

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, 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.154/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Sindhudurga Zilla Madhyamik Adhyapak
Va Ucchya Madhyamik Shikshak Va
Shikshaketar Karmachari Sahakari Patpedhi Maryadit,
33, Sindhudurnagari (Oros - 416812),
Tal.-Kudal, Distt.-Sindhudurg - 416812

PAN : AAGAS6518L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 2(4), Kudal

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 29-05-2018

घोषणा की तारीख / Date of Pronouncement : 31-05-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1&2, Kolhapur dated 20-11-2014 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are: The assessee is a Co-operative Credit Society providing credit to its members. During the period relevant to the assessment year under appeal the assessee received interest income of Rs.44,97,939/- on saving bank account and fixed deposits with Sindhudurg District Central Co-operative Bank Ltd. Apart from above, the assessee also earned dividend income of Rs.6,25,000/- on the investments made in the shares of Sindhudurg District Central Co-operative Bank Ltd. The assessee claimed deduction u/s. 80P(2)(d) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in respect of interest income, as well as dividend income. The assessee raised an alternate claim of deduction of the aforesaid amounts u/s. 80P(2)(a)(i) of the Act. However, the Assessing Officer rejected both the contentions of the assessee and made addition of the above amounts.

Aggrieved by the assessment order dated 07-10-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). Before the Commissioner of Income Tax (Appeals), the assessee contested both the issues i.e. claim of deduction u/s. 80P(2)(a)(i) or in alternate deduction u/s. 80P(2)(d) of the Act. However, the Commissioner of Income Tax (Appeals) after placing reliance on the decision of Hon'ble Supreme Court of India in the case of Totgars, Co-operative Sale Society Ltd. Vs. Income Tax Officer reported as 322 ITR 283 rejected both the contentions of the assessee. Now, the assessee is in second appeal before the Tribunal assailing the findings of First Appellate Authority in confirming the disallowance of deduction u/s. 80P(2)(d)/80P(2)(a)(i) of the Act.

3. Shri Nikhil Pathak appearing on behalf of the assessee submitted that the assessee is registered under Maharashtra Co-operative Societies Act,

1960. The assessee deposited surplus funds in the fixed deposits with Sindhudurg District Central Co-operative Bank Ltd. The ld. AR submitted that the case of the assessee is squarely covered by the decisions of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. Income Tax Officer reported as 230 Taxman 309 and in the case of Guttigedarara Credit Co-operative Society Ltd. Vs. Income Tax Officer reported as 377 ITR 464. The ld. AR submitted that the Co-ordinate Bench of the Tribunal in the case of Income Tax Officer Vs. M/s. Kundalika Nagari Sahakari patsanstha Maryadit in ITA No. 900/PN/2014 for assessment year 2010-11 decided on 29-01-2016 had occasion to deal with identical issue. The Tribunal after considering the decision of Hon'ble Supreme Court of India in the case of Totgars, Co-operative Sale Society Ltd. Vs. Income Tax Officer (supra) distinguished the same and held that the assessee is eligible for claiming deduction u/s. 80P(2)(a)(i) of the Act. Thereafter, similar view was taken by the Tribunal in various decisions including in the cases of M/s. Sindhudurg Zilla Rajya Sarkari Karmachari Sahakari Pat Sanstha Maryadit Vs. Income Tax Officer in ITA No. 1677/PN/2014 for assessment year 2011-12 decided on 17-06-2016, Baliraja Gramin Bigarsheti Sahakari Pat Sanstha Maryadit Vs. Income Tax Officer in ITA Nos. 50 & 51/PUN/2017 for assessment years 2013-14 and 2012-13 decided on 26-03-2018 and Income Tax Officer Vs. Keshavsmurti Nagari Sahakari patpedhi Ltd. in ITA No. 936/PUN/2015 for assessment year 2010-11 decided on 04-04-2018.

4. On the other hand Shri Achal Sharma representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) in rejecting assessee's claim of deduction u/s. 80P(2)(d)/80P(2)(a)(i) of the Act.

The ld. DR submitted that the Hon'ble Supreme Court of India in the case of Totgars, Co-operative Sale Society Ltd. Vs. Income Tax Officer (supra) has categorically held that the interest income earned by the assessee on fixed deposits with the schedule bank constitutes income under the head "Income from other sources", such interest income does not qualify for deduction u/s. 80P(2)(a)(i) of the Act. To further strengthen his arguments the ld. DR placed reliance on the decision of Gujarat High Court in the case of State Bank of India (SBI) Vs. Commissioner of Income Tax reported as 389 ITR 578. The ld. DR submitted that the Hon'ble Gujarat High Court reiterating the law laid down in the case of Totgars, Co-operative Sale Society Ltd. Vs. Income Tax Officer (supra) has held that the society engaged in providing credit facilities to its members, earning income from investments made in banks is not eligible for claiming deduction u/s. 80P(2)(a)(i) of the Act on such income.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The only issue raised in appeal by the assessee is disallowance of deduction claimed u/s. 80P(2)(d)/80P(2)(a)(i) of the Act in respect of interest income earned on deposits with Co-operative scheduled Bank and dividend income from investment in shares of Co-operative Bank. The Revenue has placed heavy reliance on the decision of Hon'ble Supreme Court of India in the case of Totgars, Co-operative Sale Society Ltd. Vs. Income Tax Officer (supra) to disallow deduction. The Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. Income Tax Officer (supra) where the assessee – engaged in the business of providing credit facilities to its members has earned interest on short term deposits

and on savings account with scheduled bank and claimed deduction u/s. 80P(2)(a)(i) held that the assessee eligible for such deduction. The Hon'ble High Court while allowing the claim of assessee has also distinguished the ratio laid down by the Hon'ble Apex Court in the case of Totgars, Co-operative Sale Society Ltd. Vs. Income Tax Officer (supra). The Hon'ble Court held that interest income earned on such deposits is attributable to the activities of the assessee carrying on the business of providing credit facilities to its members. The relevant extract of the findings of Hon'ble Karnataka High Court reads as under :

“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 is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative 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, 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. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Cooperative 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 COMMISSIONER OF INCOME-Tax III, HYDERABAD VS. ANDHRA PRADESH STATE COOPERATIVE 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.

The impugned order is hereby set aside. Parties to bear their own cost.”

6. Similar view has been taken by the Hon'ble Karnataka High Court in the case of Guttigedarara Credit Co-operative Society Ltd. Vs. Income Tax Officer (supra) where the Co-operative Society engaged in the business of providing credit facilities to its members was denied the benefit of deduction u/s. 80(P)(2)(a)(i) by the Revenue was reversed after

distinguishing the judgment rendered in the case of Totgars, Co-operative Sale Society Ltd. Vs. Income Tax Officer (supra).

7. The Co-ordinate Bench of the Tribunal in the case of Income Tax Officer Vs. M/s. Kundalika Nagari Sahakari patsanstha Maryadit (supra) where the assessee, a credit co-operative society had earned interest income on deposits/investments with other banks held that the assessee is eligible for claiming deduction u/s. 80P(2)(a)(i) in respect of interest income. However, the Tribunal held that the assessee is not entitled to claim deduction u/s. 80P(2)(a)(i) of the Act on dividend income. The Tribunal while adjudicating the issue considered the judgment rendered in the case of Totgars, Co-operative Sale Society Ltd. Vs. Income Tax Officer (supra) as well as both the judgments of Hon'ble Karnataka High Court referred above.

Thereafter, Pune Benches of the Tribunal in several decisions have consistently held that credit co-operative society 'earning' interest on deposits with scheduled banks is eligible to claim deduction u/s. 80P(2)(a)(i) on such interest income.

8. In the present case it is an undisputed fact that the assessee is a Co-operative Society engaged in the business of providing credit facilities to its members. In our considered view the case of the assessee is at par with Income Tax Officer Vs. M/s. Kundalika Nagari Sahakari patsanstha Maryadit (supra). Therefore, following the decisions discussed above we hold that the assessee is eligible for claiming deduction on interest income of Rs.44,97,939/- u/s. 80P(2)(a)(i) of the Act. However, the dividend income earned by the assessee from investments in shares does not qualify

for deduction under the said section. Accordingly, the appeal of the assessee is partly allowed in the terms aforesaid.

9. In the result, the appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced on Thursday, the 31st day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st May, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1&2, Kolhapur
4. आयकर आयुक्त / The CIT-I/II, Kolhapur/CIT(Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune