

**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. 89/Asr/2021**  
Assessment Year: 2017-18

The Urapar Coop. Agri.  
Service Society Ltd.,  
VPO, Urapar, Nawanshahr.  
[PAN: AAATT 4076F]  
**(Appellant)**

**V.** The Asstt. Commissioner of  
Income Tax, Circle-2,  
Jalandhar  
**(Respondent)**

Appellant by Sh. Rakesh Joshi, Adv.

Respondent by Sh. S. M. Surendranath, Sr. DR

Date of Hearing : 16.05.2023  
Date of Pronouncement : 23.05.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 31.07.2021 in respect of Assessment Year 2017-18 whereby challenging

the confirmation of addition of Rs.54,00,164/- on account of disallowance of deduction claimed u/s 80P(2)(d) of the Income Tax Act, 1961.

2. Briefly, facts of the case are that the assessee is a co-operative agricultural service society dealing in the business of providing credit facility to its members and it is formed for the purposes of development of agriculture. The assessee is duly registered under the Punjab Societies Registration Act, 1961, with the office of The Registrar co-operative societies, Punjab (A.O. page 1, in para 2). During the Assessment Year 2017-18, the year relevant, the assessee deposited its reserve funds with The Nawanshahr Central Co-operative Bank Ltd; Nawanshahr [another co-operative society] in the shape of FDR and Saving Bank Account. The assessee received interest from the Banks during the year under consideration to the tune of Rs. 1,35,63.303/-. The AO had denied deduction of a sum of Rs. 54,00,164/- out of the said interest income claimed by the appellant from Banks under section 80-P(2)(d) of the Income Tax Act, 1961, by applying the provisions of sub-section 4 of section 80-P of Act. That the Ld. Assessing Officer erred in law and facts of the case in making the addition of the said interest income of Rs.54,00,164/- to the returned income of the assessee relying on the case

of "Totgar's Co-operative Sale Society Ltd; Vs. Income Tax Officer as reported in (2010) 322 ITR 283.

3. The Ld. CIT(A) has confirmed the finding of the AO. The appellant challenged the action of the CIT(A)/NFAC, Delhi in confirming the action of the Ld.AO is against law and facts of the case.

4. At the outset, the ld. counsel for the assessee submitted that the ld. CIT(A)/NFAC has erred in law and the facts on record by confirming the disallowance of deduction u/s 80P(2)(d) of the Income Tax Act without appreciating the primary facts that the appellant-assessee is a Co-operative Society and not a Co-operative Bank. The appellant-assessee being a Co-operative Society, it is eligible for exemption on its entire interest income received from the investment with a Co-operative Bank as deductible u/s 80(2)(d) of the Income Tax Act. He contended that the appellant's case is squarely covered by the judgment of the co-ordinate Bench of ITAT Amritsar Bench given in the case of Khaira Majja Co-operative Agricultural Multipurpose Society Ltd. v. Asstt. CIT, Circle-IV, Jalandhar in ITA No. 540/Asr/2017 order dated 28.08.2019 wherein the judgment of the Hon'ble Apex Court in the case of M/s Totgars Co-operative Sales Society Ltd. has been considered. The relevant part of the judgment is reproduced hereunder:

“5. I heard the Ld DR and perused the record. I notice that an identical issue was considered by Mumbai SMC Bench of the Tribunal in the case of Gandhinglaj Taluka Sahakari Patpedhi Ltd (supra) and decided the issue in favour of the assessee. For the sake of convenience I extract below the order passed by the Tribunal in the above said case:

“The assessee has filed this appeal challenging the order dated 3.6.2014 passed by Id CIT(A)-26, Mumbai and it relates to the assessment year 2010-11. The assessee is aggrieved by the decision of Id CIT(A) in holding that the interest income earned on the deposits kept with banks is not eligible for deduction u/s 80P(2)(a)(i) of the Act and hence liable to be assessed as income from other sources.

2. The facts relating to the above said issue are stated in brief. The assessee is a co-operative credit society registered under Maharashtra Co-operative Society Act, 1960. The main objects of the society is to provide credit/loans to its members and collect deposits from its members by way of fixed deposits, saving deposits and daily recurring deposits. The assessee filed its return of income for the year under consideration declaring NIL income after claiming deduction u/s 80P(2)(a)(i) of the Act. Sec. 80P(1) of the Act provides for deduction of income specified in sec. 80P(2) in case of an assessee, being a co-operative society. Sec. 80P(2)(a)(i) provides deduction of the whole of the amount of profits and gains of business attributable to any one or more of such activities. Since the assessee is a co-operative society engaged in carrying on the business providing credit facilities to its members, it claimed deduction u/s 80P(2)(a)(i) of the Act. However, sec. 80P(4) was inserted by Finance Act 2006 w.e.f. 1.4.2007 and the same reads as under:-

“80P(4) The provisions of this section shall not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank.

According to Explanation given under sec. 80P(4), the expressions “Co-operative Bank” and “Primary agricultural credit society” shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949. The expression “primary co-operative agricultural and rural development bank” means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities.

3. The assessing officer, after referring to the provisions of Banking Regulation Act, held that the assessee is a bank and hence it is hit by the provisions of sec. 80P(4) of the Act. Accordingly he rejected the claim for deduction u/s 80P of the Act.

4. In the appellate proceedings, the Id CIT(A) held that the assessee cannot be considered to be a co-operative bank. On this decision, the revenue has not come on appeal before the Tribunal and hence the finding given by Ld CIT(A) has attained finality. Since the assessee is not considered as bank, the provisions of sec. 80P(4) shall not apply and hence the original ground on which the AO had denied deduction u/s 80P(2)(2)(a)(i) stood reversed by Ld CIT(A).

5. The Ld CIT(A), however, noticed that the assessee has earned interest income from fixed deposits maintained with various banks. The Ld CIT(A) took the view that the above said interest income cannot be held to be income generated from business activities and hence the same is required to be assessed under the head income from other sources, in which case the deduction u/s 80P(2)(a)(i) of the Act is not available to it. The assessee submitted that it is holding statutory reserves to the tune of Rs.115.51crores under various heads and they have been parked in deposits with Scheduled banks and co-operative banks. Accordingly it was submitted that these interest income also derived from carrying on its business activities and hence the same is exempt u/s 80P(2)(a)(i) of the Act. In the alternative, it was submitted that the interest received from deposits kept with Co-operative societies is exempt u/s 80P(2)(d). The Ld CIT(A) was not convinced with the contentions of the assessee and accordingly held that the interest income received from deposits cited above is assessable as income under the head Income from other sources and accordingly held that the deduction u/s 80P(2)(a)(i) is not available to it. In this regard, he placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd (2010) (229 CTR (SC) 209 : [2010] 35 DTR (SC) 25 : [2010] 322 ITR 283 (SC) : [2010] 188 Taxman 282 (SC). Aggrieved, the assessee has filed this appeal.

6. I heard the parties and perused the record. I notice that an identical issue was considered by me in the case of M/s Jaoli Taluka Sahakari Patpedhi Maryadit vs. ITO in I.T.A. No. 6627/Mum/2014 relating to AY 2010-11 and I have decided the issue in favour of the assessee, vide my order dated 10.8.2015. For the sake of convenience, I extract below the operation portion of the said order:

*“9. I heard the parties and perused the record. In my view, the decision rendered by Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd (supra) squarely applies to the facts of the present case. In the case before the Hon'ble Karnataka High Court also, the assessee claimed deduction u/s 80P(2)(a)(i) on the interest income earned from deposits kept with banks on the reasoning that the same shall form part of its business income. The Hon'ble High Court upheld the said view by duly considering the decision rendered by Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd (supra). For the sake of convenience, I extract below the observations made by the Hon'ble Karnataka High Court:*

*“8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.*

*9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of*

*its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee -Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.*

*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] 244 CTR (AP) 86: [2011] 60 DTR (AP) 281: [2011] 336 ITR 516 (AP): [2011] 200 Taxman 220 (AP). 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:"*

*7. Consistent with the view taken in the case of M/s Jaoli Taluka ahakari Patpedhi Maryadit (supra), I hold that the interest income is assessable as profit and gains of business in the hands of the assessee and accordingly, it is liable for deduction u/s 80P(2)(a)(i) of the Act. Accordingly, I set aside the order of the Id.CIT(A) on this issue and direct the AO to allow deduction u/s 80P of the Act on the interest income also."*

6. I also notice that Amritsar SMC bench has also taken an identical view in the case of *The Lambra Kangri Multipurpose Co-operative Service Society vs. DCIT* (ITA Nos. 607 & 419 (Asr)/2015 dated 22.04.2016). Accordingly, consistent with the view taken in the above said cases, I hold that the interest income earned from bank deposits is assessable as profits and gains of business in the hands of assessee and accordingly deduction u/s. 80P(2)(a)(i) of the Act is allowable thereon. Accordingly I set aside the order passed by the Ld CIT(A) on this issue in both the years under consideration and direct the AO to allow the deduction u/s. 80P of the Act on the impugned interest income also in both the years."

5. The Id. counsel has also placed reliance on the judgment delivered by Hon'ble Apex Court in the case of *Pr. CIT 17, Mumbai v. M/s Annasaheb Patil Mathadi Kamgar Sahakari* in Civil Appeal No. 8719/2022 dated April 20, 2023 wherein the Hon'ble Apex Court adjudicated the following question of law considered by the High Court:

*"Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified as claimed by the assessee on the ground that the assessee, a co-operative credit society and is not a bank for the purpose of Section 80P(4) of the Act?"*

*Apart from the fact that against the relied upon decision in the case of M/s. Quepem Urban Co-operative Credit Society Ltd. (supra), the Special Leave Petition has been dismissed, having heard learned counsel appearing on behalf of the respective parties, the issue involved in the present appeal is squarely covered against the Revenue in view of the decision of this Court in *Mavilayi Service Cooperative Bank Limited and Others Vs. Commissioner of Income Tax, Calicut and Another* (2021) 7 SCO 90. This Court, in the aforesaid decision has specifically observed and held that primary Agricultural Credit Societies cannot be termed as Co-operative Banks under the Banking Regulation Act and, therefore, such credit societies shall be entitled to exemption under Section 80(P)(2) of the Income Tax Act, 1961.*

*Ms. Aakansha Kaul, learned counsel appearing on behalf of the appellant/Revenue has tried to submit that the respondent/Assessee will fall*



*under the definition of Co-operative Bank as their activity is to give credit/loan. However, it is required to be noted that merely giving credit to its members only cannot be said to be the Co-operative Banks/Banks under the Banking Regulation Act. The banking activities under the Banking Regulation Act are altogether different activities. There is a vast difference between the credit societies giving credit to their own members only and the Banks providing banking services including the credit to the public at large also.*

*There are concurrent findings recorded by CITA, ITAT and the High Court that the respondent/Assessee cannot be termed as Banks/Cooperative Banks and that being a credit society, they are entitled to exemption under Section 80(P)(2) of the Income Tax Act. Such finding of fact is not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India. Even otherwise, on merits also and taking into consideration the CBDT Circulars and even the definition of Bank under the Banking Regulation Act, the respondent/Assessee cannot be said to be Co-operative Bank/Bank and, therefore, Section 80(P)(4) shall not be applicable and that the respondent/Assessee shall be entitled to exemption/benefit under Section 80(P)(2) of the Income Tax Act.”*

6. The Id. DR relied on the order of Id. CIT(A). He failed to rebut the contention of the Ld. AR and the citations of Hon'ble Apex Court.

7. Heard the rival contentions, perused the material available on record and the citation placed before us. Admittedly, the appellant-assessee is a Co-operative Society and not a Co-operative Bank. The appellant-assessee being a Co-operative Society, it is eligible for exemption on its entire interest income received from the investment with a Co-operative Bank as deductible u/s 80P(2)(d) of the Income Tax Act.

8. Respectfully following the Hon'ble Apex Court in the case of "Mumbai v. M/s Annasaheb Patil Mathadi Kamgar Sahakari", (Supra) and Coordinate Bench Amritsar, we hold that since, appellant society being a cooperative society and investment in FDR's was made in another cooperative Society and hence, it is eligible for deduction u/s u/s 80P(2)(d) of the Income Tax Act.

9. In view of the that matter, we accept the grievance of the assessee as genuine. The impugned order is set aside and the Addition of Rs. 54,00,164/- is deleted, accordingly.

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

*Order pronounced in the open court on 23.05.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

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