

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT (KZ)

&

SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA No.1434/KOL/2023

Assessment Year: 2006-07

The West Bengal State Co-operative Agriculture & Rural Development Bank Ltd. 25D, Shakespeare Sarani, Kolkata-700017. (PAN: AAAJT0468K)	Vs.	ACIT Circle-32, Kolkata. 10B, Middleton Road, Kolkata-700071
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Palash Chattapadhyaya, AR

Respondent by : Dr. Anup Biswas, Addl. CIT

Date of Hearing : 07.05.2024

Date of Pronouncement : 05.08.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as “the Ld. CIT(A)” passed u/s 250 of the Income tax Act, 1961 (hereinafter referred to as the “Act”) vide Order No. ITBA/NFAC/S/250/2023-24/1057593476(1) dated 01.11.2023.

2. The appeal of assessee is reportedly delayed by 295 days and a condonation petition has been filed. In the said application the assessee has submitted as under:

“In the Form No. 36 relating to the aforesaid Appeal filed by the WBSCARDB Ltd., date of order of the CIT was erroneously mentioned as January 01, 2023 instead of correct date of order of November 01, 2023 and thus, the appeal was filed by the WBSCARDB Ltd. within 51 days from the date of issue of the order. Thus, it may kindly be noted that the appeal of the WBSCARDB Ltd. was not time barred.”

The Ld. AR of the assessee prayed before the Bench to treat the appeal as filed within time. Ld. CIT, DR did not raise any objection to this prayer of the assessee. Since no objection has been raised by the Ld. CIT, DR to the facts mentioned, we admit the appeal as being filed in time.

3. The Grounds of appeal raised by the assessee are as under:

“1. That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC is wrong, unjust and has erred in law in confirming the action of Ld Assessing Officer in holding that Expenses incurred against interest income of Rs.55,08,000/- earned by the appellant co-operative society on FDR(s) with the Schedule Banks were to the tune of Rs.8,26,000/- instead of the expenditure claimed by the Appellant at Rs.54,50,166/-.

1.1 That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC is wrong, unjust and has erred in law in Rs.30,55,025/- confirming the action of Ld. Assessing Officer in holding that no expenses incurred corresponding to Reimbursement of Training Institute Grant for an amount of Rs. 11,50,707/- and receipts from Training Institute for an amount of Rs.19,04,118/- earned by the appellant co-operative society would be allowable instead of the expenditure claimed by the Appellant at Rs.11,50,707/- and Rs.17,56,047/- respectively against the income.

2. That on the facts and in the circumstances of the case the Ld CIT(A), NFAC is wrong unjust and has erred in law, he not having made any comment against the additional ground of appeal submitting that the interest income of Rs.55,08,000/- earned by the appellant co-operative society on FDR(s) with the Schedule Banks and Interest on HBL of Rs. 28,71,843/- received by it are income derived from its business activities and eligible to get deduction u/s 80P(2)(a)(i) of the IT Act 1961 and in view of the facts and circumstances it may kindly be held accordingly and deduction u/s 80P(2)(a)(i) may kindly be granted accordingly.

3. That, the appellant craves leave to amend, alter, modify, General ground substitute, add to, abridge and/or rescind any or all of the above grounds.”

4. Brief facts of the case as culled out from the order of the Ld. CIT(A) are that the assessee, The West Bengal State Cooperative Agriculture &

Rural Development Bank Ltd. (WBSCARDB) is a Cooperative Society under the West Bengal Cooperative Societies Act, 1940. Its main business is lending to its members. WBSCARDB filed its Annual Return for AY 2006-07 on 26.03.2008 declaring a total income of Rs.39,47,780/- It was selected for scrutiny and the income was assessed at Rs.1,68,54,700/-. On an appeal made by the WBSCARD Bank, the Ld. CIT(A) revised the income to Rs. 1,55,07,653/-. The 3 main reasons for the difference in total income computed by the assessee and the Income Tax Authorities were denial of exemption u/s 80P for Income from (a) interest earned on deposits made with Banks other than Cooperative Banks (Rs. 55.08 L), (b) income from Interest on Housing Loans to Employees (Rs. 28.72 L) and (c) Misc. Income (Rs. 31.67 L).

5. The appellant has filed the summary of events for A.Y. 2017-18, which reads as under:-

SN	Date	Event	Main issues
1	26.03.08	Return filed	Returned income: Rs.39,47,780/-
2	22.12.2008	Assessment order passed	Income assessed: Rs 1,68.54,700 by disallowing 80P(2)(a)(i) deduction for Rs.1,28.56,964/- (break up is Interest on Short Term deposits: Rs 55,08,000, Interest on HBL to employees: Rs.28,71,843, Training Institute Grant from NABARD: Rs.11,50,707, Guest Room Charges, Hostel charges, Stipend & Fooding Charges on Training: Rs.19,04,318 and Building Maintenance Charges recovered from tenants: Rs.13,07,047 by considering this as Income from other Sources.
3		Appeal filed with Ld. CIT(A)	Claim for 80P(2)(a)(i) deduction reiterated
4.		The Ld. CIT(A) passes its order	Decision of Ld. AO is upheld except a sum of Rs 13,07,047 being Building Maintenance Charges recovered from

			tenants- said amount having been already subjected to tax under the head Income from House Property.
5		Appellant files Appeal before ITAT B Bench, Kolkata	1.Claim for 80P(2)(a)(i) deduction reiterated. 2. Additional ground filed for netting of expenses corresponding to the disallowed incomes.
6	16.09.15	ITAT, B Bench, Kolkata pronounces its order	1.Claim for 80P(2)(a)(i) deduction relating to Interest Income dismissed by pronounces its order relying on the Totgars case. 2.Appeal for netting of expenses corresponding to the disallowed incomes accepted. Matter restored to Ld. AO.
7	30.12.2016	Ld. ACIT passes order	1. Rs 8.26.200 considered as expense corresponding to Interest income of Rs.55,06,000 as against Appellant's claim of Rs 54,50,166. 2. Claim for expense corresponding to other heads rejected.
8	27.01.2017	Appellant files Appeal before CIT(A)-9/Kolkata	1. Considering Rs 826,200 as expense corresponding to Interest income as CIT(A)-9/Kolkata against Appellant's claim of Rs 54,50,166 is arbitrary. 2. Rejection of claim towards expenses corresponding to other heads unjust
9.	09.10.2023	Appellant submits additional grounds	1. The Appellant is in the business of Banking as also lending to its members-ref See 80 P (2)(a)(i). 2. Investments made by a Banking concern are part of the business of Banking. The income arising from such investments is attributable to the business of Banking and would fall under the head "profits and gains of business and profession". 3. Several decisions at various levels including that of Jurisdictional court as also Supreme Court in support of point 2 above cited.

10.	01.11.23	CIT, NFAC passes order	Upheld the expenses allowed by AO corresponding to Interest Income and none of the other appeals for considering expense corresponding to other income heads accepted primarily on the ground that no separate books of Accounts are maintained with regard to the Incomes under dispute with a comment that such claims of the appellant have already been analysed by the AO under para 6 of his order wherein he has concluded that no expenses incurred by the appellant for earning of such Income. However, no comment was made in respect of claim of deduction u/s 80P(2)(a)(i).
12		Present Appeal before ITAT	It was arbitrary and unjust on the part of Id CIT(A)- NFAC to uphold Ld ACIT decision and the Appellant is present before you on the following grounds of Appeal:-

6. Hon'ble ITAT, Kolkata, vide its order dated 16th September, 2015 had decided the appeal of the assessee by holding as under:-

"9. We have heard the rival submissions and perused the materials available on record. In this case, the case laws cited by the Id. AR are not applicable to the present case. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of M/s. The Totgars' Cooperative Sale Society Ltd. vs ITO in Civil Appeal No. 1622 of 2010 The Hon'ble Supreme Court has held as under

"An 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. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "other Income" which has been rightly taxed by the Department under section 56 of the Act".

In view of the above the appeal of the assessee is dismissed.

10. *In respect of the additional grounds raised by the assessee the ld. DR did not object to the admission of the additional ground.*

11. *The Id. AR has prayed before the Tribunal that in case the aforesaid incomes if treated under the head income from other sources then the corresponding expenditure should be allowed against these incomes. It is a well settled law that the net income should be brought to tax after deducting the expenses incurred to earn that income. Hence, in the interest of justice and fair play, we restore this matter to the file of AO for fresh adjudication in accordance with law. Accordingly, this additional ground raised by the assessee is allowed for statistical purposes.*

12. *Now we take up the appeal of the revenue in ITA No. 1108/Kol/2009. In the grounds of appeal raised the revenue has stated that the income arising out of maintenance charges should be charged under the head 'income from house property' instead of 'income from other sources'. It is pertinent to note that the Id. CIT(A) has already directed in his order that the AO should charge the above stated income under the head 'income from house property'. However, it was further made clear in the order of CIT(A) that in case the house property income has been clubbed with the income from other sources, the same should be excluded from the income from other source and same should be brought to tax income from house property. This ground of objection of revenue was consequential in nature and does not require any fresh adjudication. Therefore, the direction issued by the Id. CIT(A) to the AO is correct as evidenced from the order of the Id. CIT(A). Accordingly, the appeal of the revenue is allowed for statistical purposes.*

7. Thus while the issue relating to allowability of deduction under section 80P was decided against the assessee but the issue relating to allowing the expenditure against income raised vide additional ground of appeal was restored to the file of ld. Assessing Officer for fresh adjudication in accordance with law. The issue regarding allowability of deduction under section 80P was decided against the assessee in view of the judgment of the Hon'ble Supreme Court in the case of M/s. The Totgars' Cooperative Sales Society Ltd. -vs.- ITO in Civil Appeal No. 1622 of 2010.

8. However, the additional ground relating to the corresponding expenditure to the aforesaid income to be allowed against the income to

be assessed under the head “income from other sources” was allowed and the Tribunal held that the net income should be brought to tax after deducting the expenses incurred to earn that income. Therefore, while the claim of deduction under section 80P was rejected and decided against the assessee, however, the income was to be assessed after deducting the expenses in accordance with law. The appeal of the Department was allowed for statistical purposes as the direction issued by the ld. CIT(Appeals) to the ld. Assessing Officer was found to be correct by the ITAT as per para 12 of the order of the Tribunal. Subsequent to the order of the Tribunal the ld. Assessing Officer passed another order on 30.12.2016, in which expenses incurred for earning interest on fixed deposits and short-term investments with Banks amounting to Rs.8,26,200/-, being corresponding expenses of interest income of Rs.55,08,000/- as against the assessee’s claim of Rs.54,50,166/- were allowed and the claim of corresponding expenses for other heads was rejected.

9. Aggrieved with the ld. Assessing Officer’s order, the assessee went in appeal before the ld. CIT(Appeals) and also submitted the additional ground of appeal. The ld. CIT(Appeals) upheld the expenses as allowed by the ld. Assessing Officer incurred for earning interest income and rejected the other claims primarily on the ground that no separate books of account were maintained with regard to the income under dispute with a comment that such claims of the appellant have already been analysed under para 6 of his order, whereas no expenses were incurred for earning of such income. However, no comment was made in respect of deduction under section 80P(2)(a)(i) related to the business of banking as also

lending to its members. Aggrieved with the order of the ld. CIT(Appeals), the assessee is now in appeal before the ITAT.

10. We have heard the rival contentions and gone through the record carefully. At the outset, it is evident that the Tribunal had set aside the order and restored it to the file of ld. Assessing Officer only for the specific purpose to examine the claim of income to be assessed under the head “income from other sources” after rejecting the claim under section 80P. Therefore, the issue relating to the allowability of any claim under section 80P is no longer *res integra* as the same has been decided against the assessee. Therefore, ground no. 2 relating to the claim of deduction under section 80P(2)(a)(i) for the interest income of Rs.55,08,000/- and interest on SBL loan to employees of Rs.28,71,843/- received by the assessee is rejected. Since the matter has already been adjudicated upon by the Tribunal, and when the matter was restored to the file of ld. Assessing Officer for calculating the net income, giving finding on the same issue would tantamount to the review of the order of the Tribunal, which is not within the powers of the ITAT.

11. As regards the Ground No. 1 relating to the expenses claimed by the assessee at Rs.54,50,166/- against the interest income of Rs.55,08,000/- earned by the assessee, out of which ld. Assessing Officer has allowed only Rs.8,26,000/- is concerned, the assessee has made the following submissions:

“Claim of legitimate Expenses in relation to Earning Interest on Deposits with Schedule Banks:-

3. *We draw your kind attention to para 7 of the Assessment Order where the Ld. AO has arrived at a figure of Rs 8,26,200 which he considers as the Interest expenses corresponding to the Interest Income of the Society*

on investments with Banks other than commercial banks. Even a cursory look at the calculation would reveal that an absolutely illogical approach has been adopted by the Ld. AO. One cannot find head or tail of the approach adopted by him. It would be obvious that the said approach and the resultant figure needs to be set aside forthwith, particularly in the background of the procedure adopted by the Appellant in arriving at a figure of Rs.54,50,166 as expense corresponding to Interest on Deposits with banks other than cooperative banks.

4. *The Ld. CIT(A), NFAC alleged that no separate books of Accounts were maintained by the Appellant and the proportionate expenses incurred for earning interest on fixed deposits and short-term investments with banks as arrived at by the Ld AO at Rs.8,26,200 have been duly allowed to the Appellant.*

It is submitted that the Appellant society does not have a separate business for investment of funds with Banks. It is further submitted that the society is carrying on the business of Banking and providing credit facility to its members. As part of the banking business the Society mobilises deposits from its members A portion of such deposits was invested with Banks to follow the direction issued by RCS and NABARD. As would be agreed, in the business of banking or providing credit facilities, not only accepting deposits but also investment of the deposits is integral to the business activity of such an entity. It is important to note that said Banking activity of the Appellant is limited to its members only and is not open to the general public.

5. *In terms of Order of Registrar of Co-operative Societies, Govt, of West Bengal, the regulatory authority for the society, vide its memo No- 2301 dated 11.03.1993 clearly stated that "70% of such total deposit are to be kept in the NSC/ Fixed Deposit/ Certificate of the Bank." Accordingly, to follow up the order the society has deposited/ invested with banks and other cooperative societies. Again Nabard which is also a Regulator of the Appellant in its capacity as the main fund provider has formulated the basic framework relating to the Deposit Mobilisation activity of the Appellant. In terms thereof the Appellant is expected inter alia to maintain Liquid Resources to the extent of 15% of Deposits outstanding in its books at any point of time (point v of NABARD Circular no NB. IDD.LDB/ 086/ B. 4 (A)/ 97- 98 dt Aug 26, 1997). The NABARD Circular has further advised that the said Liquid Recourses are to be maintained by the SCARDBs, here the Appellant in the form of Cash with themselves or Term Deposits with Scheduled Banks. The investments thus made in Short Term deposits of Scheduled Banks by the Appellant facilitated necessary and easy liquidity as and when required for repayment of the deposit received from its member ARDBs on maturity/ pre maturity which is so integral to the business of mobilization of Deposits. Thus to comply with the Order of RCS, Govt. WB, as also the NABARD, both regulatory authorities for the society,*

the Appellant Society had invested in Short Term Deposits as detailed hereunder:

(Amount in Rs)

1	<i>Deposits from members:-</i>			<i>Circular ref</i>
2	<i>Deposits received from Members through own branches</i>	9,23,65,857		<i>RCS, WB</i>
3	<i>Deposits received from 24 PCARDBs</i>	40,59,76,846	49,83,42,703	<i>Nabard</i>
4	<i>Investment to be made statutorily (2*70%+3*15%) (Approx.)</i>		12,55,00,000	
	<i>With UBI</i>	664,20,000		
	<i>With UCO</i>	250,00,000		
	<i>With WBSCB</i>	350,00,000	12.64,20,000	

The statutory requirement to invest in deposits with banks including co-operative Bank has been fulfilled. As would be seen from the figures in the table, the entire Investment with Schedule banks was made to fulfil statutory requirement. Thus the income received therefrom is very much business income.

It is further submitted that the source of Investment with bank was the Deposits received from Members and the corresponding expenditure would be Interest paid thereon.

6. *The amount claimed by the Appellant was based on detailed calculation and backed by necessary documentary evidences and would like to submit hereunder the said detail as also explanations:*

(Amount in Rs.)

1	<i>Deposits from members:-</i>		
2	<i>Deposits received from Members through own branches</i>	9,23,65,857/-	49,83,42,703/-
3	<i>Deposits received from 24 PCARDBs</i>	40,59,76,846/-	-
4	<i>Required investment-(2*70%+3*15%) (Approx.)</i>		12,55,00,000/-
5	<i>Interest paid on Deposits (Schedule-XIII of Statement of Accounts)</i>		
6	<i>Interest paid other than Thrift Deposit scheme</i>	32,30,609/	
7	<i>Interest paid on Thrift Deposit scheme</i>	4,98,11,549/-	5,30,42,158/-
8	<i>Effective rate of Interest</i>		10.64%
9	<i>Investment with schedule bank</i>		
10	<i>UBI</i>	6,64,20,000/	
11	<i>UCO Bank</i>	2,50,00,000/-	9,14,20,000/-
12	<i>WBSCB</i>	3,50,00,000/-	
13	<i>Interest Received</i>		55,08,000/-
14	<i>Effective Rate</i>		6.03%
15	<i>Rate of Interest offered by bank during the period 2004-05</i>		5.75 to 6.25

16	Rate of Interest offered by bank during the period 2005-06		6.25 to 7.00
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7. It would be seen from the above table that the Appellant raised its deposits at an effective interest rate of 10.64% [ref: Sr no 8 in above Table]. It could however, earn a far less effective Interest rate at 6.03% [ref Sr no 14 in Table above]. One reason why the Interest cost was so much more as compared to the Interest earnings was that the deposits raised by the Appellant was for longer tenure whereas its investments were in STDs. The Ld. ACIT however, arbitrarily arrived at an unverified figure of expense corresponding to Interest earnings at Rs 8,26,200 against the Interest / received of Rs 55,08,000 and the same upheld by the Ld. CIT(A), NFAC without any regard to the facts of the case.

8. It is inherent in our business that there is always some floating fund. This floating fund has a cost (i.e. interest payable to NABARD) and is invested in short term deposits which yields an income and partly compensates the cost (i.e. interest payable to NABARD). It would thus be seen that this activity is integral to our business of lending and the interest earning on the deposits is attributable to our lending business only.

The Appellant Co-operative Society is carrying on the business of banking and is providing credit facilities to its members. Being the Apex Cooperative Society of the Land Mortgage Banks in the State, the source of the Investment with Banks is besides the deposits mobilised from members are also Refinance received by the Cooperative Society from NABARD for its own lending activities and/ or repayments received from its loanee members which are to be accumulated for repayment of the Refinance received from NABARD on the scheduled dates. It may be noted that the Society borrows wholesale and lends on retail basis. Thus, both during lending as also recovery related activities, there is inherently some liquid funds which yields an income. The rate of Interest on Deposits at any point of time is less than that of Borrowing. Thus, the Society at the most can partly compensate the cost of its Borrowing through these floating funds and rarely, if at all, earn a positive margin on such deployment.

The contention as above can be substantiated by reference to the actual inflow and outflow of cash for which the Appellant encloses herewith a month- wise Cash Flow Statement together with a summary thereof covering the entire period from Apr 1, 2005 to Mar 31, 2006. It would be seen there from that on Aug 3, 2005 the Society had received Rs 1,494.67 L as Refinance from NABARD, incidentally at a cost of 6% and 6.25%. Out of this amount, the Society disbursed Rs 419.08 L in 9 tranches to the ARDBs on Aug 4 & 5 and a further Rs 138.81 L during Aug 9- 11 to 3 ARDBs. In addition, 2 remittances were made to branches of the Society during Aug 5- 8.

Similarly, the Appellant receives repayments from its borrower members in hundreds of instalments. Repayment to its lenders, primarily NABARD however, takes place twice a year i.e. Jan 31 and July 31 each year as per schedule fixed by the lender. The society has to accumulate fund to honour its commitments on the scheduled dates. It is the timing difference in recovery of Loans extended by it which is spread throughout the year and the obligation to repay to its own lender only twice a year resulting in some floating fund which when invested yields an Income. Investment of these floating funds which incidentally yields an income is thus very much integral to the business of the society.

Again we submit that the one to one relationship of Investment of the floating funds and its utilization for repayment of the Appellant's dues would be clearly brought out from the attached Payment Statement of NABARD as on May 04, 2005 the payment was made to NABARD for an amount of Rs.7,27,00,000/- out of the maturity proceeds received from the STDs with UBI bearing no. 951, 771/ 408, 951 1T2) 409 and 951,773/ 409, deposited on 24/02/2005 for Rs. 7,05,96,631/-. Again repayment to NABARD on March 07, 2006 for an amount of Rs. 5,00,00,000/-was made out of the maturity proceeds received from STD no. 951983/ 286 with UCO Bank for Rs.2,25,00,000/-.

9. The income of the Society from Deposits with Banks other than Co-operative Banks amounted to Rs 55,08,000 during FY 06. It is impossible to directly link an outflow with a particular inflow on one to one basis and vice versa. Whereas during major part of the year, the deposits made earned an interest lesser than the Borrowing cost, rates of deposits made on Mar 30 was more when compared with that of corresponding Borrowing Cost. The effective rate of Deposit earned by the Society during FY 06 was 6.05%. The minimum Borrowing cost during this period was 6%. Thus, a sum of Rs 54,60,000/- (Rs 55,08,000/ 6.05%* 6%) is the corresponding expenditure in the shape of borrowing cost. It may be noted that there is in addition some management or Transaction cost which is not considered here.

From the above submission the minimum amount of expenditure is Rs.54,50,166 corresponding to Interest earnings of Rs 55,08,000 on STDs with Banks other than Co Operative Banks and this is the amount which should be allowed as deduction and request you to allow such expenditure". (emphasize supplied)

12. On one hand, the assessee is claiming deduction for expenditure relating to interest income, which is to be assessed under the head

“income from other sources”, which as per Section 57, assessee be allowed only to the extent of expenditures directly relatable to the earning of such interest income, but simultaneously on other hand, it is expressing inability to directly link an outflow with a particular inflow on one-to-one basis. Therefore, it is difficult to allow any expenditure as per section 57 of the Income Tax Act. The provisions of section 57 are reproduced as under:-

“57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—

(i) in the case of¹⁷[dividends, other than dividends referred to in section-115-O], or interest on securities, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee;

(ia) in the case of income of the nature referred to in sub-clause (x) of clause (24) of section-2 which is chargeable to income-tax under the head "Income from other sources", deductions, so far as may be, in accordance with the provisions of clause (va) of sub-section (1) of section-36;

(ii) in the case of income of the nature referred to in clauses (ii) and (iii) of sub-section (2) of section-56, deductions, so far as may be, in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of section-30, section-31 and sub-sections (1) and (2) of section-32 and subject to the provisions of section-38 ;

(ia) in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or fifteen thousand rupees, whichever is less.

Explanation.—For the purposes of this clause, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death ;

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;

(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section-56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section.

Following proviso shall be inserted in section-57 by the Finance Act, 2020, w.e.f. 1-4-2021 :

Provided that no deduction shall be allowed from the dividend income, or income in respect of units of a Mutual Fund specified under clause (23D) of section-10 or income in respect of units from a specified company defined in the Explanation to clause (35) of section-10, other than deduction on account of interest expense, and in any previous year such deduction shall not exceed twenty per cent of the dividend income, or income in respect of such units, included in the total income for that year, without deduction under this section”.

13. Thus, only the expenditure, which is made out wholly and exclusively for the purpose of making or earning such income can be allowed. The assessee is claiming that these were statutorily required to be deposited and, therefore, should be held to be for the purpose of business. However, as is held above, since the Tribunal vide its order dated 16.09.2015 disallowed the claim of applicability of section 80P and had given a specific finding for allowing the expenses relating to the income to be assessed under the head “income from other sources” to the ld. Assessing Officer, therefore, this argument of the assessee is no longer tenable. The assessee was required to justify the claim of expenses against the interest income out of the borrowed funds, but has expressed its inability to correlate the same. However, since the ld. Assessing Officer has also not given any specific finding for correlation, but allowed the expenditure as per the calculation done, therefore, in our considered view, this issue is once again restored to the file of ld. Assessing Officer, who would go through the chart filed before us at paras 5 and 6 of the written submission, which is reproduced in the preceding paragraph, and allow the claim of assessee as per law and as per the direction of the Tribunal vide order dated 16.09.2015. It is not the case of the assessee that only the borrowed funds were invested in short-term deposit as no

such correspondence or correlation has been exhibited before us. The assessee shall be at liberty to explain the same before the Id. Assessing Officer, who will allow the claim of deduction of interest on borrowed funds utilized in making the deposits in the Scheduled Banks and others, the earning of interest from which has been assessed under the head “income from other sources” by considering the totality of the facts and circumstances. Hence, this ground of appeal of the assessee is allowed for statistical purposes.

14. As regards Ground No. 1.1, the assessee has made the following submission-

“Claim that expenditure was incurred corresponding to earning the receipts in respect of Training Institute Grant from NABARD of Rs 11,50,707 and Receipts from Training Institute of Rs 19,04,318/-

10. The Appellant Society has been providing training services to the persons associated with the Cooperative sector who came for taking training as arranged by the ICMARD, a unit of your Appellant. In the ICMARD Unit there are 9 floors. 5 (five) of these floors were let out and the income therefrom have been assessed under the head Income from House Property. 2 (Two) nos of these floors were used for the purpose of training and for accommodating the trainees. The balance 2 (two) Floors were used as Administrative Office and canteen. The Society prepared septirate Books of Accounts for ICMARD. The total expenses incurred by the ICMARD were debited to Profit & Loss Account of the said Unit. The Income of the unit are classified as Rent and Maintenance Charges received from the tenants (59,38,478), Receipt from Training Institute (19,04,318) & Grant from NABARD (11,50,707). The expenditure incurred by the unit should be allocated against the Income earned by the unit as stated. In this regard we are enclosing herewith Audited statement of Accounts of ICMARD and Consolidated Audited statement of Accounts for the FY 06 for your kind verification and records. We are providing hereunder the details of allocation of the said expenditure to arrive at the proportionate expenditure allocated to earn Income credited in Profit & Loss account in support of our claim that expenditure was incurred corresponding to earning the receipts in respect of Training Institute Grant from NABARD of Rs 11,50,707 and Receipts form Training Institute of Rs 19,04,318 The details of Expenses allocated against the Income on the basis of Floor occupied are as follows:-

Details of allocation of Expenses between Rent & Others

Particulars	Total	Let out portion	Admin & Canteen portion	Training portion
INCOME	91,66,447/-	59,38,478/-	19,04,318	^ 11,50,707/-
Proportion (Based on no of Floors at ICMARD Building)	9	5	2	
EXPENDITURE				
Rent & Taxes - XV	3,62,870/-	2,27,365/-	67,753/-	67,753/-
Electric Insurance - XV	& 7,70,988/-	3,60,714/-	2,05,137/-	2,05,137/-
Depreciation & Repairs XVI	& 19,36,761/-	10,75,978/-	4,30,391/-	4,30,391/-
Stationery & Printing- XVII	& 70,740/-	39,300/-	15,720/-	15,720/-
Other Exp XVIII	8,97,303/-	4,98,502/-	1,99,401/-	1,99,401/-
Salary Allowance XIX	& 24,88,328/-	4,13,038/-	8,37,645/-	12,37,645/-
Total	65,26,990/-	26,14,896/-	17,56^047/-	21,56,047/-

Training Institute Grant from NABARD - Rs. 11,50,707/-:-

11. The Society received Training Grant from NABARD amounting to Rs. 11,50,707 which was alleged as Other Source Income. It is stated that the Appellant received this amount from NABARD towards part reimbursement of Expenses incurred by the Society for imparting training to the Staffs of the Cooperative Sector. The expenditure was incurred on fooding, lodging, cost of stationery as also salaries of the trainers and the associated personnel like Salary to Principal and its subordinates. The details of reimbursement claimed with NABARD were submitted before the Ld AO for his kind verifications and records. The Ld. ACIT did not consider the same but escaped his duty by commenting that no Expenditure was incurred corresponding to the receipts as stated in para 6 of Page no. 2 of the Order dated 30.12.16.

The reimbursement of Grant from NABARD for an amount of Rs 11,50,707 was against the expenditure on Training for which the total expense as allocated comes to Rs.21,56,047.

Guest Room Charges, Hostel charges, Stipend & Food Charges on Training: Rs 19,04,318.

12. The Society has earned Rs.19,04,318 as Fooding Charges and Service Charges on Training for providing service to the persons who came for taking training as arranged by the ICMARD, a unit of your appellatant. For providing this service, details of expenditure incurred by ICMARD and the same debited in Profit & Loss Account. The details cost allocated to earning Income of Rs 17,56,047- the details of calculation is stated as above under the head Reimbursement of Training cost from Nabard. We thus submit that the expenditure corresponding to this income is Rs 17,56,047 and the same should be netted against the income of Rs 19,04,318. The Ld AO did not consider the same but escaped his duty by commenting that no corresponding Expenditure was incurred for earning the receipts as stated in para 6 of Page no. 2 of his Order dated 30.12.16.

From the above submission the minimum amount of corresponding expenditure to the tune of Rs. 11,50,707/- to earn Training Institute Grant from NABARD of Rs. 11,50,707/- and also the minimum amount of corresponding expenditure to the tune of Rs. 17,56,047/- to earn Receipts form Training Institute of Rs. 19,04,318/- will be allowed as deduction and request to you to allow such expenditure”.

15. The Id. Assessing Officer in the order dated 30.12.2016 in para 6 considered the receipt of interest on house building loan to employees as not attributable to the business of the assessee. Besides, other amounts were also held as not attributable to the business of the assessee and hence not allowable for deduction under section 80P.

“6. Considering the above facts and circumstances, the following receipts are not attributable to the business of the assessee as the assessee engaged for providing loan in agriculture and rural development through its 24 member units with assistance of NABARD:-

(a)	<i>Interest on House Building Loan to Employees</i>	<i>Rs.28.71,843/-</i>
(b)	<i>Building Maintenance</i>	<i>Rs. 13,07,047/-</i>
(c)	<i>Training Institute Grant from NABARI.</i>	<i>Rs. 11,50,707/-</i>
(d)	<i>Receipt from Training Institute</i>	<i>Rs.19,04,318/-</i>

(e)	<i>Commission on Insurance Solicitation</i>	Rs. 68,047/-
(f)	<i>Misc. Receipt</i>	Rs. 46,632/-

So, no corresponding expenses incurred for earning of the above receipts are considered.

16. The ld. Assessing Officer accordingly did not allow any corresponding expenses on the same. However, this is not justified as the direction of the Tribunal was very specific and it was directed that the net income should be brought to tax after deducting the expenses incurred to earn that income.

17. As is mentioned above, the assessee has bifurcated the expenses relating to Training Institute Grant and has also bifurcated the expenses between rental income and others. It is stated that the Guest Room Charges, Hostel Charges, Stipend and Food Charges were incurred on Training while grant of Rs.11,50,707/- was received from NABARD towards part reimbursement of expenses incurred by the Cooperative Society. The ld. Assessing Officer has considered the Training Institute Grant from NABARD at Rs.11,50,707/- and the receipt from Training Institute at Rs.19,04,318/- i.e. total amount of Rs.30,55,025/- as not attributable to the business income of the assessee. However, while granting Training and earning income from Training, the assessee had also incurred expenses and out of the common expenses of rent and taxes, insurance, depreciation, salary allowance etc. it has bifurcated the expenses of Rs.21,50,047/- and claimed the same as relating to the Training portion. Apparently, this was not furnished before the ld. Assessing Officer, Therefore, the view of the ld. Assessing Officer that no

corresponding expenses were incurred for earning of the above receipts is not correct as the expenses relating to training and income from training are to be allowed in accordance with the direction of the Tribunal. Hence this ground of appeal is also restored to the file of Id. Assessing Officer to examine the claim of the assessee. The assessee is directed to submit necessary evidence like vouchers, etc. for the claim of these expenses against the income from the Training Institute and the Id. Assessing Officer is directed to go through the claim and allow the same in accordance with law and in compliance with the direction of the Tribunal issued vide its order dated 26.09.2015 and only net income from Training Institute should be assessed to tax. As income from Training Institute is not attributable to the business of the assessee, therefore, it is not eligible for deduction under section 80P of the Income Tax Act.

18. Ground No. 2 relates to interest received on FD with Scheduled Banks and interest on HBL to staff u/s. 80P(2)(a)(i) of the Act. The Id. Counsel for the assessee has submitted as under:-

“The Ld. AO in original order dated 22/12/2008 in page 4 and 5 alleged that the Interest received on Investment is Income from Other Source of Income and deduction u/s 80P(2)(a)(i) will not be available and referred to the Order of Hon’ble Supreme Court in case of The Totgars’ Cooperative Sale Society Ltd. v. ITO, [322 ITR 283 (SC)]. The Ld. CIT(A)-9/Kol and ITAT -B bench Kolkata vide ITA No. 1068/Koi/2009 uphold the decision of Ld. AO in Original Assessment order on the same ground.

It is submitted that the nature of activity of the Appellant is different from the Income of the stated Society as brought out by us during hearing proceedings. Unlike the Totgars Society, the Appellant is engaged in business of Banking and/ or lending to its Members and during the course of carrying on Banking, the Appellant deposited some fund with Schedule Bank as short Term Deposits to comply the direction of RCS and NABARD as stated in para 5 here in above and also to set it aside to ensure timely honouring of its half-yearly repayment obligation to its refinancer i.e. to NABARD since, the NABARD extends refinance to the Appellant against the Guarantee extended by the Government of West Bengal and any default in

repayment to NABARD would result in revoking of the State Government Guarantee and thus, existence of the Appellant would be in jeopardy as stated in para 6 here in above. Therefore, the aforesaid Fund is not Surplus Fund but only accumulation of fund over the 6 month period with a view to honouring its commitments to its financier. Thus the money that we deal with we parked it with a bank [and not in a godown] and that yielded an income which is very much incidental to our core business.

It would be noted here that whereas Totgars was basically a sale or a Marketing society, the Appellant is primarily a Co-operative Credit Society. In the Totgars case, the Ld. Judges stated in their Order that the said Cooperative Society which is a Sale or a Marketing Society, Invested its surplus funds arising from the sale of Marketing of Agriculture Products in Schedule Bank and Govt. Securities which was not required for the purpose of business.

It would thus be seen that investment in deposits with Banks is very much a business activity of the Appellant; income therefrom is to be computed under the head "Profits and gains from Business" and not under "Income from Other Sources" as unjustly done by the Ld. ACIT and upheld by the CIT (A) / NFAC and accordingly, such earnings is eligible for deduction u/s 80 P (2) (a)".

19. Besides the fact that the issue does not emanate from the order of the Tribunal, it may also be mentioned that in the case of Bihar Rajya Sahakari Bhoomi Vikas Cooperative Bank Limited -vs.- CIT reported in 186 taxman 54 (Patna), it has been held that income earned by a Cooperative Bank by way of interest on P.F. amounts of employees and rent from house property could not be treated as income attributable to the banking business and hence would not qualify for deduction. Since it was not the business of the assessee to lend money to employees and being a Cooperative Bank, its business is to lend money to its members and since the employees do not fall under the category of members, therefore, the claim of allowing deduction under section 80P(2)(a)(i) for interest on HBL to staff is rejected primarily for the reason that the issue does not emanate from the direction of the Tribunal and secondly because the same is otherwise also not allowable. Hence, Ground No. 2 is rejected.

20. Ground No. 3 is general in nature, which does not require any adjudication.

21. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 5th August, 2024.

Sd/-
(Rajpal Yadav)
Vice-President

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 05th August, 2024

Copy to:

1. The West Bengal State Cooperative Agriculture & Rural Development Bank Limited, 25D, Shakespeare Sarani, Kolkata-700017;
2. Assistant Commissioner of Income Tax, Circle-32, Kolkata, 10B, Middleton Road, Kolkata-700071;
3. CIT(A), NFAC, Delhi;
4. The CIT,
5. DR, ITAT, Kolkata Benches, Kolkata;
6. Guard File

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By Order

Assistant Registrar,
ITAT, Kolkata Benches, Kolkata

Laha, Sr. P.S.