugned order was emanated from the order of the Id. DCIT, Cir-Hshiarpur, [in brevity 'the AO'] order passed u/s 143(3) of the Act.

2. The assessee has taken the following ground:

“1. That the Id.CIT(A)/NFAC grossly erred in facts and on law in arbitrarily confirming the addition of Rs.36,92,758/-, as wrongly made by the Id.AO, by disallowing deduction claimed u/s.80P(2)(a)(i) in respect interest earned from Cooperative Bank.

2. That in any case, interest earned from investment made with cooperative bank, intrinsically being a cooperative society, was otherwise eligible for deduction u/s.80P(2)(d).

3. That the provisions of sec 80P(4) have been misconstrued to deny the benefit of deduction u/s.80P(2)(d).

4. That the impugned order, passed ex-parte, without affording sufficient opportunity, violates the principles of natural justice, hence liable to be set aside and quashed.”

3. The issue of disallowing deduction claimed u/s 80P(2)(a)(i) of the Act amount to Rs. 36,92,758/-, in facts and circumstances similar to those attending this appeal, has been discussed by the Division Bench of the ITAT Amritsar, while

disposing of ITA No. 238/Asr/2023, in the assessee's own case for A.Y. 2020-21, order dated 13.09.2023.

4. Therein, it has been observed, inter alia, as follows:

*“3. The issue of disallowing deduction claimed u/s 80P(2)(a)(i) of the I.T. Act, in facts and circumstances similar to those attending this appeal, has been discussed by the Division Bench of the ITAT Amritsar, while disposing of ITA No. 86/Asr/2021, in the case of **The Kot Ram Dass Coop. Thrift & Credit Society Ltd. Jalandhar vs. ITO-Ward 2(4), Jalandhar for A.Y. 2017-18, order dated 13.06.2023.**”*

4. Therein, it has been observed, inter alia, as follows:

“2. Brief fact is that all the cooperative societies invested their surplus funds in Cooperative Bank and accordingly the interest was earned. The assessee claimed the interest as deduction u/s 80P but the Ld. AO disallowed the deduction for violation of Section 80P(2)(d) of the Act. In relation to restriction u/s 80P(4) of the Act. The interest was added back with the total income as income amount of Rs.21,05,192/- as income from other sources. The Revenue authorities had relied on the order of Hon'ble Supreme Court in the case of

Totgar Cooperative Sales Society Ltd. V. ITO 188 Taxman 282 (SC). Accordingly, the interest earned from Cooperative Bank was added back with the total income of the assessee society. The assessee filed an appeal before the ld. CIT(A) and the ld. CIT(A) upheld the assessment order. Being dissatisfied, the assessee filed the appeal for further adjudication before the ITAT.

3. The ld. AR filed a written submission which is kept in the record. According to the ld. AR the assessee invested his fund to the Cooperative Bank, so the interest earned from the bank is liable for the exemption u/s 80P of the Act. Section 80P(4) is not affected in this particular deduction. The Revenue is wrongly interpreted the section 80P(4) and the judgment of the Hon'ble Supreme Court in the case of *Totgars Co-operative Sales Society Ltd, supra.*

4. The ld. DR vehemently argued and relied that the assessee invested in Cooperative Bank and the interest earned from the Cooperative Bank is not eligible u/s 80P(4). Section 80P(4) only restricted investment in the Cooperative Society not in bank. So, the order of the Ld. CIT(A) is maintainable. The ld DR invited our attention in assessment order page 2 para 3.1 is reproduced as below:
"3.1 From the assessment records, it was noticed that assessee had earned interest income from its members and as interest on savings account and FDRs made with other banks as under:

<i>Particulars</i>	<i>Interest on</i>	<i>Saving</i>	<i>Interest from</i>
	<i>FDRs</i>	<i>Interest</i>	<i>members</i>

<i>The Jalandhar Central Coop. Bank, Patara, Jalandhar.</i>	10,33,074		
<i>The Jalandhar Central Coop. Bank, Rama Mandi, Jalandhar</i>	24,63,842	52,086	
<i>The Citizen urban Coop. Bank Ltd., Jalandhar</i>	1,29,123	8982 -	
<i>Interest from members</i>			2,68,544
Total	36,26,039/-	61,068/-	2,68,544/-

Thus, it is clear that the assessee has parked its surplus/idle funds with the aforesaid banks and is earning huge interest income on FDRs. The assessee has claimed its entire income as deduction under section 80P of the Income-tax Act, 1961. Vide Notice under section 142(1) of the Income-tax Act, 1961 issued on 07.12.2019, the assessee was show caused to explain which subsection of section 80P is applicable in its case under which it has claimed deduction under chapter VI-A and also to explain as to why interest earned on FDRs

should not be treated as income from other sources instead of business income and taxed accordingly.”

5. *The ld. AR further argued that the assessee is registered under Punjab Cooperative Society Act, 1961. The assessee is eligible for deduction of the interest or dividend derives by its investment which other Co-operative Society & also from co-operative bank. It was argued that the assessee has earned interest from Cooperative Bank which are primarily Cooperative society. Respectfully reliance was placed in the case of **PCIT vs Totgars Coop Sale Society (2017) 392 ITR 74 (Kar)**. So, the assessee is rightly eligible for deduction u/s 80P(2)(d).*

6. *The ld. AR respectfully relied in the case of **Commissioner of Income-tax v. Doaba Co-op. Sugar Mills Ltd, [1998] 96 Taxman 509 (PUNJ. & HAR.)**.*

“6. Section 80P(2)(d) allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to the source of the investment because this section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial

whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The revenue is not required to look to the nature of investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by the learned counsel for the revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by the learned counsel for the revenue. In our opinion, the Tribunal was right in law in allowing deduction under section 80P(2)(d) in respect of interest of Rs. 4,90,919 on account of interest received from Nawanshahr Central Co-operative Bank without adjusting interest paid to the bank. Therefore, the reference is answered against the revenue, i.e., in the affirmative, and in favour of the assessee.”

7. We heard the rival submissions and perused the material available on record. Having discharge the matter in the issue of section 80P(2)(a)(i), the claim of assessee for deduction is viewed as follows:-

7.1. *The Cooperative Bank wherein the assessee deposited out of its surplus funds for earning interest. Then, the only interest was earned by the assessee on the deposit would be eligible for deduction u/s 80P(2)(d). The definition of the Co-operative Society is bought in larger umbrella under which the Cooperative Banks is performed. In this consideration we relied on the catena of judgments which are as follows: -*

a) In the case of Tumukur Merchants Souhard credit coop limited Vs. The income Tax officer ward-1 Tumkur, [2015] 55 taxmann.com 447 (Karnataka)

“10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact, this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore, they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact, similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State co-operative Bank Ltd., [2011] 200 Taxman 220/12 taxmann.com 66. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly, it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order”

b) In the case of The Commissioner of Income tax vs Gulshan Mercantile Urban Co-Operative Bank Ltd [2013] 29 taxmann.com 8 (All.)

“10. The question as to whether the business is derived from or attributable to SLR or non-SLR funds would not make any difference for the purposes of qualifying the interest earned by the cooperative bank under Section 80P(2)(a)(i) as the deposits of surplus idle money available from working capital, including reserves, excess collection of interest tax and other incomes are all attributable to the business of banking. The interest from such deposits cannot be said to be beyond the legitimate business activities of the bank.

11. For the aforesaid reasons, we do not find that the Income Tax Appellate Tribunal committed any error in arriving at findings that the interest are not deposits of non-SLR funds and the cooperative bank will qualify for exemption under Section 80P(2)(a)(i) of the Act.”

c) In the case of Kaliandas Udyog Bhavan Memises Co-op Society Ltd. v. Income-tax Officer-21(2)(1), 6547/MUM/2017, AY 14-15 (ITAT-Mumbai), Date of Order-25/04/2018.

“9. We thus in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view taken by the lower authorities that the assessee would not be entitled for claim of deduction under Sec. 80P(2)(d), in respect of the interest income on the investments made with the co-operative bank. We thus set aside the order of the lower authorities and conclude that the interest income of Rs.27,48,553/- earned by the assessee on the investments held with the co-operative bank would be entitled for claim of deduction under Sec. 80P(2)(d).”

d) In the case of Tirupati Campus PH. II CO-OP HOUSING SOCIETY MARYADIT VERSUS THE NCOME TAX OFFICER WARD -7 (4), PUNE (ITAT_Pune)ITA No.1429/PUN/2018, AY-2015-16, Date of Order 28/02/2019.

“5. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80P(2)(d) of the Act. The claim of deduction by the assessee was denied by the AO with respect to the interest income earned from Saraswat Co-operative Bank on the ground that the same is not a Co-operative Society. I find that the Co-ordinate Bench of the Delhi Tribunal in the case of M/s. The Veer Cooperative Group Housing Society Limited (supra) has held that Sarswat Co-operative Bank to be a Co-operative Society and the interest earned therein to be entitled to claim deduction u/s 80P(2)(d) of the Act. I further find that Co-ordinate Bench of the Mumbai Tribunal in the case of Lady Ratan Tower Cooperative Housing Society Ltd., (supra) and after relying on the decision in the case of Kaliandas Udyog Bhavan Premises Cooperative Society Ltd., (supra) has held that the interest earned on investments held with the Co-operative Banks would be eligible for deduction u/s 80P(2)(d) of the Act.”

7.2. Thus, we also find that section 80P(2)(d) of the Act allows whole deduction of income by way of interest or dividend derived by Cooperative Society from its investments with any other co-operative society. This provision does not make any distinction with regard to the source of investment because this section envisages deduction in respect of any income derived by co-operative society from in his investment with a co-operative society. So, the Revenue is not required to look another of investment whether it was formed as required within time or otherwise.

*7.3. We have heard and respectfully considered of the case of **Totagars Co-operative Sales Society Ltd.** Supra which was relied by the ld. DR and find that the Hon’ble Apex Court has dilapidated on the issue of deduction*

u/s 80P(2)(a)(i) but not on section 80P(2)(d). We also observed that in the case of Totagars Cooperative Sales Society Ltd, [2017] 78 taxmann.com 169 (Karnataka) itself the Hon'ble High Court of Karnataka has allowed the claim of deduction u/s 80P(2)(d) vide order dated 05.01.2017.

7.4 Considering all the judgments of the different High Courts & Tribunals we hereby hold that the investment of assessee in cooperative bank is eligible investment u/s 80P(2)(d) of the Act. The interest of the said investment related to Cooperative Society; the assessee is eligible for deduction u/s 80P(2)(a)(i) of the Act. The addition amount to Rs. 21,05,192/- is quashed. Accordingly, the appeal of the assessee is allowed.”

5. The ld. DR vehemently argued and relied on order of revenue authorities.
6. The relevant part of appeal order is reproduced as below: -

“8. Apropos the above Ground Nos. 2 & 3 are whether the appellant as a cooperative society is entitled to claim deduction under the provisions of section 80P of the Act. It is observed that the appellant earned a profit of Rs.36,92,758/- during the year under consideration. It is further observed that major part of income of the assessee was not generated from the activities which qualify for the deduction u/s 80P. The AO had assessed the return on 25.12.2019 after disallowance of Rs.36,92,758/- u/s 80P. The appellant did not furnish the submission /

document in support of claim of Rs.36,92,758/- u/s 80P of the Act during the course of appellate proceedings. I did not find the adverse of the action of AO. Accordingly, the disallowance of deduction of Rs.36,92,758/- u/s 80P of the Act is confirmed.”

7. We heard the rival submission and considered the documents available in record. The Id. CIT(A) has not adjudicated the issue on merit. But the issue is well settled before the bench.

Here, we respectfully relied on the order of 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.”

As evident, the above case is squarely covered by the Division Bench decision of the ITAT Amritsar Bench, in ITA No. 238/Asr/2031, in the assessee’s own case

for A.Y. 2020-21, order dated 13.09.2023. Therefore, the said observations, of the Division Bench, Amritsar are, *mutatis mutandis*, applicable squarely to this case also. The addition amount to Rs. 36,92,758/- is quashed.

8. In the result, appeal of the assessee **ITA No. 273Asr/2023** is allowed.

Order pronounced in the open court on 09.11.2023

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