

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री के.नरसिम्हाचारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON’BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.437 & 438/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2018-19 & 2020-21)

Pandalapaka Primary Agricultural Co-op Credit Society Ltd., 5-28/1, Pandalapaka Biccavole Mandal – 533345 Andhra Pradesh [PAN: AABAP2382G]	v.	Income Tax Officer – Ward – 1 Income Tax Office 3 rd Floor, Deepthi Towers Main Road, Kakinada – 533001
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri I. Kama Sastry, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	08.01.2025
घोषणा की तारीख/Date of Pronouncement	:	28.01.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre,

Delhi [hereinafter in short “Ld.CIT(A)”] vide respective DIN & Order No. as stated below: -

ITA No. & A.Y.	DIN & Order No.	Dated
ITA No. 437/VIZ/2024	ITBA/NFAC/S/250/2024-25/1067075175(1)	26.07.2024
ITA No. 438/VIZ/2024	ITBA/NFAC/S/250/2024-25/1067017500(1)	25.07.2024

2. Since both the appeals are relating to same assessee, these appeals are clubbed and a consolidated order being passed. We now proceed to appeal number in ITA No. 437/VIZ/2024 (A.Y. 2018-19).

ITA No. 437/VIZ/2024 (A.Y. 2018-19)

3. This appeal is filed by the assessee against the order of Ld.CIT(A) vide respective DIN & Order No. ITBA/NFAC/S/250/2024-25/1067075175(1) dated 26.07.2024 for the A.Y. 2018-19 arising out of the order passed under section 144 of Income Tax Act, 1961 (in short ‘Act’) dated 30.01.2024.

4. Brief facts of the case are that, assessee has failed to furnish return of income for the A.Y. 2018-19. According to the information, Ld. Assessing Officer [hereinafter in short “Ld. AO”] noticed that the assessee received a commission of Rs. 58,07,237/- during the impugned assessment year and thereby issued a notice dated 22.03.2022 under section 148A(b) of the Act to submit the response with supporting documents on or before 29.03.2022 after obtaining prior approval from the PCIT, Visakhapatnam – 1. In response,

assessee submitted reply through E-mail on 24.03.2022 stating that assessee is eligible for deduction under section 80P of the Act and therefore issuance of notice under section 148A(a) of the Act is not warranted. Ld. AO did not accept the reply of the assessee and decided that it is a fit case of issue of notice under section 148 of the Act for the A.Y. 2018-19 and thereafter passed order under section 148A(d) of the Act on 30.03.2022.

5. Ld. AO then proceeded to issue notice under section 148 of the Act on 02.04.2022. In response, assessee submitted return of income on 09.04.2022. Subsequently, notice under section 142(1) of the Act was issued and served on the assessee along with the questionnaire. A reminder on 07.07.2023 and notice under section 142(1) of the Act on 07.07.2023 was issued and served on the assessee. In compliance, assessee filed a reply on 14.08.2023 enclosing the Registration details and other documents as detailed in the order of the Ld. AO. Ld. AO noticed that the assessee while filing the return of income claimed deduction of Rs.49,53,669/- under section 80P of the Act. Ld. AO observed that the return is not e-verified by the assessee, therefore considered it as invalid return. Thereafter, he determined the total income at Rs. 1,07,60,906/- by making the following additions: -

Sl.NO.	Description	Amount in Rs.
(i)	Commission Receipts	Rs.58,07,237/-
(ii)	Deduction claimed under section 80P	Rs. 49,53,669/-

6. Being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A). The main contention before Ld. CIT(A) is that the Ld. AO has erred in taxing the same income twice. Ld. CIT(A) agreed to the submissions of the assessee and deleted the addition of Rs. 58,02,237/-. With respect to the disallowances of Rs. 49,53,669/- claimed as deduction under section 80P of the Act the Ld. CIT(A) confirmed the order of the Ld. AO.

7. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising following grounds of appeal: -

“1. The reopening of assessment for this assessment year is bad in law as the show cause notice under section 148A(b) dated 22.03.2022 has not given the minimum time prescribed under the section.

2. The reopening of assessment for this assessment year is bad in law as the assessee has not been furnished with the material/information relied on along with the show cause notice under section 148A(b).

3. The reopening of assessment for this assessment year is bad in law as the assessee has not been furnished with the copy of the approval of the specified authority along with the order under section 148A(d).

4. The CIT(Appeals), National Faceless Assessment Centre is not justified in denying the claim for deduction of Rs. 49,53,669 under section 80P of the Income-tax Act, 1961.

5. All the above grounds of appeal are mutually exclusive and without prejudice to one another.

6. The appellant craves leave to add to; alter; modify; amend or delete all or any of the above grounds of appeal.”

8. Ground Nos. 1, 2 & 3 challenges the issuance of notice under section 148(b) of the Act without giving the minimum prescribed time as allowed

under the section. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] vehemently argued that the notice under section 148(b) was issued on 22.03.2022 requesting the assessee to submit its response on or before 29.03.2022. The Ld.AR submitted that no “7” clear days were allowed in the notice for filing the response. He vehemently argued that the “2” days being the date of issuance of notice and the end date for compliance should be excluded for the consideration of “7” clear days permissible under the Act.

9. Ld.AR relied on the decision of the Hon’ble High Court of Rajasthan in the case of *Bijendra Singh v. PCIT* in Civil Writ Petition No. 6852 of 2022 dated 04.01.2024 and stated that both the terminal days be excluded for the purpose of complying with the requirement of “not less than 7 days”. Ld.AR also relied on the decision of the Hon’ble High Court of Karnataka in the case of *Rangaswamaiah Ravikumara v. ITO & others*, in Writ Petn. No. 14654 of 2024 dated 03.07.2024 wherein it was held that the time afforded in the notice is less than 7 days and hence prejudice is being caused due to non-adherence to the time period under section 148A(b) requires to be accepted. He pleaded that in this case, assessee was issued notice on 22.03.22 to comply with it on or before 29.03.2022.

10. Further Ld.AR also submitted that the Ld. AO has not provided the relevant information and material relied upon for the issuance of notice under

section 148A(b) of the Act. On this issue, Ld.AR placed reliance in the case of Union of Inda & Ors. v. Rajeev Bansal [(2024) 8 NYPCTR 1291 (SC)] wherein in Para No. 106 of the order, the Hon'ble Supreme Court has held that the Ld.AO were deemed to have been inhibited from acting in pursuance of the section 148A(b) notice till the relevant material was supplied to the assesseees. Ld.AR also placed reliance in the case of Anurag Gupta v. ITO by the Hon'ble Bombay High Court in Writ Pet No. 10184 of 2022 dated 13.03.2023 wherein it was held that issuance of notice under section 148A(b) of the Act without furnishing the material based upon which the information is provide, would render an assessee handicapped in submitting an effective reply to the show-cause notice, thereby rendering the purpose and spirit of section 148(b) of the act totally illusive and ephemeral. Further Ld.AR also submitted that the Ld.AO has not provided the copy of approval by the PCIT for the issuance of notice under section 148 of the Act. He therefore pleaded that in the absence of providing the clear seven days to submit reply to the notice under section 148(b) of the Act which caused prejudice to the assessee and hence the proceedings initiated under section 148 of the Act consequent to such invalid notice is *void abinito*.

11. Per contra, Ld. Departmental Representative [hereinafter in short "Ld.DR"] fully supported the orders of the Revenue Authorities and stated

that in response to the notice dated 22.03.2022 assessee has furnished its reply through E-Mail on 24.03.2022. She therefore pleaded that assessee cannot claim prejudice for not providing clear seven days' notice. Further Ld. DR also submitted that assessee furnished full reply to the show-cause notice and has not sought any time for furnishing documents or further reply to substantiate the deductions claimed under section 80P of the Act. Ld. DR also submitted that assessee has not filed his return of income and has filed it only in response to the notice under section 148 of the Act. Ld. DR also submitted that assessee has not raised its objection before the First Appellate Authority regarding the validity of the notice used under section 148(b) of the Act. Ld. DR stated that it is an afterthought of the assessee to raise this legal issue after complying with the notice and replying through E-Mail dated 24.03.2022. She therefore pleaded that order of the Revenue Authorities be upheld.

12. We have heard both the sides and perused the material available on record including the cases cited by the parties. It is an admitted fact that the assessee is a non-filer for the impugned assessment year. However, in response to the notice under section 148 of the Act assessee has filed return of income by claiming the deduction under section 80P of the Act for Rs. 49,53,669/-. The return of income was filed belatedly by the assessee and only in response to the notice under section 148 of the Act. Section 80AC(2)

was amended w.e.f. 01.04.2018 to allow any deduction under any provision of this chapter under the heading “C. – *Deductions in respect of certain incomes*” shall be allowed only when the assessee furnished the return of income within the due date specified under section 139(1) of the Act. Section 80AC(2) is extracted below for reference: -

“80AC.

(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes",

no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.”

13. Further it is also noticed that the assessee while filing the return of income in compliance to notice under section 148 of the Act on 09.04.2022 has not e-verified the return and hence it is considered as invalid return by the Ld.AO. Section 80A sub-section 5 of the Act allows deduction under the Chapter Deduction and expenses “C. – *Deductions in respect of certain incomes*” only when the return of income is filed by the assessee. In the instant case, return of income is considered as invalid and considered as not filed by the assessee.

14. Further we do not agree with the contentions of the Ld.AR on the legal issue that the clear seven days has not been provided to the assessee to

respond to the notice under section 148A(b) of the Act. The defence taken by the Ld.AR does not have any merit as the assessee has responded fully without seeking any time for submission of any additional information or otherwise, through E-Mail dated 24.03.2022. Assessee in its reply dated 24.03.2022 has contended that it is entitled for deduction under section 80P of the Act and has requested to withdrawal of notice under section 148A(a) of the Act. Therefore, in our considered view no prejudice is being caused to the assessee for not providing the clear seven days as required under section 148(b) of the Act, to invalidate the proceedings. The cases relied on the Ld.AR is of no help to the assessee since the facts are distinguishable that in those cases assessee has not responded whereas in the instant case assessee has responded within two days i.e., for the notice dated 22.03.2022 on 24.03.2022. We are therefore inclined to dismiss the legal ground raised by the assessee. Ground Nos. 1, 2 & 3 are dismissed.

15. On merits, Ld.AR argued that with respect to Ground No. 4 by stating that the assessee has filed return of income in response to notice under section 148 of the Act belatedly and therefore entitled for deduction under section 80P of the Act. Ld.AR therefore pleaded to delete the disallowances of the claim of deduction made by the assessee under section 80P of the Act.

16. Per contra, Ld. DR submitted that even though assessee has filed return of income in response to the notice under section 148 of the Act assessee has not e-verified the return of income, thereby causing the return of income as invalid. In the absence of valid return of income, the deduction claimed by the assessee could not be allowed and the Ld. CIT(A) has rightly upheld the order of the Ld. AO.

17. We have heard both the sides and perused the material available on record. It is an admitted fact that the assessee has not e-verified the return of income filed in response to the notice under section 148 of the Act on 09.04.2022. Section 80A sub-section 5 of the Act is reproduced below for reference: -

“80A

(5) Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading "C.— Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder.”

18. From the bare reading of the above sub-section 5 of the Act, no deduction shall be allowed to assessee under any provision of the chapter under the heading “C. – *Deductions in respect of certain incomes*” in the absence of a valid return filed by the assessee, and hence the Ld. AO has rightly disallowed the claim of the assessee made under section 80P of the

Act. We therefore find no infirmity in the order of the Ld. CIT(A) thereby dismissing the grounds of the assessee on merits. Thus Ground No. 4 raised by the assessee is dismissed.

19. Ground No. 5 & 6 are general in nature and needs no adjudication.

20. In the result, appeal of the assessee is dismissed.

ITA No. 438/VIZ/2024 (A.Y. 2020-21)

21. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2024-25/1067017500(1) dated 25.07.2024 for the A.Y. 2020-21 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 13.09.2022.

22. At the outset, it is noticed from the appeal record that there is a delay of 26 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the petition which is as under:

“1. That the society has filed a return of income for the Assessment Year 2020-21 on 28.12.2020 returning a taxable income of NIL after claiming deduction under section 80P

2 That the Assessment Unit, National Faceless Assessment Centre has passed an order under section 143(3) r.w.s. 144B dated 13.09.2022 by disallowing adding Rs.16,15,079/- being deduction claimed under section 80P towards income derived from investments under section 80P(2)(d) being a co-operative society.

3. That the ld. CIT(A) confirmed the disallowance of deduction claimed under section 80P(2)(d) amounting to Rs.16,15,079. The order was passed on 25.07.2024.

4. That the Chartered Account Shri. Ashok Bhagavathula who is looking after our tax matters since a very long time is a senior citizen suffering from many ailments. His wife is also suffering from many ailments. He is presently residing in Bangalore for undergoing treatment.”

23. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR, we find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 26 days. Therefore, we hereby condone the delay of 26 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

24. Brief facts of the case are that, assessee is a cooperative society registered under Registrar of Cooperative Societies, Government to AP whose main object is to provide agricultural loans by borrowing loans from District Central Cooperative Bank, purchases fertilizers and seeds. Assessee filed its return of income on 28.12.2020 declaring a total income of Rs. NIL and the return was summarily processed under section 143(1)(a) of the Act on 25.11.2021 on total

income of Rs. 13,24,110/- after making adjustment to the returned income. Thereafter the case was selected for limited scrutiny for verification of deduction claimed under section 80P of the Act. Accordingly, statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee, calling for information. In response filed its submissions. On perusal of the submissions, Ld. AO noticed that assessee has invested surplus fund of Rs.1,01,81,131/- with the D.C.C.BANK, RAYAVARAM. Since the deduction under section 80P of the Act is available only for the profits and gains of the business of assessee (providing credit facilities to the members), the said deduction is not available to the interest income which is in the nature of 'other income' or 'income from other sources'. Accordingly show-cause notice was issued why the amount of Rs. 16,15,079/- received towards income on investments and deduction claimed under section 80P(2)(d) of the Act should not be disallowed and added back to the returned income pertaining to A.Y.2020-21. In response, assessee submitted its reply and the same is not accepted by the Ld.AO. Therefore, Ld. AO observing that out of this interest of Rs. 16,15,079/-, Rs.13,00,923/- was already adjusted while processing the return and therefore, Ld. AO added Rs.3,14,156/- (Rs.16,15,079/- less Rs.13,00,923/-) and completed the assessment on total Income of Rs. 16,38,266/- under section 143(3) r.w.s. 144B of the Act on 13.09.2022.

25. Aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld.CIT(A), NFAC, Delhi. Assessee submitted similar information before Ld.CIT(A). Ld. CIT(A) after considering the submissions made by the assessee dismissed the appeal of the assessee.

26. Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising the following revised grounds of appeal: -

“1. The Assessment Unit, National Faceless Assessment Centre is not justified in disallowing Rs.16,15,079/- under section 80P(2)(d) and the Ld.CIT(Appeals), National Faceless Assessment Centre is not justified in confirming the same.

2. All the above grounds of appeal are mutually exclusive and without prejudice to one another.

3. The appellant craves leave to add to; alter; modify; amend or delete all or any of the above grounds of appeal.”

27. The only issue contested by the assessee is with respect to disallowance of interest under section 80P(2)(d) of the Act considering the interest received from a cooperative bank is not eligible for deduction u/s 80P(2)(d) of the Act. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee is a cooperative society registered under the Registrar of Cooperative Societies, Government of AP. Ld.AR further submitted that the assessee is not a cooperative bank and has invested its surplus funds which were immediately not required by the members, in a cooperative bank to earn interest. Ld.AR further submitted that the provisions of section 80P is not

applicable only to cooperative banks and not to cooperative societies. He therefore, pleaded that the deduction claimed by the assessee under section 80P(2)(d) of the Act be allowed.

28. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully supported the orders of the revenue authorities. Ld. DR argued that as per provisions of section 80P(2)(d) of the Act, interest earned from investments with any other cooperative society is only exempted not the interest from cooperative banks. On this issue, Ld. DR placed reliance on the decision of the Hon’ble High Court of Karnataka in the case of Pr.CIT v. Totagars Co-operative Sale Society [2017] 395 ITR 611 (Karnataka).

29. We have heard both the sides and perused the material available on record including the cases cited by both the parties. The main grievance of the assessee is with respect to denial of deduction under section 80P(2)(d) of the Act in respect of interest income received from cooperative banks. The provisions of section 80P(1) of the Act allows deduction under section 80P(2) of the Act to an assessee being a cooperative society. Section 80P(2)(d) of the Act is reproduced below for ready reference: -

"80P. Deduction in respect of income of co-operative societies.

(1)

(2) *The sums referred to in sub-section (1) shall be the following, namely:-*

(a)

(b)

(c)

(d) *in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;”*

30. From the bare reading of the provisions of section 80P(2)(d) of the Act, assessee should satisfy two conditions namely (i) income by way of interest or dividend is earned by the cooperative society from the investments; and (ii) such investments should be with any other cooperative society. The term “cooperative society” is defined under section 2(19) of the Act as under: -

“(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912(2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;”

31. In the instant case, it is not disputed that assessee is a cooperative society and therefore any income referred in sub-section (2) of Section 80P of the Act which is included in the gross total income of the assessee, shall be allowed as deduction. The revenue denied the deduction under section 80P(2)(d) of the Act stating that interest income is earned from the cooperative bank whereas in the said provision only grants deduction in respect of interest earned from

cooperative society. The Hon'ble High Court of Madras in the case of Thorapadi Urban Co-op Credit Society Limited v. ITO (supra) held as follows: -

“10. A reading of the above definition would make it clear that 'Co-operative Society' means a Co-operative Society registered under Co-operative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a co-operative society as defined under the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank.”

32. The Hon'ble High Court of Madras in the case of CIT v. The Salem Agricultural Producers Co-Operative Marketing Society Ltd (supra) also affirmed the view that interest income earned from cooperative bank by cooperative society is also eligible for deduction under section 80P(2)(d) of the Act. Further various Co-ordinate Benches of the Tribunal had consistently taken a view and held that interest income earned from cooperative bank were allowable as deduction under section 80P(2)(d) of the Act. Further, we are also of the considered view that provisions of section 80P(4) excludes only cooperative banks possessing licence from RBI to do banking business, to claim deduction u/s 80P(2) of the Act. Therefore, it is relevant only in the case of cooperative banks which is claiming deduction u/s 80P and does not apply to deposits made with the cooperative bank which is also a registered cooperative society under the Cooperative society Act, 1912 (2 of 1912) or under any other law for the time being in force in any state for the registration of cooperative

societies. The case relied on by the Ld.DR is distinguishable on the facts that, in that case, the surplus funds which are liable to be paid to its members and shown on the liability side of the balance sheet was deposited with cooperative banks in order to circumvent the decision of the Hon'ble Supreme Court in the case of Totgar's cooperative Sale Society Ltd. v. ITO [(2010) 322 ITR 283]. Since the facts in the instant case are different, this case is not of any help to the revenue. We are therefore inclined to set-aside the order passed by the Ld.CIT(A) and direct the Ld. AO to allow the deduction claimed by the assessee under section 80P(2)(d) of the Act. Thus, Ground raised by the assessee is allowed.

33. In the result, appeal of the assessee is allowed.

34. To sum-up, appeal filed by the assessee in ITA No. 437/Viz/2024 is dismissed and the Appeal in ITA No. 438/Viz/2024 is allowed.

Order pronounced in the open court on 28th January, 2025.

Sd/-

(के.नरसिम्हाचारी)

(K.NARASIMHA CHARY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 28.01.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Pandalapaka Primary Agricultural Co-op Credit Society Ltd.,**
5-28/1, Pandalapaka
Biccavole Mandal – 533345
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 1**
Income Tax Office
3rd Floor, Deepthi towers
Main Road, Kakinada – 533001
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam