

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA No.3985/Del/2024
Assessment Year: 2017-18

Sahkari Ganna Vikas Samiti Limited, C/o-Ayyubi Chamber, Raniganj, Lakhimpur Kheri, Badaun, Uttar Pradesh	Vs.	ACIT-2, Moradabad
PAN :AAZFS2514E		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Sanjay Kumar, Sr. DR

Date of hearing	06.01.2025
Date of pronouncement	06.01.2025

ORDER

This assessee's appeal for assessment year 2017-18, arises against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the "CIT(A)/NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2024-25/1066204467(1), dated 28.06.2024 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Case called twice. None appears at the assessee's behest. It is accordingly proceeded ex-parte.

3. The assessee's instant appeal raised the following substantive grounds:

“(1) The Ld CIT(A) NFAC erred on facts and in law in dismissing the appeal in limine by not condoning the delay in filing of appeal owing to Covid-19 pandemic and without considering that the delay period is covered by the judgement of Hon'ble Supreme Court in Suo moto Writ petition No. 3/2020 and also by the CBDT Circular 10/2021 dated 25.05.2021.

WITHOUT PREJUDICE TO ABOVE

- (2) That the Authorities below erred on facts and in law in not allowing deduction u/s/80P(2)(a)(iii) of 1. T. Act on Interest received on Investments held with Banks in form of FDR's Rs. 18,11,902/- AND Interest on TDS Refund Rs. 12,00,675/-.*
- (3) That the Authorities below erred in relying on the decision of Hon'ble Supreme Court in the case of Totgars Co-Operative Sale Society Ltd. Vs. ITO without appreciating that it was a sale society and the facts of the case of the assessee are distinguishable from the facts prevailing in the case of Totgars Co-operative Sale Society and hence reliance placed on the said judgment is misplaced.*
- (4) That the Authorities below erred on facts and in law in not considering that the A. O. has nowhere demonstrated in the Assessment Order that the Interest Income on FDR's and Saving Bank Accounts was on account of surplus funds of the Society and in absence of such finding the decision of Hon'ble Supreme Court cannot be relied upon in Appellant's Case.*
- (5) That the Authorities below erred on facts and in law in not considering that the Law has used the word "attributable" and not the word "derived" in section 80P so as to include income from sources other than the actual conduct of the Business of the Society and thus Interest Income on FDR's & S. B. A/c is attributable to the business of providing credit facilities and providing assistance to cane growers for better development cane crops.*
- (6) That the Authorities below erred on facts and in law in making addition of Rs. 501105/- without considering that the dividend amount is exempt u/s 10 of IT Act.*
- (7) That the Authorities below erred on facts and in law in not considering that the funds of the Society in form of Share Capital from members and the society being co-operative society is statutorily required to maintain a Reserve Fund of a minimum 25% of its profit and thus the investments in form of deposits with Banks to the extent of the Share Capital and Reserve Funds cannot be said to be made out of surplus funds.*

(8) *That the Authorities below erred on facts and in law in not considering that the P. F. Balance of seasonal employees of society which is held in the form of deposits are not the investments of the society and accordingly interest accruing on the said amount cannot be said to be the Income of the Society.*

WITHOUT PREJUDICE TO ABOVE

(9) *That the Authorities below erred on facts and in law in not allowing proportionate deduction for Management Expenses and Interest paid debited in the Profit and Loss Account.*

(10) *That the Authorities erred on facts and in law in not considering that only the real income/ profit can be Taxed and accordingly, the expenses incurred in earning the said income has to be determined and deducted from the Gross Income.*

(11) *That the addition confirmed is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by CIT (A).*

4. Learned Departmental Representative vehemently argues during the course of hearing that both the lower authorities have rightly disallowed the assessee's 80P deduction claim on interest income herein derived from various cooperative banks.

5. I have given my thoughtful consideration to the assessee's pleadings and Revenue's vehement contention and I am of the considered view that so far as the interest received on the investment made in cooperative banks amounting to Rs.18,11,902/- is concerned, the tribunal's recent decision in case of ITO Vs. Shri Bhairavnath Multistate Cooperative Credit Society Ltd. (2024) 164 taxmann.com 382 (Pune-Trib.) has already decided the issue in assessee's favour as under:

“5. We heard the rival submissions and perused the material on record. We find this issue is no more res integra by virtue of catena of decisions passed by the Coordinate Benches of this Tribunal. In the present case, we find that admittedly the interest income was earned from the investments out of surplus funds made with cooperative banks/societies, the cooperative bank is also a specie of cooperative society, therefore, the interest income earned by the cooperative society from the cooperative banks qualifies for deduction u/s.80(P)(2)(d) of the Act. Such interest also qualifies for exemption u/s.80P(2)(a)(i) as held by the Co-ordinate Bench of Pune Tribunal in the case of Nashik Road Nagari Sahkari Patsanstha Limited Vs. ITO in ITA No.1700/PUN/2017 wherein the Tribunal held as under :-

“9. We heard the rival submissions and perused the material on record. Admittedly, the appellant is a Cooperative society formed under the provisions of Maharashtra Cooperative Societies Act,1960 with the objective of accepting deposits and lending money to its members. The money which is not immediately required for the purpose of lending to the members is deposited with Bank of Baroda in the form of Fixed Deposit. The question is whether the interest so earned qualifies for exemption u/s. 80P(2)(a)(i) of the Act. The AO as well as the CIT(A) were of the opinion that the interest earned from third parties or non- members does not qualify for exemption u/s.80P. It is an admitted position that the interest so earned should be taxed as 'income from other sources' There is a cleavage of judicial opinion among several High Courts on the issue of eligibility of this kind of income for exemption u/s. 80P(2)(a)(i) of the Act. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Cooperative Federation of Housing Building Societies Ltd. 11 taxmann.com 448, the Hon'ble Gujarat High Court in the case of State Bank of India Vs. CIT 389 ITR 578 (Guj.), the Hon'ble Delhi High Court in the case of Mantola Co- operative Thrift & Credit Society Ltd. Vs. CIT 50 taxmann.com 278, the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Punjab State Cooperative Agricultural Development Bank Ltd. 389 ITR 68 and the Hon'ble Kolkata High Court in the case of CIT Vs. Southern Eastern Employees Cooperative Credit Society Ltd. 390 ITR 524 took a view that the income arising on the surplus invested in short term deposits and securities cannot be attributed to the activities of the society and, therefore, not eligible for exemption u/s.80P(2)(a)(i) of the Act. However, the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 taxmann 309 (Kar.) and the Hon'ble Telangana and Hon'ble Andhra Pradesh High Court in the case of Vaveru Co-operative Rural Bank Ltd. v CIT [(2017) 396 ITR took a view that such interest income is attributable to the activities

of the society and, therefore, eligible for exemption u/s.80P(2)(a)(i) of the Act. The Coordinate Bench of Pune Benches in the case of M/s. Ratnatray Gramin Bigar Sheti Sah. Pat Sanstha Maryadit Vs. ITO (ITA Nos.559/560/PUN/2018, dated 11-12- 2018) has taken view in favour of the assessee following the judgment of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra). Respectfully following the decision of the Coordinate Bench, we hold that the interest income earned on the investment of surplus money with banks is also eligible for exemption u/s.80P(2)(a)(i) of the Act. Thus, the grounds of appeal No. 1 & 2 stands allowed."

6. Thus, the order passed by the ld.CIT(A) is in conformity with the settled position of law by virtue of the above discussion. Therefore, we affirm the impugned order directing the Assessing Officer to allow the claim of exemption u/s.80P(2)(a)(i)/80P(2)(d) on the interest income earned on investments made out of surplus funds made with Cooperative banks, Cooperative Societies and Nationalised banks.

6. The assessee is accordingly held entitled for its section 80P deduction claim of Rs.18,11,902/- which represents interest from cooperative banks etc. So far as its latter claim of section 80P relief as interest on TDS refund of Rs.12,00,650/- is concerned, the same admittedly could not be held as "derived" from the eligible business u/s 80P(2)(a)(i) of the Act and impugned disallowance is confirmed to this later extent.

6. This assessee appeal is partly allowed.

Order pronounced in the open court on 6th January, 2025

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 6th January, 2025.
RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi