

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 703/Chd/2022
निर्धारण वर्ष / Assessment Year : 2018-19

The Balduhak Co-operative Agriculture Service Society Ltd. Balduhak, Tehsil, Putrial Nadaun, Hamirpur	बनाम	The ITO Hamirpur, H.P
स्थायी लेखा सं./PAN NO: AABAT1341B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Alok Krishan, C.A
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 31/01/2024
उद्घोषणा की तारीख/Date of Pronouncement : 16/02/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), NFAC, Delhi dt. 21/09/2022 pertaining to Assessment Year 2018-19.

2. At the outset, it is noted that there is delay in filing the appeal by 3 days as pointed out by the Registry. After hearing both the parties and pursuing the affidavit filed by the assessee society, we find that there was reasonable cause for the delay and the delay is hereby condoned and the appeal is admitted for adjudication.

3. In the present appeal, the assessee has challenged the action of the Ld. CIT(A), NFAC, Delhi in sustaining the disallowance claimed by the assessee society under section 80P(2)(d) of the Act amounting to Rs. 20,51,316/-.

4. The facts which are emerging from the record and are relevant for adjudication of the matter before us are that the assessee is a cooperative

society engaged in providing short term agriculture credit to its members and had also acted as an agent on behalf of Government of Himachal Pradesh for supply of food grains under the PDS system during the financial year relevant to the impugned assessment year.

4.1 During the year under consideration, it filed its return of income claiming deduction under section 80P amounting to Rs. 25,73,020/- and which includes deduction under section 80P(2)(d) of the Act amounting to Rs. 20,51,316/- in respect of interest income on deposits placed with Kangra Central Cooperative Bank (KCCB) Ltd.

4.2 The Assessing officer was of the view that since assessee has received interest income from a cooperative bank and not a cooperative society, the assessee was not eligible for claim of deduction under section 80P(2)(d) of the Act and accordingly a show cause dt. 12/04/2021 was issued to the assessee as to why the claim of deduction under section 80P(2)(d) should not be disallowed and thereafter, in absence of any response from the assessee, the AO went ahead and disallowed the claim of deduction under section 80P(2)(d) of the Act.

4.3 Here, it is relevant to examine the reasoning adopted by the AO while disallowing the said claim. Referring to the Hon'ble Karnataka High Court decision in case of Totagars Co-operative sale society Ltd. Vs. PCIT(2017) 83 taxmann.com 140(Karnataka), the AO held that though in the said decision, the Hon'ble High Court has observed that a Cooperative bank is a species of Cooperative society, thus taking care of the issue raised by him in the show-cause, at the same time, the AO following the said decision held that the interest earned on deposit would be eligible for deduction under section 80P(2)(d) of the Act only where there is a clear nexus between the interest earned on deposit and the business activity of the assessee society and which was found absent in the present case, the AO concluded that the assessee was

not eligible for claim of deduction under section 80P(2)(d) of the Act and same was disallowed and the income was brought to tax under the head "income from other sources".

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A), NFAC Delhi who has upheld the order of the AO stating that he has relied on the decision of Hon'ble Karnataka High Court in case of Totagars Co-operative sale society Ltd. Vs. PCIT (*supra*) which in turn has drawn direct reference to the first decision in case of Totagars Co-operative sale society Ltd. by the Hon'ble Supreme Court and therefore principle laid down in the said decision has been followed by the AO.

5.1 Further, the Id CIT(A), NFAC Delhi has referred to various other authorities and in particular, the decision of Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Limited 431 ITR 1 (SC) and held that the Cooperative Bank is a Commercial bank and doesn't fall under the purview of Cooperative Society as referred to in Section 80P(2)(d) of the Act and accordingly upheld the finding of the AO.

6. We have heard the rival contentions and also pursued the written submission made by both the parties. We find that the matter is squarely covered by our own findings in case of **Jagadhri Co-operative Marketing Cum Processing Society Ltd. vs. The Pr. CIT** (ITA No. 210/Chd/2023 dt. 12/01/2024) wherein we have held as under:

"15. We have heard the rival submissions and perused the material available on record. The limited dispute relates to claim of deduction under Section 80P(2)(d) of the Act in respect of interest income of Rs. 13,58,969/- received by the assessee cooperative society on deposits placed with Yamuna Nagar Central Co-op Bank Ltd.

16. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a Co-operative Society. Further, Section 80P(2)(d) of the Act provides for deduction 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.

Thus, for the purpose of Section 80P(2)(d) of the Act, there are only two conditions which are required to be cumulatively satisfied, i.e, the income should be by way of interest or dividend earned by a Co-operative Society from its investments, and secondly, such investments should be with any other Cooperative Society. Besides these two conditions, there are no other condition(s) which has been provided in the statute as apparent from the plain reading of the provisions of Section 80P(2)(d) of the Act.

17. The term "co-operative society" as defined under section 2(19) of the Act (19) 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.

18. As per the Id PCIT own findings, as per Section 80P(2)(d), interest income derived by a co-operative society from its investments held with any other cooperative society shall be deducted in computing its total income. Further, she has referred to the amendment by way of insertion of sub-section (4) of sec. 80P, vide the Finance Act, 2006 with effect from 1-4-2007 where the provisions of sec. 80P are no more applicable in the case of a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. As per the Id PCIT, the aforesaid amendment does not jeopardise the claim of deduction of a co-operative society under Section 80P(2)(d) in respect of its interest income on investments/deposits parked with a cooperative bank.

19. In the present case, there is no dispute that the assessee is a Cooperative Society. There is also no dispute that Yamuna Nagar Central Co-op Bank Ltd. is also a Co-operative society. Further, during the course of assessment proceedings, we find that the AO while examining the claim of the assessee under Section 80P observed that out of total claim of Rs 76,77,246/-, the assessee has claimed Rs 50,25,234/- under section 80P(2)(d) of the Act. The AO noted that said claim under section 80P(2)(d) consist of dividend income from KHRIBHCO, IFFCO and HAFED, interest income on deposits placed with HDFC Bank, ICICI Bank, AXIS Bank and Yamuna Nagar Central Co-operative Bank Ltd and referring to the provisions of section 80P(2)(d) of the Act, a show-cause was issued as to why claim of deduction in respect of interest income on deposits placed with HDFC Bank, ICICI Bank, AXIS Bank should not be disallowed and thereafter, after considering the submissions of the case, has returned a finding that such interest income has not been earned from any other Cooperative society but from Scheduled commercial banks and the deduction so claimed from Scheduled commercial banks was denied and while doing so, the AO has allowed the claim of deduction in respect of Yamuna Nagar Central Cooperative Bank Ltd, being the deduction in respect of interest income on deposits with any other Co-operative Society. We therefore find that the AO has duly examined the facts of the present case and has allowed the deduction in respect of interest income received from the Yamuna Nagar Central Co-op Bank Ltd. as being in compliance with the provisions of Section 80P(2)(d) of the Act. Where the facts in the present case and legal position is not in dispute, we therefore don't understand how the Id PCIT in the same breath hold that the assessee shall not be eligible for claim of deduction under section 80P(2)(d) of the Act.

20. Now, coming to the decision of the Hon'ble Punjab and Haryana High Court in case of CIT Vs. Punjab State Cooperative Federation of Housing Building

Societies Ltd (Supra), the question for consideration before the Hon'ble High Court was whether the Tribunal was right in holding that interest income from commercial banks, being attributable to business activity of the assessee qualifies for deduction u/s 80P(2)(a)(i) of the Act ignoring the fact that direct source of income is not the loans advanced to members of the society and it is only the interest income from commercial banks in form of fixed deposits and saving bank accounts. Referring to the decision of the Hon'ble Supreme Court in case of *Totgars Co-operative Sale Society Ltd (Supra)*, it was held that since the judgment of the Tribunal was prior to the judgment of the Hon'ble Supreme Court, the Tribunal did not have the advantage of the said judgment and the matter was decided in favour of the Revenue. We therefore find that the Hon'ble Punjab and Haryana High Court following the decision of the Hon'ble Supreme Court which was also rendered in the context of section 80P(2)(a)(i) held that interest income from commercial banks was not eligible for claim of deduction under section 80P(2)(a)(i) of the Act. Therefore, the said decision rendered in the context of section 80P(2)(a)(i) is distinguishable and doesn't support the case of the Revenue and has been wrongly referred in support while challenging the assessee's claim of deduction on interest income under section 80P(2)(d) of the Act in respect of deposits placed with Yamuna Nagar Central Co-op Bank Ltd.

21. Now, coming to another decision of the Hon'ble Punjab and Haryana High Court in case of *CIT Vs. Doaba Co-op Sugar Mills Ltd. (Supra)*. Briefly the facts of the case were that the assessee, a cooperative society, filed its return of income claiming deduction in respect of interest income received from the cooperative bank. The assessment was completed after making disallowance of the deduction claimed which on appeal has been allowed by the Tribunal and thereafter, the question of law which was proposed by the Revenue for the opinion of the Hon'ble High Court was "whether on the facts and circumstances of the case, the Tribunal is right in law in allowing deduction under section 80P(2)(d) of the Act in respect of interest of Rs. 4,90,919/- on account of interest received from Nawanshahr Central Co-operative Bank without adjusting interest paid to the bank and in that background, the Hon'ble High Court has held as under:

"5. The contention of Mr. Gupta, the learned counsel appearing for the revenue, is that the Tribunal was wrong in allowing deduction under section 80P(2)(d) because it is not established that the assessee had derived interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that the assessee has paid interest to Jalandhar Central Co-operative Bank and has also received interest from the said co-operative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under section 80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of section 80P(2)(d). For facility of reference, it is reproduced as under:

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

So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by now classic words of Rowlatt, J., in *Capce Brandy Syndicate v. IRC [1921] 1 KB 64* :

"... In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." (p. 71)

The principle laid down by Rowlatt, J., has also been time and again approved and applied by the Supreme Court in different cases including the one *Hansraj Gordhandas v. H.H. Dave*, Assistant Collector of Central Excise & Customs AIR 1970 SC 755 at p. 759.

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

22. In the aforesaid decision, the Hon'ble Jurisdictional High Court has referred to the provisions of Section 80P(2)(d) and held that the said provisions does not make any distinction with regard to the source of the investment because this section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It was held that it is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments and the Revenue is not required to look to the nature of investment whether it was from its surplus funds or otherwise. The Hon'ble High Court thus held that the nature and source of investment is not relevant for claiming deduction under Section 80P(2)(d) of the Act, and what is relevant to examine is whether there is any income derived by a cooperative society from any investment with another co-operative society. In the instant case, we therefore find that it is not relevant to examine whether interest income is earned from any specified co-operative activity or it is a case of deployment of surplus funds by the assessee society so long as the interest income is earned from deposits placed with a co-operative society. Where the AO has allowed the claim of the assessee under section 80P(2)(d) of the Act after due examination of the facts of the case, he has rightly followed the dicta laid down by the Hon'ble Jurisdictional High Court and therefore, the order so passed by the AO cannot be held as erroneous in so far as prejudicial to the interest of Revenue.

23. Now, coming to the decisions of the Hon'ble Karnataka High Court, we find that there are two decisions in case of Pr. CIT v. Totagars Co-operative Sale Society and in both of these decisions, the Hon'ble Karnataka High Court has referred to the decision of the Hon'ble Supreme Court in case of Totagars Cooperative Sale Society vs ITO (Supra). In case of first decision referred by the Id AR, it was held that according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. In the latter decision referred by the Id PCIT (he has not referred to the earlier decision), it was held that interest earned by the assessee, a Co-operative Society, from surplus deposits kept with a Co-operative Bank, was not eligible for deduction under Section 80P(2)(d) of the Act. We therefore find that there are divergent views of the non-jurisdictional High Court on the issue of eligibility of deduction under Section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank as against the decision of the Jurisdictional Punjab and Haryana High Court in case of CIT vs Doaba Co-operative Sugar Mills Ltd and the latter shall be our guiding force as far as the present proceedings are concerned.

24. Having said that, we find that in the latter decision of Hon'ble Karnataka High Court in case of PCIT vs. Totgars Co-operative Sale Society (Supra), the Hon'ble High Court has basically laid great emphasis on the provision of Section 80P(4) of the Act and basis interpretation of Section 80P(4) of the Act, the deduction under section 80P(2)(d) has been held to be not eligible. In this regard, we find that the Hon'ble Supreme Court in case of Mavilayi Service Cooperative Bank Ltd. Vs. CIT (supra) while analyzing the provision of Section 80P(4) of the Act has held that Section 80P(4) is a proviso to the main provision contained in Section 80P(1) and 80P(2) and excluded only cooperative banks which are cooperative society and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Therefore Section 80P(2)(4) is relevant only where the assessee is a cooperative bank and who claimed the deduction under section 80P of the Act which is not the facts of the present case. Therefore the said decision of the Hon'ble Karnataka High Court is distinguishable and in any case, the later decision of Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (Supra) wherein the correct legal preposition has been laid down by the Hon'ble Supreme Court has to be followed. Interestingly, as per the Id PCIT own findings, section 80P(4) does not jeopardise the claim of deduction of a co-operative society under Section 80P(2)(d) in respect of its interest income on investments/deposits parked with a cooperative bank and at the same time, she has placed reliance on the said decision of Hon'ble Karnataka High Court. As against that, we find that the AO has referred to the said decision in case of Mavilayi Service Cooperative Bank Ltd. Vs. CIT (Supra) and has thus followed the dicta laid down by the Hon'ble Supreme Court and thus, the order so passed cannot be held as erroneous in so far as prejudicial to the interest of Revenue.

25. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, we find that there is no legal and justifiable basis to invoke the provisions of section 263 by the Id PCIT and therefore, the order so passed u/s 263 is hereby set-aside and that of the AO who has rightly allowed the deduction u/s 80(P)(2)(d) is sustained."

7. In the aforesaid decision, we have considered the various authorities on the subject including the decision of the Jurisdictional Punjab & Haryana High Court in case of CIT Vs. Doaba Co-op Sugar Mills Limited, the decision of Hon'ble Karnataka High Court in case of Totagars Co-operative sale society Ltd., the decision of Hon'ble Supreme Court in case of Totagars Co-operative sale society as well as recent decision of Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Limited. As we have held in the said decision, what needs to be seen for the purpose of Section 80P(2)(d) is that firstly, the income should be by way of interest earned by Cooperative Society from its investment and secondly such investment should be with any other cooperative society. These are only two conditions which have been provided in the statute as apparent from the plain reading of the provisions of Section 80P(2)(d) of the Act and nothing more has to be read and applied/tested besides these two conditions. More particularly, it is not relevant to examine whether interest income is earned from any specified co-operative activity or for that matter, it is a case of deployment of surplus funds. The Hon'ble Supreme Court in case of Mavilayi Service Cooperative Bank Ltd. Vs. CIT (supra) has held that Section 80P(4) is a proviso to the main provision contained in Section 80P(1) and 80P(2) and excludes only cooperative banks which are cooperative society and which possesses a licence from RBI to do banking business and the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks. Therefore Section 80P(2)(4) is relevant only where the assessee claiming the deduction under Section 80P of the Act is a cooperative bank and not where a co-operative society is claiming deduction on deposits placed with a co-operative bank.

8. In the instant case, there is an admitted and undisputed fact that the assessee is a Cooperative Society (and not a co-operative bank) registered with Registrar, Cooperative Society, Himachal Pradesh which was engaged in providing short term credit facility to its members besides acting as an agent on

behalf of the Government of Himachal Pradesh for supplying the food grains under PDS System. Secondly, the Kangra Central Cooperative Bank Ltd. is also a Cooperative Society registered with Registrar, Cooperative Society and necessary registration certificate has been duly submitted before the lower authorities and the same has not been disputed. Therefore, interest income has been earned on deposits placed with a co-operative society and duly eligible for deduction under section 80P(2)(d) of the Act.

9. In view of the same, we find that there is no justifiable basis in denying the claim of deduction by the assessee society under section 80P(2)(d) in respect of interest income on deposit placed with Kangra Central Cooperative Bank Ltd and the same is hereby directed to be allowed.

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

Order pronounced in the open Court on 16/02/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 16/02/2024

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar