

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "B" KOLKATA**

Before Hon'ble **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

I.T.A. No.1340/Kol/2015 Assessment Year : 2012-13
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I.T.O., Ward-35(3), Aayakar Bhawan Poorva, 8 <sup>th</sup> Floor, 110, Shantiplly, Kolkata-700107.	<b>V/s.</b>	Kolkata Reserve bank Employees Co-operative Credit Society Ltd., 13, Netaji Subhas Road, RBI Building (Annexe), Kolkata-700001.
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Saurbh Kumar, Addl. CIT(DR)
प्रत्यर्थी की ओर से/By Respondent	Shri Anil Kochar, Advocate
सुनवाई की तारीख/Date of Hearing	18.09.2017.
घोषणा की तारीख/Date of Pronouncement	18.10.2017

**आदेश /ORDER**

**Per Waseem Ahmed, AM**

This appeal by the revenue is against the order of Commissioner of Income Tax (Appeals)-10, Kolkata dated 24.08.2015. Assessment was framed by I.T.O., Ward-35(3), Kolkata u/s.143(3) of the Income tax Act, 1961 (hereinafter referred to as 'the Act ') vide his order dated 24.02.2015 for assessment year 2012-13.

2. The revenue has raised the following grounds of appeal :

*"1. On the facts and in the circumstances of the case, the Ld, CIT(A) has erred in deleting the addition on interest income earned from nationalized Banks on the basis of the decision of the case law of Totgars Co-operative Society Ltd.-vs.-ITO [2010] 188 Taxman 282 (SC) and some other case laws, without going through the decision properly.*

*2. The Ld. CIT(A) has ignored the fact that in the case of Totgars Co-operative Society Ltd.-vs.-ITO [2010] 188 Taxman 282 (SC), Hon'ble Apex court has dismissed the appeal filed by the assessee and confirmed the ITAT's view that this interest income would fall under the "Income from Other sources" and not from "Income from Business and Profession".*

*Thus, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition on interest income ignoring the provisions of section 80P(1), 80P(2) and 80P(2)(d) of the Income Tax Act, 1961.*

*3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the A.O. on profit from the business of Holiday Homes on the decision of some other case laws which are not at all relevant in the instant case. Those cases are based entirely on different facts and not squarely applicable in this case.*

*4. The appellant craves the leave to add, alter or amend any ground before or at any time of hearing."*

3. The first issue raised by the revenue in ground no.1 and 2 is that the Id. CIT(A) erred in deleting the addition made by the AO for Rs.1,60,76,939/- on account of interest income from other sources.

4. Briefly stated facts are that the assessee is a Co-operative credit society and registered under the West Bengal Cooperative Society w.e.f. 15<sup>th</sup> July, 1972. The assessee is engaged in the business of provided credit facilities to its members out of the deposits accepted from its members. The assessee for the year under consideration has declared gross total income of Rs.1,68,45,861/- and claimed deduction for the same amount u/s 80P(2)(a)(i) of the Act.

5. The assessee during the year has shown gross income from interest for Rs.8.35 crores which includes interest income of Rs.1,60,76,339/-on the money deposited in current, savings and fixed deposits with the bank. However, the AO was of the view that deduction u/s 80P(2)(a)(i) of the Act is not available to the assessee on the amount of interest income earned on the amount deposited with the bank. Accordingly the AO called upon the assessee to explain why deduction

u/s 80P(2)(a)(i) of the Act is allowed to the assessee on such income. In compliance thereto the assessee submitted that deduction on account of interest income on the money deposited with the bank is available in view of the judgment of the Hon'ble Uttarakhand High Court in the case of CIT vs Iqbalpur Cooperative Bank Development Union Ltd (2009) 315 ITR 441 (Uttarakhand). The assessee further submitted that identical issue was also decided in favour of the assessee by the Hon'ble Patna High Court in the case of Bihar State Housing Cooperative Federation Ltd. Vs CIT(2009) 315 ITR 286 (Pat).

However, the AO disregarded the contention of the assessee by observing as under :-

- (i) The Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. Vs ITO reported in 188 Taxman 282 has held that interest earned on investment of funds not required immediately for the purpose of business cannot fall under the head "business and profession". Therefore the same would be treated as income from other sources.
- (ii) As per the provision of section 80P(2)(a)(i) of the Act the deduction is available to the amount of interest earned by the assessee which is given to its members. Thus the amount deposited with the bank cannot be termed as loan given to the members.

Thus from the above it is clear that the assessee has parked its surplus funds by way of depositing the same in the current, savings and fixed deposits account with the bank. Therefore the interest income earned thereto is not eligible for deduction u/s 80P(2)(a)(i) of the Act. Accordingly the AO disallowed deduction made by the assessee for Rs.1,60,76,339/- and added to the total income of the assessee.

6. Aggrieved assessee preferred an appeal before the Id. CIT(A).

The assessee before the Id. CIT(A) submitted that the surplus funds was kept with the banks for the purpose of providing loan to the members. The assessee also submitted that in the identical issue the Hon'ble Tribunal of Kolkata in the case of S.E, S.E.C. and E.C.O.Railway Employees Cooperative Credit Society Ltd. In ITA NO.1693/Kol/2012 for A.Y.2008-09 after distinguishing the facts of Totgar's Cooperative Sales Society Ltd. (supra) has decided the issue in favour of the assessee. Thus the interest income earned on the money deposited with the bank is accordingly eligible for deduction u/s 80P(2)(a)(i) of the Act

As per the provision of section 80P(2)(a)(i) of the Act the deduction is available to the assessee if it fulfills the following conditions :-

- (i) It is engaged in carrying on the business of banking
- (ii) It is engaged in the business of providing credit facilities to its members.

Thus one of the activities of the assessee to provide credit facility to the members has been fulfilled in the instant case. Therefore the primary activity of providing credit facilities to the members has been duly complied with. The Id. CIT(A) after considering the submissions of the assessee has allowed deduction to the assessee u/s 80P(2)(a)(i) of the Act by observing as follows :-

“Other than the judgment of the jurisdictional High Court, as followed by the Hon'ble Jurisdictional ITAT, I find that there are a catena of judgments wherein the case of Totgars Co-operative Sale Society Ltd. (supra) has been clearly distinguished on facts, and it has been held that the interest earned by assesses., such as the one at hand, namely a Credit Co-operative Society that carries on the business of providing credit facilities to its members and earned interest by deposits made in nationalized banks, would be eligible for the deduction envisaged under Sec 80 P of the Income tax Act, 1961. The Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. in ITA No.307 of 2014 dt.28.10.2014, wherein their Lordships after considering the judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. (supra), have held that the interest earned by a co-operative society engaged in the business of providing credit facilities to its members has to

be regarded as income eligible for deduction under Section 80P(2) of the Act.

The Revenue, being aggrieved, is in appeal before us.

7. Before us both the parties relied on the orders of the authorities below as favourable to them.

8. We have heard the rival contentions and perused the materials on record. At the outset, we find that the Hon'ble Tribunal of Kolkata Benches In ITA NO.2058/Kol/2014 has decided the identical issue in favour of the assessee after distinguishing the facts of Totagars Cooperative Sale Society Ltd. reported in 188 Taxman 282. The relevant extract of the order is reproduced below :

3. After hearing the rival contentions, I find that similar issue has been adjudicated by the Jurisdictional High Court in the case of Commissioner of Income Tax-X, Kolkata vs. South Eastern Railway Employees Co-operative Credit Society in ITAT No. 135 OF 2010 judgment dt. 22.07.2010. The question before the Hon'ble Court was as follows:

*"i) Whether on the facts and circumstances of the case, the interest earned by the assessee to the tune of Rs.1,18,07,645/- out of Its investment in banks is not the activity that arose from the activity of providing loan and credit facilities to its members as the society is not engaged in the business of banking and is therefore not qualifying for deduction u/s.80P(2a)(a)(i) of the Act, the learned Tribunal is correct in law in holding that interest earned on such investment is within the purview of section 80P of the Act 7"*

The Hon'ble Court held as follows:-

*"It was found by the Tribunal while affirming the order of the Commissioner of Income Tax (Appeal) that there is no change in the facts and circumstances of this case and it was held that the assessee was eligible for deduction under Section 80P(2 )(a )(i) on interest on investment amounting to Rs. 1;18,07,645/- in this assessment 'year also. Since the Tribunal found that this decision of the Tribunal was followed by CIT (A) there is no reason to take a different view.*

*Under these circumstances, we feel that when the Commissioner of Income Tax (A) as well as the Tribunal has followed the earlier unchallenged decision no question of law is involved in this matter. Nothing has been produced before us to show subsequent decision of the Tribunal in relation to the assessment years 1998-99 to 2002-03 and 2003-04 have been challenged by any of the parties before this Court. "*

Following this the appeal of the Revenue had been dismissed.

3.1. The ITAT 'C' Bench, Kolkata, in the case of S.E.,S.E.C & E.Co.Railways Employees' Co-operative Credit Society Ltd., Kolkata vs. A.C.I.T., Circle-28, Kolkata in ITA No. 1693/Ko1j2012 for Assessment Year 2008-09, order dt. 30/10/2014 at para 7.2 to 7.5 held as follows:

"7.2. Considering the above we find that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in assessee's own case. In this regard we would like to place reliance upon the decision of the Hon 'ble Apex Court in the case of CIT vs Excel Industries 358 ITR 295 wherein the principle of consistency has been reiterated. Hence when the issue has been decided by the Jurisdictional High Court no convincing reason has been pointed to take a different view, any deviation is not permitted.

7.3. Now we come to the case laws relied upon by the Id. CIT(A). As regards the decision of the Hon 'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. (supra) we find that the said decision is not applicable in the facts of the case. We find that the Hon'ble Apex Court in the said decision in para 11 has itself mentioned that "We are confining the judgment to the facts of the present case." The facts of the case were that assessee's business was to provide credit facilities to its members and to market their agricultural produce. In many cases assessee retained sale proceeds of members whose produce was marketed by it and since funds created by such retention were not required immediately for business purposes, it invested same in specified securities and earned interest income. In these circumstances the Hon'ble Apex Court had held that interest earned would come in category of 'Income from other sources' taxable u/s 56 of the Act and would not qualify for deduction as business income u/s BOP(2)(a)(i). From the above it is amply evident in the present case the assessee has not retained any amount due to its members and instead of paying the same had invested the same and earned interest. Thus this case law is not applicable on the facts of the present case.

7.4. As regards the decision of Hon'ble Patna High Court in the case of Bihar Rajya Sahkari Bhoomi Bikash Co-op. Bank Ltd. (supra) the same is also not applicable to the facts of the present case. In that case the question was the treatment of interest earned on provident fund and rental income as attributable to banking business 'and this qualifying for deduction u/s BOP(2)(a)(i) of the Act.

7.5. In the background of the aforesaid discussion and precedent we hold that the issue is squarely covered in favour of the assessee by the decision of the Tribunal and the Jurisdictional High Court in assessee's own case. The decision relied upon by the Id. CIT(A) are not applicable in the facts of the case. The principle of consistency as conveyed by the Hon'ble Apex Court mandates that the Revenue does not take a different stand. Accordingly we set aside the orders of the authorities below and decide the issue in favour of the assessee.

4. In view of the above discussion, respectfully following the binding judgment of the jurisdictional High Court, we direct the Ld. AO to allow deduction u/s 80N the Act, to the assessee on the interest income of Rs.17,85,173/-.”

Respectfully following the same we direct the AO to allow the deduction as claimed by the assessee u/s 80P(2)(a)(i) of the Act.

9. The second issue raise by the revenue in this appeal is that the Id. CIT(A) erred in providing deduction u/s 80P(2)(a)(i) of the Act from business of holiday homes.

10. The assessee in the year under consideration has earned profit of Rs.5,11,100/- from the maintenance of holiday homes which was claimed as deduction u/s 80P(2)(a)(i) of the Act. However, the AO rejected the claim of the assessee for the deduction u/s 80P(2)(a)(i) of the Act on the ground that deduction is available on the income attributable to the business providing credit facilities to the members. As such the activity of holiday home is not eligible for deduction u/s 80P(2)(a)(i) of the Act. Accordingly the AO disallowed deduction claimed by the assessee for Rs.5,11,100/- and added to the total income of the assessee.

11. Aggrieved the assessee preferred an appeal before the Id. CIT(A). The assessee before the Id. CIT(A) submitted that it has been running holiday home for the mutual benefit of the members. The surplus earned by the assessee from the holiday homes is used for providing credit facilities to the members. Therefore the activity of running the holiday home is ancillary and supportive to the impugned objects of the society. Thus the assessee is entitled for deduction u/s 80P(2)(a)(i) of the Act on the income earned from the holiday homes. The Id. CIT(A) after considering the submissions of the assessee has allowed deduction u/s 80P(2)(a)(i) of the Act by observing as under :-

*"I have carefully considered the argument of the Assessing Officer in making this addition. The AO has stated that the "appellant has disclosed rent received from holiday home of Rs14,50,622/-, and claim corresponding expenses of Rs.9, 39, 522/-. From this source of income the appellant has disclosed the net profit of Rs.5,11,100/-. The AO has opined that the activity of running a holiday home is not attribute even closely to the primary business of providing credit facility, and therefore the deduction u/s BOP would not be allowable. In appeal, the appellant has taken the position that the holiday home was being run for the benefit of the members of the cooperative credit society. He has argued that as such a facility was for the mutual benefit of the members, as a result of mutuality, the resultant surplus ought to be treated as business income. Such business income according to him was generated for providing services to the members, and such an activity is ancillary and/or supportive to the main object of the appellant society.*

*From the order of the Assessing officer, and the facts available, it is seen that the appellant receives rental income from giving a guest house to its member/Holiday Home to its member, and that this facility is restricted to its members only. The amount of Rs.5, 11,100/- which has been disallowed by the AO actually represent surplus from the business of letting out the Holiday Home to its own members by the appellant co-operative society. It appears that a similar matter came up before the Hon'ble ITAT Indore Bench in ITA No 315/IND/2011(ACIT Bhop.al Vs MP State Cooperative Housing Federation) relevant for A.Y. 2006-07. In that case also the Hon'ble ITAT has held that income from guest house would qualify for deduction u/s 80P. At para 9 of the said order the Hon'ble ITAT had adjudicated as under*

*"9. Regarding miscellaneous income, income from guest house, we also hold that this income also qualify for deduction u/s 80-P(2)(a)(i), in view of the decision of Hon'ble Karnataka High Court in the case of CIT vs. Grain Merchants Co-Op. Bank Limited (supra), where the Hon'ble High Court has held that from letting out a part of the property was treated as income from Banking business and held to be qualified for deduction u/s 80- P(2)(a)(i). We also get strength on this issue from the decision of Hon'ble Bombay High Court in the case of CIT vs. Ahmednagar District Central Co-Op. Bank Limited & Others, ( cited supra), where the Hon'ble High Court has held that the commission collected from electricity bills was held to come qualifying for deduction u/s 80- P(2)(a)(i)."*

*I find myself in agreement with the contention of the appellant that it is a co-operative society formed under the relevant law laid down, and that it had started its activities in the year when the holiday home was acquired. As the same was being continuously maintained for the comfort of the members*

*and that whatever surplus remains it is nothing but part of its activities in the matter of carrying on its activities for providing amenities to its members, there ought to be no disallowance of the this amount of Rs.5,11,100/-. The AO is directed accordingly. "*

The Revenue, being aggrieved, is in second appeal before us.

12. Before us both the parties relied on the order of Authorities Below as favourable to them.

13. We have heard the rival contentions and perused the material available on record. In the instant case the assessee has earned income for Rs.5,11,100/- on the maintenance of holiday homes exclusively for the members. The AO was of the view that the impugned activity is not eligible for deduction under the provision of section 80P(2)(a)(i) of the Act. However the Id. CIT(A) reversed the order of the AO.

13.1 Now the question before us arise for our adjudication whether the assessee is eligible for deduction u/s 80P(2)(a)(i) of the Act on the income earned from holiday homes in the given facts and circumstances. At this juncture we would like to reproduce the provision of section 80P(2)(a)(i) which reads as follows :-

**80P(2)** *The sums referred to in sub-section (1) shall be the following namely :-*

- (a) In the case of a co-operative society engaged in-*
- (i) *Carrying on the business of banking or providing credit facilities to its members*

From the above provision, it is clear that the deduction is available to the assessee from the business of banking or providing credit facilities the members. The issue before us is with regard to the income earned by the assessee from the running and maintenance of holiday homes for the members. Thus, in our considered view the same cannot be allowed as deduction under the provisions

of section 80P(2)(a)(i) of the Act. Thus, the ground of appeal of Revenue is allowed.

**14. In the result, Revenue's appeal stands partly allowed.**

Order pronounced in the open court 18/10/2017

Sd/-

(न्यायिक सदस्य)

(S.S.Viswanethra Ravi)

(Judicial Member)

\*RG.Sr.PS

दिनांक:- 18/10//2017 कोलकाता ।

**आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-**

1. अपीलार्थी / Appellant
2. प्रत्यर्थी / Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Kolkata / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

(Accountant Member)

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।