आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.3057/PUN/2017

निर्धारण वर्ष / Assessment Year : 2014-15

Kalbhairavnath Gramin Bigarsheti
Sahakari Pat Sanstha Maryadit,
At & Post, Yewat,
Taluka Daund,
Dist. Pune – 412214 …. अपीलार्थी/Appellant

PAN: AAAAK0302J

Vs.

The Income Tax Officer,
Ward 14(3), Pune …. प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / **Date of Hearing : 26.12.2018**		घोषणा की तारीख / **Date of Pronouncement: 31.12.2018**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-7, Pune, dated 06.10.2017 relating to assessment year 2014-15 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. On the facts & in circumstances of the case & in law, the lower authorities have erred in incorrectly invoking provisions of section 80P(2)(d) of the Income Tax Act 1961 and thereby incorrectly denying the deduction claimed by the assessee amounting to Rs.14,21,300/- for

the reason that society has earned interest from Bank of Maharashtra and the lower authorities further erred by incorrectly denying the assessee the deduction claimed by the assessee under section 80P(2)(a)(i).

2. On the facts & in circumstances of the case & in law, the lower authorities have erred in incorrectly invoking provisions of section 80P(2)(d) of the Income Tax Act 1961 and thereby incorrectly denying the deduction claimed by the assessee amounting to Rs.34,923/- for the reason that society has earned interest from MSEB and the lower authorities further erred by incorrectly denying the assessee the deduction claimed by the assessee under section 80P(2)(a)(i).

3. Despite service of notice, none appeared on behalf of assessee nor any application was moved for adjournment. However, because of the issue being covered by earlier orders of Tribunal, I proceed to decide the same after hearing the learned Departmental Representative for the Revenue.

4. The issue which arises in the present appeal vide grounds of appeal Nos.1 and 2 is against the claim of deduction under section 80P of the Act on account of interest income earned from Bank of Maharashtra and also interest income earned from MSEB.

5. The appeal of assessee was fixed for hearing on 08.11.2018 on which date, none appeared on behalf of assessee and another notice was issued to the assessee. However, on the appointed date of hearing i.e. 26.12.2018, again there is non-appearance on behalf of assessee and even notice of hearing has been returned by postal authorities with remark ‘refused’. The envelop and Ack. Due are placed on record and hence, the appeal is decided *ex-parte* the assessee.

6. Briefly, in the facts of the case, the assessee was co-operative society and had furnished return of income declaring Nil income after claiming deduction under section 80P of the Act. The assessee had earned income

from investments with Bank of Maharashtra at ₹ 14,21,300/- and also interest from deposit with MSEB at ₹ 34,923/-. The assessee claimed that it was Credit Co-operative Society, providing credit facilities to its members and hence, the income arising from the activity qualified for deduction under section 80P(2)(a)(i) of the Act. The Assessing Officer was of the view that other income earned by assessee society was not allowable for deduction under section 80P(2)(a)(i) / 80P(2)(d) of the Act and hence, the same was denied to assessee.

7. Before the CIT(A), the assessee raised issue of claim of deduction under section 80P(2)(a)(i) of the Act against deposit income from Bank of Maharashtra and also the interest earned on deposits with MSEB. The CIT(A) did not allow both the claims of assessee in turn, relying on the ratio laid down by the Hon'ble High Court of Delhi in Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT (2014) 50 taxmann.com 278 (Del) and the Hon'ble Supreme Court in Totgars' Co-operative Sale Society Ltd. Vs. ITO (2010) 322 ITR 283 (SC).

8. The assessee is in appeal against the order of CIT(A).

9. I find that similar issue of claim of deduction under section 80P(2)(a)(i) of the Act in respect of interest income from Bank of Maharashtra has been decided by the Tribunal in bunch of cases in the case of ITO Vs. M/s. Maharashtra Bank Employees Co-op. Credit Society Ltd. in ITA Nos.454 to 456/PUN/2015, relating to assessment years 2007-08, 2008-09 & 2010-11 along with CO Nos.16 & 17/PUN/2017, relating to assessment years 2007-08 & 2008-09, order dated 22.12.2017, wherein reliance was placed on the ratio laid

down by the Hon'ble High Court of Punjab & Haryana in CIT Vs. Nawanshahar Central Co-operative Bank Ltd. (2003) 263 ITR 320 (P&H), confirmed by the Hon'ble Supreme Court. After considering the ratio laid down by the Hon'ble High Court of Delhi in Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT (supra) of interest accrued on surplus funds, the issue was decided in favour of assessee holding as under:-

> *"11. We have heard the rival contentions and perused the record. The limited issue which arises in the present appeal filed by the Revenue is against relief given by the CIT(A) on the claim of assessee society that interest income received on FDRs with scheduled Bank of Maharashtra is entitled to claim of deduction under section 80P(2)(a)(i) of the Act. The assessee was a Co-operative society of the employees of Bank of Maharashtra, and was engaged in the business of providing credit facilities to its members. The activities carried on by the assessee society were subject to the provisions of Maharashtra Co-operative Societies Act, 1960. Under section 66 of the said Act, every society which is making profits from its transactions shall maintain reserve fund as per clause (1) to section 66 of the said Act. Clause (2) further lays down that every society shall carry atleast one-fourth of net profits each year to the reserve fund; and such reserve fund may subject to the rules made thereunder, if any, be used in the business of society or may, subject to provisions of section 70, be invested, as the State Government may by general or special order direct or may, with the previous sanction of the State Government be used in part for some public purpose to promote the objects of the Act or some such purposes of the State Government or of the local interest. Section 70 of the said Act lays down that society shall invest or deposit its funds in one or more of the investments provided in clauses (a) to (e) thereunder. We are concerned here with clause (d) to section 70 of the said Act, which reads as under:-*
>
> > *"70…*
> > *(a)….*
> > *(b)….*
> > *(c)…*
> > *(d) in any co-operative bank (other than those referred to in clause (a) of this section) or banking company approved for this purpose by the Registrar, and on such conditions as the Registrar may from time to time impose:*
> > *(e)….."*
>
> *12. Reading the provisions of Maharashtra Co-operative Societies Act, it is incumbent upon the society which is making profits to park one-fourth of its profits in the reserve fund. Further, the said reserve funds as per directions of the State Government by general or special order are to be invested in one of the securities, which are provided under section 70 of the said Act. Clause (d) clearly lays down that the investment or deposit of funds could be in any Co-operative Bank or Banking company approved for this purpose by the Registrar. The assessee society belonging exclusively to the employees of Bank of Maharashtra, had invested its reserve funds in FDs with Bank of Maharashtra. Accordingly, the assessee society applied for requisite permission from the Registrar of Co-operative Societies under section 70 to do so. The Registrar vide its letter dated 18.10.1995 in respect of investment of reserve funds consequent to Society's Resolution dated 25.08.1994 and Management Committee's Resolution dated 29.07.1991 and further the*

assessee's letter dated 11.07.1995, granted permission under section 70 of the Maharashtra Co-operative Societies Act, 1960 and Rule 54 of the Rules 1961 to transfer reserve funds amount with Pune District Central Co-operative Bank to the Bank of Maharashtra with condition of investment and also that the amount invested in the Bank of Maharashtra could not be given as security for borrowing or used for any other purpose without written permission from the Registrar. The copy of said permission is placed at page 6 with English translation at page 7 of the Paper Book. The claim of assessee was that in line with the said permission received from the Registrar as under the provisions of section 66 and 70 of the Maharashtra Co-operative Societies Act, it was required to transfer the funds i.e. one-fourth of profits of assessee's society to the reserve fund and thereafter, the funds in the reserve fund were invested as FDRs with the Bank of Maharashtra. The assessee points out that the said parking of funds in FDRs with the Bank of Maharashtra was one of the conditions for carrying on the business activities of the assessee society, hence interest earned therefrom was business income in the hands of assessee. It was time and again reiterated by the learned Authorized Representative for the assessee that the amounts which were parked in FDRs with Bank of Maharashtra were not out of surplus and idle funds but were out of funds transferred to reserve fund. The assessee thus, claimed that once the interest income has been earned during the course of carrying on of its business activities, then the same is eligible for grant of deduction under section 80P(2)(a)(i) of the Act .

13. The Apex Court in CIT Vs. Karnataka State Co-operative Apex Bank (supra) while deciding the case of Co-operative Societies and scope of special deduction had held as under:-

> *"Interest arising from investment made, in compliance with statutory provisions to enable it to carry on banking business, out of reserve fund by a co-operative society engaged in banking business, is exempt under section 80P(2)(a)(i) of the Income-tax Act, 1961. The placement of such funds being imperative for the purpose of carrying on banking business the income therefrom would be income from the assessee's business.*
>
> *There is nothing in the phraseology of section 80P(2)(a)(i) which makes it applicable only to income derived from working or circulating capital."*

14. We further find that similar issue was considered by the Pune Bench of Tribunal in ITO Vs. M/s. Kundalika Nagari Sah. Patsanstha Maryadit (supra), wherein the issue was with regard to investments with other Co-operative Society as per the mandate of Maharashtra Co-operative Societies Act and whether the interest income earned by the assessee on such investments was liable for deduction under section 80P(2)(a)(i) of the Act. The Assessing Officer had denied the claim relying on the ratio laid down by the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), the Tribunal after considering the factual and legal aspects held as under:-

> *"17. In order to adjudicate the issue, first reference is made to the decision of Hon'ble Supreme Court in Totgar Co-operative Sale Society Ltd. Vs. ITO (supra). In the facts of the said case, the assessee before the Hon'ble Apex Court was a co-operative society providing credit facilities to the members or marketing agricultural produce of its members. The assessee had parked its funds in short term bank deposits and securities and the interest earned on the same was claimed as deductible under section 80P(2)(a)(i) of the Act. The Revenue authorities held that the same was taxable under the head 'income from other sources'. The claim of the assessee was that it had*

invested the funds on short term basis as these were not required immediately for business purposes and consequently, interest received by the assessee was eligible for deduction under section 80P(2)(a)(i) of the Act. Further, the contention of the assessee before the Court was that under regulations 23 and 28 r.w.s. 57 and 58 of the Karnataka Co-operative Societies Act, 1959, a statutory obligation was imposed on co-operative credit societies to invest its surplus funds in specified securities and in view of the aforesaid statutory obligations, the above mentioned investment was made by the assessee and the same was in the nature of its business activity. The said interest income was claimed to be eligible for deduction under section 80P(2)(a)(i) of the Act, irrespective of the source or head under which such income would fall. The Hon'ble Apex Court noted that the interest income arising on surplus investment in short term deposits and securities, which surplus was not required for business purpose, was to be taxed under section 56 of the Act. The Hon'ble Apex Court further noted that the assessee markets the produce of its members whose sale proceeds at times were retained by it and the tax treatment of such amount was the issue before them. The Hon'ble Apex Court held that where the interest on deposits / securities, where the funds were not immediately required for business purposes, was invested in specified securities, would be taxable as income under section 56 of the Act. It further held that where the assessee society regularly invests its funds not immediately required for business purposes, interest on such investment could not fall within the expression of profits and gains of business and the same could not be held to be attributable to the activities of the society i.e. carrying on of business of providing credit facilities to its members or marketing the agricultural produce of its members. The Hon'ble Apex Court further reiterated that where the assessee markets the agricultural produce of its members and it retains the sale proceeds in many cases and where the retained amount which was payable to its members, from whom the produce was bought, was invested in short term deposits / securities, the said amount was liability of the assessee and it was shown in the balance sheet on the liabilities side, therefore, to that extent, the Hon'ble Supreme Court held that such interest income could not be said to be attributable either to the activity mentioned in 80P(2)(a)(i) or 80P(3) of the Act. In view thereof, the Hon'ble Supreme Court upheld the order of Assessing Officer in taxing the said amount under section 56 of the Act. The alternate plea of the assessee that even if the said interest income was held to be covered under section 56 of the Act, was eligible for deduction under section 80P(2)(a)(i) of the Act, was rejected.

18. In the facts of the case before Hon'ble High Court of Karnataka in Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO (supra), the assessee co-operative society was engaged in the activity of carrying on of business of providing credit facilities to its members and it had earned interest income on its deposits. Another fact noted by the Hon'ble High Court of Karnataka was that the amount which was invested in banks to earn interest was not the amount due to any members and it was not the liability of the assessee. In fact, the said amount was in the nature of profits and gains, which was not immediately required by the assessee for lending money to the members as there were no takers and the assessee in such circumstances, deposited the money in bank so as to earn interest. The Hon'ble High Court of Karnataka in such circumstances held that the interest income was attributable to carrying on of business of banking and therefore, it was liable to be deducted in terms of section 80P(1) of the Act, they took note of insertion of section 80P(4) of the Act, which

was applied by the Assessing Officer to deny the deduction under section 80P(2)(a)(i) of the Act. The Hon'ble High Court of Karnataka referred to the judgment of Hon'ble Apex Court in Totgar Co-operative Sale Society Ltd. Vs. ITO (supra) and pointed out that in the facts of the said case, the amount which was retained by the assessee was a liability and it was shown in the balance sheet on liabilities side. Where the interest income was earned on such funds, then the same was held by the Hon'ble Apex Court to be treated under section 56 of the Act. However, the distinction was drawn by the Hon'ble High Court of Karnataka in para 10 and it was pointed out that in the case before them, the amount which was invested in banks to earn the interest was not an amount due to any member, it was not the liability and it was not shown as liability in their accounts. In fact, the amount was in the nature of profits and gains which was not immediately required by the assessee for lending money to the members as there were no takers and hence, was deposited in the banks so as to earn interest, such interest income earned by the assessee was held to be attributable to carrying on the business and therefore, same was liable to be deducted in terms of section 80P(1) of the Act.

19. Another decision referred to by the learned Authorized Representative for the assessee is Guttigedarara Credit Co-operative Society Ltd. Vs. ITO (supra), wherein the assessee was a co-operative society engaged in the activity of carrying on the business of providing credit facilities to its members. The Assessing Officer in view of insertion of section 80P(4) of the Act, had declined to extend the benefit of deduction under section 80P(2)(a)(i) of the Act. The interest income earned on short term deposits and from saving banks account was held liable to income tax. The Hon'ble High Court held that where the assessee society was providing credit facilities to its members and was not carrying on any other business, then the surplus funds which it had earned as profits of its business when temporarily not required were invested in banks to earn interest was attributable to carrying on the business of banking and therefore, liable to be deducted under section 80P(1) of the Act.

20. Further, the Pune Bench of Tribunal in ITO Vs. Niphad Nagari Sahakari Patsanstha Ltd. (supra) had laid down the similar proposition as by the Hon'ble High Court of Karnataka.

21. …… The claim of the assessee before us is that it was engaged in the business of providing credit facilities to its members, out of loan received from its members itself. The surplus amount which was on account of amount received from its members only, which had not been advanced to any of the members was invested in the banks, against which the said investment was made out of surplus funds available with the assessee, which in turn, were amounts advanced by the members itself. The said parking of funds with the co-operative banks was claimed by the assessee to be in the nature of its business activity as it was the requirement of Maharashtra Co-operative Societies Act, 1960, that 20 to 30% of total deposits are to be parked in the investments with co-operative banks. It is not the case of the Department that the amount invested by the assessee was out of any liabilities due by the assessee. In the absence of the same and following the same parity of reasoning laid down by the Hon'ble High Court of Karnataka in Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO (supra) and the facts of the present case being at variance to the facts before the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), we hold that the assessee is entitled

to the claim of deduction under section 80P(2)(a)(i) of the Act. In the alternate, we find merit in the plea of the assessee that at best the income which can be assessed in the hands of assessee is the net income and not the gross income as proportionate expenditure incurred is to be allowed in the hands of the assessee. However, we are not adjudicating this issue since we have already held the assessee to be eligible for claim of deduction under section 80P(2)(a)(i) of the Act. In view thereof, we also do not adjudicate the second alternate plea raised by the assessee that it is entitled to the claim of deduction under section 80P(2)(d) of the Act. However, the assessee is not entitled to the deduction under section 80P(2)(a)(i) of the Act relating to dividend received from UTI Mutual Funds and Sundaram Finance of Rs.87,087/- and Rs.88,519/-, which are to be included as income from other sources, on which the assessee is entitled to proportionate expenditure. Similarly, the profit of Rs.25,786/- from other activities and services is not entitled to the claim of deduction under section 80P(2)(a)(i) of the Act. Accordingly, we partly uphold the order of CIT(A). In view thereof, the grounds of appeal raised by the Revenue are partly allowed."

15. The Hon'ble Punjab & Haryana High Court in CIT Vs. Nawanshahar Central Co-operative Bank Ltd., (2003) 263 ITR 320 (P&H) held that where investment in PSEB bonds was made in accordance with mandatory provisions of section 44 of Punjab Co-operative Societies Act, it was clearly a statutory investment and the interest on this investment was eligible for deduction under section 80P(2)(a)(i) of the Act. The Hon'ble Punjab & Haryana High Court held that whether investment was made in statutory reserves had come out of working or circulating capital or out of surplus funds was of no consequence. The said decision of the Hon'ble Punjab & Haryana High Court has been confirmed by the Hon'ble Supreme Court in CIT Vs. Nawanshahar Central Co-operative Bank Ltd. (2007) 289 ITR 6 (SC), wherein it has been held that where a Co-operative bank carrying on the business of banking, statutorily required to place part of its funds in approved security, then the income attributable thereto is deductible under section 80P(2)(a)(i) of the Act. The Hon'ble Supreme Court relied on earlier decisions of the Apex Court in this regard.

16. The Hon'ble Punjab & Haryana High Court in CIT Vs. Punjab State Co-operative Agricultural Development Bank Ltd. (2016) 389 ITR 607 (P&H) has remanded the issue back to the Tribunal to decide whether the assessee was carrying on business of banking and thereafter, decide the issue of eligibility of deduction under section 80P(2)(a)(i) of the Act on the interest income attributable to the business of banking.

17. However, we find that the Hon'ble High Court of Gujarat in State Bank of India Vs. CIT (supra) while deciding similar issue of eligibility of deduction under section 80P(2)(a)(i) of the Act on interest income from deposits of surplus funds in banks held that neither it was business income nor income from investment in any other Co-operative societies. It may be pointed out that the Hon'ble High Court in para 16 has clearly noted that in the said case, there was no obligation upon the assessee to invest its surplus funds with the State Bank of India. It was further observed that investing surplus funds in a bank is no part of the business of the appellant of providing credit to its members and hence, it cannot be said that the interest income derived from depositing surplus funds with the State Bank of India being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a)(i) of the Act. The Hon'ble High Court further referred to section 71 of the Gujarat Co-operative Societies Act, 1961 permitting society to invest or deposit its funds in the State Bank of India. The Hon'ble High Court held that while investment in State Bank of India was permissible under section 71 of that Act, there was no statutory obligation upon the assessee to deposit the funds as

part of its business. The said provision also permitted investment of funds in any Co-operative Bank or any banking company approved for this purpose by the Registrar. The Hon'ble High Court further held that the assessee could not avail the deduction under section 80P(2)(d) of the Act in this regard. Even in the case of Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT (supra) the issue before the Hon'ble High Court was in respect of interest income earned from FDRs out of surplus funds and applying the principle laid down in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), the Hon'ble High Court held the assessee not to be entitled to claim the deduction.

18. We find that the facts of the present case are at variance to the facts before the Hon'ble High Court of Gujarat (supra). Even in the facts before the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), the issue was deposit of surplus funds as in the case before the Hon'ble High Court of Gujarat. Though reference is being made to the reserve funds but the ratio laid down is against investing of surplus funds. Where any society deposits its surplus funds in fixed deposits with Scheduled Bank, then the Courts have held that such interest income is not eligible for claim of deduction under section 80P(2)(a)(i) of the Act. However, the facts of the present case before us are at variance, it is not surplus funds which has been deposited by the assessee. On the other hand, the assessee is statutorily required to deposit 25% of its profits in reserve funds, which in turn, have to be parked in FDRs with Co-operative Bank or Scheduled Banking company. The assessee before us, in line with statutory obligation of maintaining its status of Co-operative society and as per the regulations of Maharashtra State Co-operative Societies Act, was duty bound to transfer 25% of its profits to reserve funds, which it has done. There is no dispute to the same. The second aspect is the utilization of funds in reserve funds by way of making FDRs with Scheduled bank under section 70 of the said Act. The assessee has received permission of the Registrar of Maharashtra Co-operative Societies Act to make such investment with Bank of Maharashtra and also in order to carry on the business activities of providing credit facilities to its employees, it is mandatory upon the assessee to invest 25% of its profits in the reserve funds, which in turn, are parked in FDRs with Bank of Maharashtra, then interest income earned by the assessee is from carrying on its business activities. Once it is so, then the said income is assessable as 'Income from business' and the assessee is entitled to claim deduction under section 80P(2)(a)(i) of the Act. Accordingly, we hold so. However, the assessee is not entitled to claim the said deduction on Saving Account interest."

10. The issue raised in the present appeal is squarely thus, covered by order of Tribunal (of which JM is Member) and consequently, I hold that the assessee is entitled to claim deduction under section 80P(2)(a)(i) of the Act in respect of FDR interest from Bank of Maharashtra. However, no such deduction is to be allowed in respect of Saving Fund interest. The ground of appeal No.1 raised by assessee is thus, allowed.

11. Now, coming to interest received from MSEB deposits, wherein the aforesaid deposits were made for carrying on its business activity and hence, the same is business income and is entitled to the claim of deduction under section 80P(2)(a)(i) of the Act. The ground of appeal No.2 raised by assessee is thus, allowed.

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

Order pronounced on this 31st day of December, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 31st December, 2018.
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-7, Pune;
4. The Pr.CIT-6, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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