

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH-SMC " C "**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

I.T.A. No.868/Bang/2017 (Assessment Year : 2012-13)		
Shri B. Madhvesh Rao, CEO, Primary Agriculture Credit Co-opeative Society Ltd., Bylur Post, Bellary Dist. PAN AAATP 6810F	Vs.	Commissioner of Income Tax (Appeals), Kalburgi-585 101
Appellant		Respondent.

Appellant By : Shri S.N. Arvinda, Advocate. Respondent By : Shri M.K. Biju, JCIT (DR) (ITAT)-3, Bengaluru.
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Date of Hearing : 25.05.2017.

Date of Pronouncement : 31.05.2017.

**O R D E R**

**Per Shri Vijay Pal Rao, J.M. :**

This appeal by the assessee is directed against the order dt.3.2.2017 of Commissioner of Income Tax (Appeals), Gulbarga for the Assessment Year 2012-13.

2. The assessee has raised the following grounds :

"1. On the facts in the circumstance of the case, the order of the CIT (Appeals) dt.3.2.2017 for the Assessment Year 2012-13, is not maintainable in law and liable to be set aside.

2. On the facts in the circumstance of the case, the Learned CIT (A) had appreciated that the appellant assessee is primary agricultural Society and registered under Co - Operative Society act , and the facility are provided that its members only, and claimed **exempt u/s. 80(P) (2)(a)(i)** accordingly under the act is correct thus the CIT (A) have to have been referent from confirming the assessment order.
3. On the facts in the of the circumstance case. The Learned CIT (A) have appreciated that the earned interest on the fixed deposit amount is not liable t o be taxed under the act. Without appreciating the nature of the transaction of the appellant assessee and the fact of the case, the Authority levied the tax is against the law hence it is liable to be deleted.
4. On the facts in the of the circumstance case, the Learned CIT (A), without appreciating the provision U/s 80P(2)(a)(i) read with 80P(4)of the act and disallowed the claim of the appellant by CIT (A) thus the order of the CIT (A) is liable to be quashed.
5. On the facts in the of the circumstance case, the Learned CIT (A), failed to consider the **submissions** filed by the appellant on **31.01.2017** and the **order passed** is against the principle of the natural Justice.

6. On the facts in the of the circumstance case, the Learned CIT (A), failed to appreciate that the Judgement , which are relied by the Appellant is squarely applicable in the appellant case but without appreciating the same, this assessment order is liable to be deleted.
  7. On the facts in the of the circumstance case, the Learned CIT (A).is failed to appreciate that the judgement relied by the assessment authority which are distinguishable from the fact of the appellant case. Thus the order to levy of the tax by the assessing authority is not correct and liable to be set aside
  8. Without prejudice, confirming the levy of tax partly and levied interest and penalty are excessive and arbitrary and ought to have been deleted substantially.
  9. For such other grounds that may be urged at the time of hearing and it is prayed that kindly may allow the appeal in the interest of justice and equity.
3. The assessee is a primary agriculture society and claimed the exemption under Section 80P(2)(a)(i) of the Income Tax Act, 1961 (in short 'the Act') in respect of the income in which includes interest on Fixed Deposits. The Assessing Officer denied the claim of the assessee on the ground that in view of

the decision of the Hon'ble Supreme Court in the case of **Totgars Co-operative Sales Society Ltd. Vs. ITO** 188 Taxmann 282 (SC) and held that the interest income would not qualify for exemption under Section 80P(2)(a)(i) of the Act. The CIT (Appeals) has confirmed the action of the Assessing Officer on similar reasoning.

4. I have heard learned Authorised Representative as well as learned Departmental Representative and considered the material on record. At the outset, it was brought to the notice of the Tribunal that this issue is covered by the decision of Hon'ble jurisdictional High Court in the case of **Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO** 230 Taxmann 309 as well as in the case of **M/s. Guttigedarara Co-operative Society Ltd. Vs. ITO** 377 ITR 464. The learned Authorised Representative has relied upon the decision of the co-ordinate bench of this Tribunal dt.28.2.2017 in the case of **Shri S.M. Revana Siddaiah, CEO, Primary Agriculture Credit Co-operative Society Ltd. & Others Vs. CIT (Appeals)** in ITA Nos. 2202 to 2204 & 2205/Bang/2016.

5. On the other hand, the learned Departmental Representative has relied upon the orders of authorities below.

6. Having considered the rival submissions as well as material on record, at the outset it is noted that an identical issue has been considered by the coordinate bench of this Tribunal in the case of **Shri S.M. Revana Siddaiah, CEO, Primary Agriculture Credit Co-operative Society Ltd. & Others Vs. CIT (Appeals)** (supra) in para 6 as under :

*“ 6. Having considered the rival submissions as well as the relevant material on record, it is noted that the decision of Hon'ble Supreme Court in the case of **Totgar Sales Credit Society Ltd. Vs. ITO** (supra) was discussed and considered by the Hon'ble jurisdictional High Court in the case of **Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO** (supra) and again in the case of **M/s. Guttigedarara Co-operative Society Ltd. Vs. ITO** (supra). The Hon'ble High Court has understood the decision of Hon'ble Supreme Court in the case of **Totgars Co-operative Sales Society Ltd. Vs. ITO** (supra) and held that when the society has surplus funds which were made fixed deposit in the bank to earn interest, the same is eligible for deduction under Section 80P of the Act. In the case of **M/s. Guttigedarara Co-operative Society Ltd. Vs. ITO** (supra), the Hon'ble High Court has again considered this issue in paras 7 to 12 as under :*

*“ 7. From the aforesaid facts and rival contentions, the undisputed facts which emerge are, certain sums of interest were earned from 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.*

**8.** *In this regard, it is necessary to notice the relevant provision of law i.e., Section 80P(2)(a)(i):—*

*"80P Deduction in respect of income of co- operative societies:— (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—*

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

(ii) *to (vii) \*\* \*\* \**

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

**9.** *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. v. CIT [1978] 113 ITR 84 (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.'*

**10.** *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 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 or the capital, if not immediately required to be lent to the members, the society 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.*

*11. In this context when we look at the judgment of the Apex Court in Totgars Co-operative Sale Society's case (supra), 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.*

*12. 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 its 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] 336 ITR 516/200 Taxman 220/12 taxmann.com 66.”*

*Thus it is clear that when the amount which was deposited in the bank was not an amount due to members and it was not the liability of the society to the members then the interest earned from the deposits in the bank was held to be eligible for deduction under Section 80P (1) as well as 80P(2)(a)(i) of the Act. In the case on hand, the assessees are co-operative societies providing the credit facilities to its members. The Assessing Officer has noted that the assessee has earned interest on funds which are not required for the business deposited in the fixed deposit in the bank. Therefore in the facts of these cases, the decisions of Hon'ble jurisdictional High Court are applicable. Accordingly, by following*

*the binding precedent of Hon'ble jurisdictional High Court, the claim of the assesseees are allowed and the orders of the authorities below are set aside."*

Accordingly, in view of the earlier decision of this Tribunal as well as the binding precedent of Hon'ble jurisdictional High Court, the claim of the assessee under Section 80P(2)(a)(i) of the Act in respect of interest income is allowed and orders of the authorities below are set aside.

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

Order pronounced in the open court on 31st May, 2017.

Sd/-

**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

Bangalore,  
Dt. 31.05.2017.

\*Reddy gp

Copy to :

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

Assistant Registrar  
Income Tax Appellate Tribunal  
Bangalore.