

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 211/Asr/2019
Assessment Year: 2015-16**

The Guruharsahai Primary Co-Operative Agricultural Development Bank Ltd. Faridkot Road, Guruharsahai. [PAN: AAEAT3900D] (Appellant)	Vs .	Dy. CIT Circle-3, Ferozpur. (Respondent)
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Appellant by	Sh. P.N. Arora, Adv.
Respondent by	Sh. S.M. Surendra Nath (DR)

Date of Hearing	15.09.2021
Date of Pronouncement	14 .10.2021

ORDER

Per Dr. M. L. Meena, AM:

This appeal of the assessee is directed against the order dated 17.01.2019 passed by the CIT(A), Bathinda. The assessee has raised the following grounds:

"1. That the Ld. CIT (A), Bathinda erred on facts and law in Confirming the disallowance at Rs.5,06,792/- out of

the total disallowance made at Rs.53,77,505/- by the AO after invoking the provisions of section 14A vide order u/s 143(3) dated 12-12-2017 as against Nil income declared in the return after claiming deduction u/s 80P of the Act.

2. That the Ld. CIT(A) erred on facts and law in not allowing enhanced deduction although assessee is entitled to the deduction u/s 80P(2)(a)(i) of the IT Act, 1961 for whole of the income earned from providing credit facilities to its members.

3. That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”

2. The sole issue is related to confirmation of the disallowance of Rs.5,06,792/- out of total disallowance made by AO under provision of section 14A of the IT Act.

3. The brief facts of the case are that the assessee entity is a Primary Co-operative Agricultural Development Bank Ltd. (in short, PADB). The objective of the assessee entity is to promote economic interest of its members by way of providing facilities of long-term loan to its members. PADBs are governed by their apex institution, the Punjab State Cooperative Agricultural Development Bank Limited (in short, SADB), Chandigarh and are required to become its member for the furtherance of its objects. The Punjab State Coop Agricultural Development Bank Limited

(SADB) receives funds from NABARD which works under the guidelines of Reserve Bank of India.

3.1 The assessee society has shown gross total income of Rs.97,94,361/- in the return of income and thereafter claimed deduction u/s 80P of the Income Tax Act. 1961, as a result of which total income comes to NIL. From the perusal of profit & loss account, it is seen that the assessee entity has shown income as "Interest received on investments" at Rs. 14,59,596/-. "Interest received from FD" at Rs.40,13,727/- and "Dividend received from SADB" at Rs.5,06,792/-. It is learnt that the assessee entity is having it - shares invested with SADB from which it was in receipt of dividend income. Also, it had investments and FD deposits with SADB. Chandigarh. It is pertinent to note that The Punjab State Co-operative Agricultural Development Bank Limited (SADB), which was previously known as The Punjab State Co-operative Land Mortgage Bank Ltd., is also a cooperative society as it is registered under the Cooperative Societies Act on 26.02.1958. Hence, the assessee entity is earning interest and dividend income from investments and deposits with another cooperative society. However, the assessee had not made any disallowance u/s 14A read with rule 8D of the income Tax Act, 1961 as it

was earning such income from investments with other cooperative society. Also, in its computation of income and P & L account no such expenditure was shown. However, section 14A read with rule 8D is attracted in this case. Accordingly, the Assessing Officer by applying section 14A read with Rule 8D, made disallowance at Rs. 53,77,505/- pertaining to dividend income.

4. The Id. CIT(A) has restricted the disallowance u/s 14A to exempt income of dividend to the extent of Rs. 5,06,792/- by observing vide para 5 of the impugned order as under:

“5.0 I have given careful consideration to the facts of the case and various contentions raised by the appellant to number of grounds of appeal as well as in the written submissions filed in the course of appellate proceedings. All the grounds and contentions are adjudicated as under:

a) The first contention raised by the appellant that provisions of section 14A apply only to the dividend income which is exempt and not to the interest received on FDR and other investments. The contention is accepted. The Assessing Officer has not denied any part of deduction u/s 80P of Income Tax Act, therefore there could be no grievance of the appellant in respect of claim of deduction u/s 80P. The disallowance calculated by the Assessing Officer by applying section 14A read with Rule 8D at Rs. 53,77,505/- pertain to dividend income only.

b) The second argument that Hon'ble Punjab & Haryana High Court in the case of CIT, Jalandhar-1, Jalandhar vs. Max India Ltd. reported at [2017] 80 taxmann.co. 98 (P&H) has held that where an assessee has sufficient interest-free funds to earn exempt income no disallowance can be made under section 14A was applicable in this case. In order to avail the benefit of the decision, of the appellant was obliged to demonstrate that at the point of making investment with SABD which has yielded dividend there were enough interest-free funds matching with the investment made. No such effort has been made to place on record as to when was the investment made, what was the amount of investment made and what were the interest-free sources. It has merely been argued that the Balance sheet for the year ending March 2015 contained paid-up share capital and reserve fund which were interest-free sources. Unless and until, the appellant organically links the source of investment with the interest-free sources, the benefit of the aforesaid decision cannot be extended. Hon'ble Punjab-Haryana High Court in the case of Punjab Tractors Ltd vs Commr. of Income Tax Patiala & Anr Income Tax Appeal No.458 of 2015 (O&M) on 3 February, 2017 held that the presumption of using interest free funds would arise only if the assessee shows availability of funds, c) In the case of Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154 (SC) it has been approved that the disallowance cannot be more than total exempt income.

c) In consideration of the discussion above, the disallowance u/s 14A is restricted to exempt income of dividend to the extent of Rs. 5,06,792/- and disallowance of Rs, 53,77,505/- is reduced to Rs. 5,06,792/-."

5. The Ld. Counsel for the assessee has submitted that the Ld. CIT(A) erred on facts and law in not allowing legitimate deduction to the assessee although it is entitled to the deduction u/s 80P(2)(a)(i) of the IT Act, 1961 for whole of the income earned from providing credit facilities to its members out of surplus funds (APB, Pg. 12) and even the investments were being made out of its own funds (APB, Pg. 52). He further submitted that the issue is covered in assessee's own case (CLPB Pg 58).

6. The Ld. DR stands by the Impugned order.

7. We have heard both the sides and perused the material on record. The AO has observed that during the year, the assessee has earned interest and dividend income from investments and deposits with another cooperative society. The AO also noted that the assessee had neither made any disallowance u/s 14A read with rule 8D of the income Tax Act, 1961 against such income from investments nor shown such expenditure in the profit And Loss account. By invoking, section 14A read with rule 8D, the Assessing made disallowance at Rs. 53,77,505/- pertaining to dividend income. After considering the assessee's submissions, The Ld. CIT(A) has restricted the disallowance u/s 14A equivalent to exempt income of

dividend to the extent of Rs. 5,06,792/- as against disallowance of Rs, 53,77,505/- made by the AO.

8. The basic contention of the assessee that although it is entitled to the deduction u/s 80P(2)(a)(i) of the IT Act, 1961 for whole of the income earned from providing credit facilities to its members out of surplus funds (APB, Pg. 12) is accepted by the Id. CIT(A) as the provisions of section 14A apply only to the dividend income which is exempt and not to the interest received on FDR and other investments. The allegation of the assessee that the Assessing Officer has denied deduction u/s 80P of Income Tax Act, is factually wrong and therefore there could be no grievance of the appellant in respect of claim of deduction u/s 80P. The only disallowance calculated by the Assessing Officer is by applying section 14A read with Rule 8D at Rs. 53,77 505/- pertain to dividend income only.

9. Next argument of the Ld. Counsel for the assessee that no disallowance can be made in view of Hon'ble Punjab & Haryana High Court in the case of CIT, Jalandhar-1, Jalandhar vs. Max India Ltd. reported at [2017] 80 taxmann.co. 98 (P&H), where it was held that where an assessee has sufficient interest-free funds to earn exempt income no disallowance can be made under section 14A of the Act. On applicability of the aforesaid

Judgement, the Id. CIT(A) stated that in order to avail the benefit of the decision, the appellant was obliged to demonstrate that at the point of making investment with SABD which has yielded dividend there were enough interest-free funds matching with the investment made. Since, no such effort has been made to place on record either before the Ld. CIT(A) nor before us, as to when was the investment made, what was the amount of investment made and what were the interest-free sources. In our view, mere argument that the Balance sheet for the year ending March 2015 contained paid-up share capital and reserve fund which were interest-free source is not sufficient to establish the links of the source of investment with the interest-free sources. Unless and until, the appellant organically links the source of investment with the interest-free sources, the benefit of the aforesaid decision cannot be extended. Following the Jurisdictional Hon'ble Punjab-Haryana High Court in the case of Punjab Tractors Ltd (Supra) held that the presumption of using interest free funds would arise only if the assessee shows availability of funds. The case law relied upon by the assessee are distinguished on the peculiar facts of the instant case.

10. In the case of Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154 (SC), it has been approved that the disallowance cannot be more than

total exempt income. Respectfully following the Hon'ble Apex Court, the Id. CIT(A) was justified in restricting the disallowance u/s 14A equivalent to exempt income of dividend to the extent of Rs. 5,06,792/-

11. In the above view, we do not find merit and substance in the contentions of the appellant. We hold that CIT(A) has passed a reasoned and speaking order without any perversity. Accordingly, the impugned order is confirmed.

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

Order pronounced in the open court on 14.10.2021

Sd/-

**(Laliet Kumar)
Judicial Member**

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Sd/-

**(Dr. M. L. Meena)
Accountant Member**

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