

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.102/Bang/2015
(Assessment year: 2011-12)**

Shree Keshava Pathina Sahakara Sangha Niyamitha,
No.1260, 3rd Cross, Near Vinayaka Nurshing Home,
Krishnamurthypuram,
Mysore-570004. ... Appellant
PAN: AAAAS 5752 J

Vs.

Income-tax Officer,
Ward 2(2),
Mysore. ... Respondent

Appellant by: Shri Suresh Muthukrishnan, CA.
Respondent by: Dr. P.K.Srihari (DR)

Date of hearing : 09/12/2015.
Date of pronouncement: 30/12/2015.

O R D E R

Per VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 16/10/2014 of CIT(A) for the assessment year 2011-12.

2. The assessee is a credit co-operative society and mainly engaged in the activity of providing credit facilities to its members. The assessee filed its return of income declaring 'nil' income after claiming deduction u/s 80P. The Assessing Officer (AO) denied the claim of deduction u/s 80P on the ground that interest amount of Rs.4,50,127/- earned by the assessee from its activity of lending money to its members was not allowable as

deduction u/s 80P because the activity of the assessee constituted banking activity in terms of sec.80P(4).

3. The assessee challenged the action of the AO before the CIT(A). The CIT(A) allowed the claim of the assessee to the extent of the interest on the credit given to the members but confirmed the disallowance of deduction u/s 80P in respect of interest income from deposits kept with banks. In support of his finding, the CIT(A) has relied upon the judgment of the Hon'ble Supreme Court in the case of *Totgar's Co-operative Society Ltd. vs. ITO* (188 Taxman 282).

4. Before us, learned AR of the assessee has submitted that this issue is now covered by the judgment of the Hon'ble jurisdictional High Court in the case of *CIT vs. Sri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita* (369 ITR 86). He has also relied upon the decision of the co-ordinate bench of this Tribunal dated 3/7/2015 in ITA No.21/Bang/2015 in case of *M/s.Syndicate Rythara Sahakara Bank Ltd. Vs. ITO* and submitted that the Tribunal after considering the judgments of the Hon'ble Supreme Court in the case of *Totgar's Co-operative Society Ltd.* (supra) as well as the judgment of the Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd.* (230 Taxman 309) held that the assessee is entitled for deduction u/s 80P(2)(a)(i) in respect of interest income on fixed deposits.

On the other hand, learned Departmental Representative has heavily relied upon the impugned order of the CIT(A) as well as the judgment of the Hon'ble Supreme Court in the case of *Totgar's Co-operative Society Ltd.*(supra).

5. Having considered the rival submissions as well as the relevant material on record, we note that the judgment of the Hon'ble Supreme Court in the case of *Totgar's Co-operative Society Ltd.* (supra) has been duly considered by the Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd.* (supra). The co-ordinate bench of this Tribunal in the case of *M/s.Syndicate Rythara Sahakara Bank Ltd.*(supra) while deciding an identical issue has held in paragraphs 6.3.1 and 6.3.2 as under:

"6.3.1 We have heard the rival submissions on the issue before us and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. We find that both the authorities below have placed reliance on the judgment of the Hon'ble Apex Court in the case of *Totagars Co-operative Sale Society Ltd.* (supra) and held that the interest income earned by co-operative societies from bank deposits cannot be regarded as income earned from the business of providing credit facilities to its members and thereby, are not entitled to deduction under Section 80P(2)(a)(i) of the Act. However, the Hon'ble High Court of Karnataka in the case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd.* (supra), has observed that the judgment of the Hon'ble Apex Court in the case of *Totagars Co-operative Sale Society Ltd.* (supra) was

confined to the facts of that case and that there was no law laid down by the Hon'ble Apex Court that interest income has to be assessed under the head 'Other Sources'. The relevant observations of the Hon'ble High Court of Karnataka at paras 6 to 10 are extracted hereunder :-

"6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs.1,77,305 represents the interest earned form short term deposits and from savings bank account. The assessee is a co-operative society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard, it is necessary to notice the relevant provision of law i.e., Section 80P(2)(a)(i) :

" Deduction in respect of income of co-operative societies :

80P (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

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

(a) in the case of co-operative society engaged in

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(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) xxx

(iii) xxx

(iv) xxx

(v) xxx

(vi) xxx

(vii) xxx

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

7. *The word 'attributable' used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. CIT, Gujarat-II reported in ITR Vol. 113 (1978) Page 842 at page 93 as under :*

" As regards the aspect emerging from the expression 'attributable to' occurring in the phrase 'profits and gains attributable to the business of' the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the legislature has deliberately used the expression 'attributable to' and not the expression 'derived from'. It cannot be disputed that the expression 'attributable to' is certainly wider in import than the expression 'derived from'. Had the expression 'derived from' been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General, it has used the expression 'derived from', as, for instance, in section 80J. In our view, since the

expression of wider import, namely, 'attributable to', has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

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 issued by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A co-operative 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 on 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. Totagars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Co-operative 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 III, Hyderabad Vs. Andhra Pradesh State Co-operative Bank Ltd., reported in (2011) 200 Taxman 220/12. 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.
Appeal is allowed."*

6.3.2 Respectfully following the decision of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra), we hold that the learned CIT(A) was not correct in denying the assessee the deduction claimed under Section 80P(2)(a)(i) of the Act in respect of Rs.26,16,800 earned by the assessee. The judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. (supra) relied upon by the learned CIT(A) has been considered and distinguished by the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra). We find that the facts of the case on hand are similar to the facts of the aforesaid case decided by the Hon'ble High Court of Karnataka, since in both cases the assessee was a credit co-operative society and invested in fixed deposits out of the surplus funds of business. Applying the ratio of the judgment of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra), we hold that the assessee is entitled to deduction under Section 80P(2)(a)(i) of the Act in respect of interest income earned on fixed deposits, as well as that the said interest income forms part of the business income earned by the assessee and the same is not to be taxed under the head 'Other Sources'. In this view of the matter, the deduction claimed by the assessee under Section 80P(2)(a)(i) of the Act in respect of interest of Rs.26,16,800 earned from investments in fixed deposits and Govt. Securities out of surplus funds from business, is allowed. Consequently the grounds raised by the assessee on this issue are allowed."

Therefore, it is clear from the judgment of the Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd.*(supra) that the amount deposited in the bank to earn interest was not an amount due to the members and it was not a liability and therefore, the Hon'ble jurisdictional High Court has held that the said interest income is attributable to carrying on business of assessee and therefore, it is eligible for deduction u/s 80P. Following the said judgment of the Hon'ble jurisdictional High Court, the co-ordinate bench of this Tribunal has also taken a view that interest earned on the fixed deposit with bank and Government securities out of surplus funds from business is eligible for deduction u/s 90P(2)(a)(i) of the Act. Following the judgment of the Hon'ble jurisdictional High Court as well as the decision of the co-ordinate bench of this Tribunal, we allow the claim of the assessee u/s 80P in respect of interest on fixed deposit of the assessee's surplus fund.

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

Pronounced in the open court on 30th December, 2015.

sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER
eksrinivasulu,sps

sd/-
(Vijay Pal Rao)
JUDICIAL MEMBER

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore