

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य  
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM  
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No.1032/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

Income Tax Officer,  
Ward-1, Satara

.... अपीलार्थी/Appellant

Vs.

Shree Parshwanath Nagari  
Sahakari Pat Sanstha Ltd.,  
75,76,77/1, Guruwar Peth,  
Chawadi Chowk,  
Karad - 415 110  
PAN : AAAAP0511C

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Dr. Vivek Aggarwal, CIT-DR  
प्रत्यर्थी की ओर से / Respondent by : Shri Shrikant B. Kelkar  
(Manager of the assessee)

सुनवाई की तारीख / <b>Date of Hearing : 26.02.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 28.02.2018</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal is filed by the Revenue against the order of CIT(A)-2, Pune, dated 14-12-2015 for the Assessment Year 2011-12.

2. Relevant facts of the case are that the assessee is a Cooperative Society engaged in the business of banking/providing credit facilities to its members. During the year, the assessee earned Rs.3.28 crores (rounded off) from the investments kept in Nationalized Banks and **other Cooperative Banks**. Out of it, the assessee earned interest income of Rs.8,13,767/- from the investments with the **Nationalized Banks**.

3. Regarding the interest income earned from the Banks and Cooperative Banks, assessee claimed the deduction u/s.80P(2)(d) of the Act. The said claim of deduction was denied by the AO in the assessment and treated the same as income from other sources. Relying on various decisions, CIT(A) allowed the claim of the assessee. CIT(A) held that the claim of deduction is available to assessee u/s.80P(2)(a)(i) of the Act. However, the CIT(A) granted relief as per the discussion given in the impugned order dated 14-12-2015.

4. Aggrieved with the same, Revenue raised the following grounds and the same read as under :

*“1. Whether the order of the learned CIT (Appeals) is contrary to law and to the facts and circumstances of the case.*

*2. Whether the Learned CIT (Appeals) has erred on facts and in law in deleting the aggregate addition of Rs.3,36,06,752/- made in assessment order on account of interests received from banks.*

*3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting addition of Rs.3,27,92,985/- by wrongly applying provisions of section 80P(2)(a)(i) rather than section 80P(2)(d), whereby erroneously treated other source income as business income and allowed exemption u/s.80P(2)(a)(i) instead of allowing exemption under section 80P(2)(d) which is specifically meant for that purpose.*

*4. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (Appeals) has erred in deleting the addition of Rs.8,13,767/- on account of interest income received from non-members as well as nationalized banks, whereby treating other source income as business income and allowing deduction u/s.80P(2)(a)(i).*

*5. For this and such other reasons as may be urged at the time of hearing, the order of the CIT(A) may be vacated and that of the Assessing Officer be restored.*

*6. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”*

5. From the above, it is evident that apart from the general issues raised in Ground Nos. 1, 5 and 6, the core issues were raised in Ground Nos. 2, 3 and 4. Ground No.2 mentions that the whole of the interest is

received from the Banks. Ground No.3 relates to the issue relating to applicability of the correct provisions of section 80P(2)(d) of the Act in place of section 80P(2)(a)(i) of the Act as held by the CIT(A). The issue raised in Ground No.4 pertains to the treatment of the interest income as “income from other sources” and not as “business income” as held by the CIT(A).

6. During the proceedings before us, there is none on behalf of the respondent assessee. However, it is a fact that the notice of hearing is duly served on the assessee. However, assessee chose not to appear before us in person or through the authorized representative. However, Manager of the assessee made an appearance before the Tribunal.

7. Before us, Ld. DR for the Revenue submitted that this is a case covered by the ratio of the Hon'ble Supreme Court judgment in the case of M/s. The Totgar's Cooperative Sale Society Limited Vs. ITO vide Civil Appeal No.1622 of 2010 dated 08-02-2010. Considering the same, we proceed to adjudicate the same.

8. On hearing the facts and the parties, we find that there is no dispute on the source of the interest income from the Banks and Cooperative Banks. It is the scheme of the provisions of section 80P of the Act, the deduction provisions do not apply to the Banks and the interest income earned from the Banks. The judgments cited by the Ld. DR for the Revenue in the cases of (1) Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT (2014) 50 taxmann.com 278 (Delhi) (2) Sri Basaveshwara Credit Co-operative Society Ltd. Vs. CIT (2014) 47 taxmann.com 189 (Bangalore-Trib.) and (3) Matoshri Ramabai Ambedkar are relevant.

However, CIT(A) granted relief to the assessee by relying on the Coordinate Bench decision of Pune Tribunal in the case of ITO Vs.

Ashokrao Banker Gramin Biger Sethi Sahakari Pat Samstha Ltd. which is relevant for the proposition that the deposits kept with the cooperative Banks constitutes business income of the assessee engaged in the activity of the credit cooperative societies. For the sake of completeness, the contents of said para are reproduced here under :

*“6.2.1 I have gone through the arguments put forth on behalf of the appellant. It is seen that Hon'ble ITAT Pune Bench in the case of ITO Vs. Ashokrao Banker Gramin Biger sethi Sahakari Path Samstha Ltd. in ITA No.1584/PN/2012 dated 30.04.2014 has held that interest on fixed deposits kept by the co-operative society with other banks is to be treated as business income and therefore the same is eligible for deduction u/s.80P(2)(a)(i) of the I.T. Act. Respectfully following the decision of Hon'ble ITAT Pune Bench, I hold that the interest income received by the appellant amounting to Rs.3,36,06,752/- is business income and therefore, eligible for deduction u/s.80P(2)(a)(i) of the I.T. Act. This ground is accordingly allowed.”*

9. Considering the above, we are of the view that the CIT(A) has not considered the existing judgments in the case laws cited by the Ld. DR for the Revenue above. It is evident that the relevant facts and decisions were not considered by the CIT(A). From the fairness point of view, we find the judgments (supra) relied on by the Ld. DR need to be considered. For this reason, we remand the issue to the file of CIT(A) for fresh adjudication. CIT(A) is directed to pass a speaking order on this issue and adjudicate the same after granting reasonable opportunity of being heard to the assessee. Accordingly, all the grounds raised by the Revenue are allowed for statistical purposes.

10. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on this 28<sup>th</sup> day of February, 2018.

Sd/-

Sd/-

**(VIKAS AWASTHY)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

**(D. KARUNAKARA RAO)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 28<sup>th</sup> February, 2018  
सतीश

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-2, Pune
4. CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench"  
Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण,पुणे / ITAT, Pune