

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं
श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष
**BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos.1136, 1137 & 1138/Chny/2018
निर्धारण वर्ष /Assessment Years: 2010-11, 2011-12 & 2014-15

The Income Tax Officer,
Non-Corporate Ward-6(4),
Room No.421,
BSNL Building, IV Floor,
16, Greams Road,
Chennai-600 006.

Vs. M/s.The Railway Employees'-
Co-Op. Credit Society Ltd.,
P.B.No.259/LB,
Ashok Vihar Complex,
Old Zoo Road,
Near Central Rly. Station,
Chennai-600 003.

(अपीलार्थी/Appellant)

[PAN: AADAT 7303 F]
(प्रत्यर्थी/Respondent)

**Cross Objection Nos.94 & 95/Chny/2018
[in ITA Nos.1136 & 1137/Chny/2018]**

निर्धारण वर्ष /Assessment Years: 2010-11 & 2011-12

M/s.The Railway Employees'-
Co-Op. Credit Society Ltd.,
P.B.No.259/LB,
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Vs. The Income Tax Officer,
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Room No.421,
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16, Greams Road,
Chennai-600 006.

[PAN: AADAT 7303 F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by
Department by

: Mrs.S.Sriniranjani, Adv.
: Mr.R.Clement Ramesh -
Kumar, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 05.12.2018

घोषणा की तारीख /Date of Pronouncement

: 02.01.2019

आदेश / ORDER

PER BENCH:

All the three appeals filed by the Revenue are directed against the different orders of the Commissioner of Income Tax (Appeals)-5, Chennai, all dated 04.01.2018, relevant to the AYs 2010-11, 2011-12 & 2014-15. The assessee also filed Cross Objections for the AYs 2010-11 & 2011-12. The only effective ground raised in all the three appeals filed by the Revenue is that the Ld.CIT(A) erred in directing the Assessing Officer to delete the addition made on account of deduction claimed under section 80P of the Income Tax Act.

2. Brief facts of the case are that the assessee is co-operative society and registered under Multi-State Cooperative Societies Act, 2002. During the course of assessment proceedings in the case of the assessee for the AYs 2010-11, 2011-12 and 2014-15, the Assessing Officer has noticed that the assessee has made deposits with non-cooperative banks, besides, it was maintaining SB accounts also with these banks. The assessee has claimed interest incomes from the above investments as well as from the SB accounts as deduction u/s.80P of the Act along with its profits from the business of banking or providing facilities to its members. It was also noticed that the assessee did not file any return prior to AY 2012-13. As the above interest incomes are not covered by either Sec.80P(2)(a)(1) or Sec.80P(2)(d) of the Income Tax Act, a notice u/s.148 was issued on 30.03.2015 calling for return of income for the AY 2010-11. In response the Notice issued u/s.148, the

assessee filed its return of income on 26.06.2015 for the AY 2010-11 admitting 'Nil' income. After considering the submissions of the assessee and following the various decisions, the AO has held that as the interest income on deposits and in the SB Accounts with non-cooperative banks is not covered by Sec.80P of the Act, the claim made by the assessee as exempt u/s.80P is not correct and disallowed the entire claim of the assessee and added to the income of the assessee. The assessee carried the matter on appeal before the Ld.CIT(A).

3. After considering the submissions of the assessee and following the various decisions, the Ld.CIT(A) deleted the addition made by the AO.

4. Aggrieved, the Revenue is in appeal before the Tribunal by relying on the various decisions and the Ld.DR has prayed that the deletion made by the Ld.CIT(A) should be reversed. On the other hand, the Ld.AR strongly supported the order of the Ld.CIT(A).

5. The Ld.CIT(A) by relying on the Tribunal orders in the assessee's own case, passed order in favour of the assessee for the AYs 2008-09, 2009-10, 2012-13 & 2013-14. The findings of the Tribunal are as under:

6.1 A co-op. credit society, though not a co-operative Bank, but its nature of business is coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee society is required to maintain some liquid funds. That is why, generally, credit societies used to invest in fixed deposits. Furthermore, in many cases, credit societies maintain overdraft facility with nationalized banks' to augment its day to day business needs. Furthermore, to some extent, the deposits are also

required to be kept, out of operational funds, as per extant legislative requirements. Naturally, this entire activity and income arising there from is nothing but attributable to business of banking.

Section 80P reads as follows: [Relevant part only]
[Deduction in respect of income of co-operative societies.]

80P. (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 a co-operative society engaged in—

*(i) carrying on the business of banking or providing credit facilities to its members, or
the whole of the amount of profits and gains of business attributable to any one or more of such activities.*

[Note: As per section 2(19), “co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies].

6.2 The Hon’ble Supreme Court in case of The Totgars’ Cooperative Sale Society Ltd. v. ITO, [322 ITR 283 (SC)] held that, the words “the whole of the amount of profits and gains of business” in section 80P(2)(a) emphasizes that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. Accordingly, it was held that interest earned by appellant cooperative society on surplus funds invested in short-term deposits with banks and in govt. securities is not eligible for deduction under section 80P of the Act. However, in the present case, admittedly, the assessee is a cooperative credit society and the only activity of the assessee society was providing credit facility to its members and nowhere the Assessing Officer has disputed in the assessment order that the assessee society has engaged in any other activity other than providing credit facility to its members or the assessee earned income out of deposits of other activities or deposited surplus funds with the banks.

6.3 The above judgement was rendered on the context that the interest income arising on the surplus invested in short term deposits and securities which surplus was not required for business purposes.

The assessee, admittedly a sales society, markets the produce of its members whose sale proceeds at times were retained by it as such, the surplus funds arose out of the amount retained from marketing the agricultural produce of the members and invested in short-term deposits/securities. 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 in section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, the Hon'ble Supreme Court has held that the interest income is sought to be taxed under section 56 of the Act and the same would not qualify for deduction as business income under section 80P(2)(a)(i) of the Act. Further, in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds in the hands of pure Co-operative Credit Societies and the ratio was applicable to co-operative sale societies only.

6.4 *The assessee in Totgars case carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and that the surplus had arisen emphatically from marketing of agricultural produces. Whereas, in the case of co-op. credit societies, generally, it does not carry out any activity except in providing credit facilities to its members and that the funds are operational funds. The only fund available with the pure credit societies is deposits from its members and, thus, there are no surplus funds as such. Therefore, we are of the considered opinion that the Department has blatantly applying the above decision of the Hon'ble Supreme Court disallowed the deduction claimed by the assessee under section 80P of the Act against the income from investments, which has no application to the facts of the present case.*

6.5 *By considering the above clinching dissimilarities, the Ahmedabad Benches of the Tribunal has categorically held in the case of Jafari Momin Vikas Co-op Credit Society Ltd., vs. ITO in ITA No.1491/Ahd/2012 for A.Y. 2009-10 that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd (supra) cannot be applied to the facts of the credit society and accordingly deduction under section 80P of the Act has been allowed against interest income from deposits with nationalized banks by observing as under:*

“17. We have carefully considered the submissions of the either party, perused the relevant records and also the case law

on which the learned AR had reservation in it's applicably in the circumstances of the assessee's case.

18. *It was the stand of the learned CIT (A) that the entire income was not exempt and that it was to be examined as to whether there was any interest income on the short term bank deposits and securities included in the total income of this society which has been claimed as exempt. According to the CIT (A), a similar issue to that of the present one was dealt with by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd v. ITO (supra). The issue before the Hon'ble Court for determination was whether interest income on short term bank deposits and securities would be qualified as business income u/s.80P (2)(a)(i) of the Act.*

19. *The issue dealt with by the Hon'ble Supreme Court in the case of Totgars (supra) is extracted, for appreciation of facts, as under:*

"What is sought to be taxed under section 56 of the Act is the interest income arising on the surplus invested in short term deposits and securities which surplus was not required for business purposes? The assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is-whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? in our view, such interest income would come in the category of 'income from other sources', hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer..."

19.1 *However, in the present case, on verification of the balance sheet of the assessee as on 31.3.2009, it was observed that the fixed deposits made were to maintain liquidity and that there was no surplus funds with the assessee as attributed by the Revenue. However, in regard to the case before the Hon'ble Supreme Court –*

"(On page 286) 7.....Before the assessing officer, it was argued by the assessee(s) that it had invested the funds on short term basis as the funds were not required immediately for business purposes and, consequently, such act of investment

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constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under section 28 and not under section 56 of the Act and, consequently, the assessee(s) was entitled to deduction under section 80P(2)(a)(i) of the Act. The argument was rejected by the assessing officer as also by the Tribunal and the High Court, hence, these civil appeals have been filed by the assessee(s)."

19.2 *From the above, it emerges that –*

(a) that assessee (issue before the Supreme Court) had admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

(c) that assessee carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and

(d) that the surplus had arisen emphatically from marketing of agricultural produces.

19.3 *In the present case under consideration, the entire funds were utilized for the purposes of business and there were no surplus funds.*

19.4 *While comparing the state of affairs of the present assessee with that assessee (before the Supreme Court), the following clinching dissimilarities emerge, namely: (1) in the case of the assessee, the entire funds were utilized for the purposes of business and that there were no surplus funds;*

- in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present assessee, it did not carry out any activity except in providing credit facilities to its members and that the funds were of operational funds. The only fund available with the assessee was deposits from its members and, thus, there was no surplus funds as such;

- in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds;

19.5 Considering the above facts, we find that there is force in the argument of the assessee that the assessee not a co-operative Bank, but its nature of business was coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in short-term deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs.13,69,955/- [source: Balance Sheet of the assessee available on record]

19.6 In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot in any way come to the rescue of either the Ld. CIT (A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT (A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s 56 of the Act. It is ordered accordingly.

19.7 Before parting with, we would, with due regards, like to record that the ruling of the Hon'ble jurisdictional High Court in the case of CIT v. Manekbang Co-op Housing Society Ltd reported in (2012) 22 Taxmann.com 220(Guj) has been kept in view while deciding the issue.

20. In the result (i) the Revenue's appeal is dismissed; &(ii) the assessee's Cross Objection is allowed.”

6.6 By following the judgement of the Hon'ble Jurisdictional High Court in assessee's own case, in the case of S.E., S.E.C. & E. Co. Railways Employees' Coop. Credit Society Ltd., Kolkata for the assessment year 2008-09 in ITA.No.1693/K/2012 vide order dated 30.10.2014, and by distinguishing the judgement of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. v. ITO (supra), the Kolkata Benches of the Tribunal has observed and held as under:

“5. We have heard both the counsel and perused the records. The ld. Counsel of the assessee submitted that the assessee has been continuously granted exemption u/s 80P(2)(a)(i) of the Act in the preceding assessment years. The ITAT, Kolkata Benches has decided this issue in favour of the assessee as well as the

Hon'ble Jurisdictional High Court. In this view of the matter the ld. Counsel of the assessee claimed that on the basis of the principle of consistency the revenue cannot be permitted to take a different stand for the current year. The ld. Counsel of the assessee further submitted that in the subsequent year the AO has himself accepted the assessee's plea that the income from bank deposits has to be seen in the light of the cost the assessee has to incur in getting those funds which are in the shape of interest which the Society pays to its members. The ld. Counsel of the assessee further submitted that the Apex Court's decision in the case of Totgars Co-operative Sale Society Ltd. vs. ITO and the decision of Hon'ble Patna High Court in the case of Bihar Rajya Sahkari Bhoomi Bikash Co-op. Bank Ltd. vs. CIT relied upon by the ld. CIT(A) are not applicable to the facts of the case. Accordingly the ld. Counsel of the assessee contended that the issue may be decided in favour of the assessee as in the preceding and subsequent years.

6. *The ld. DR, on the other hand, relied on the orders of the authorities below.*

7. *Upon careful consideration, we find that the issue involved in the present case is whether the interest income earned by the assessee society from making deposits in short term deposit in banks will qualify for exemption u/s 80P(2)(a)(i) of the Act. The deposits which are made by the assessee are out of the deposit collected by the assessee from its members. The assessee society also provides loan and credit facilities to its members. When the funds are lying idle they are invested in the short term in bank deposits. In this view of the matter we find that assessee's contention is cogent that when the real income from the bank deposit has to be considered, it is to be seen in the light of the interest which the assessee has to pay to its members on its deposits and also the administration cost of making such deposits. This contention of the assessee has duly been accepted by the Revenue as is emanating from the order of AO in A.Yr.2009-10. In the said assessment order the AO had computed the gross interest on bank deposit at Rs.1,24,16,335/-. From this the AO has allowed the interest paid by the assessee to its members amounting to Rs.1,21,31,880/-. Only the resultant income from bank deposits amounting to Rs.2,84,445/- was brought to tax. We do not find any reason as to why this principle should not be adopted in the current year. In our considered opinion the ld. CIT(A) has erred in not entertaining this plea of the assessee.*

7.1. We further find that the issue involved is covered in favour of the assessee by catena of decisions of the Tribunal in assessee's own case. These decisions are also affirmed by the Hon'ble Jurisdictional High Court in its order for A.Yr.2005-06. In this order the Hon'ble Jurisdictional High Court has considered all the relevant orders and has decided the issue in favour of the assessee. We may gainfully reproduce the operative order of the Jurisdictional High Court which is as under:-

"We have gone through the impugned judgment and order of the Learned Tribunal. It appears that the point involved .is whether interest earned out of the investment earned by the assessee cooperative can be treated to be the income arising out of business activity or from other sources in order to apply the provision of Section 80P(2)(a)(i) of the I.T.Act. It is an undisputed factual position that similar issue arose before the Commissioner of Income Tax (Appeal) in relation to the assessment year 1998-99 to 2002-2003 as also for the assessment year 1995-96 and 1996-97. Then again in relation to the assessment years 2003-04 and 2004-05 a similar point arose. The Learned Tribunal in relation to the assessment years 1998-99 to 2002-2003 by order dated 10.11.2006 in ITA Nos. 840 to 844/Kol/2006 and again by order dated 29.12.2006 in relation to assessment years 2003-04 and 2004-05 has deleted the disallowance made in those assessment years and it was held that the interest earned by the assessee cooperative society from its short term and fixed deposits with the banks and other institutions were disallowed on the ground that this income was not business profit of the assessee society but was income from other sources. The Ld. Tribunal has also held that income from investment in banks and other financial institutions is the business income of the assessee society and it is eligible to get deduction under Section 80P(2)(a)(i). The Tribunal has overruled the decisions rendered against the assessee in relation to assessment years 1995-96 and 1996-97 on the same issue in relation to subsequent years.

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.

It is submitted by Mr. Bhowmick that there has been challenge of the decision in relation to assessment years 1995-96, 1996-97 and the same is pending before this Court we think that challenge of the assessee has now become redundant as the earlier view taken in both the assessment years have been reversed by the Tribunal by its subsequent decision. Hence, the pendency of that earlier matter is of no consequence in this matter. Had there been a challenge of the decision of the Tribunal in relation to the assessment years 1998-99 to 2002-03 and also 2003-04 to 2004-05 the matter would have been different. The revenue did not take any step whatsoever. Therefore, we presume the revenue has accepted the subsequent view of the Tribunal and the same now hold the field right now."

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 ld. 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 80P(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 80P(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 ld. 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.

8. In the result, the appeal of the assessee is allowed.”

6. In Para No.2.3 of the grounds of appeal, the Department has stated that having regard to the Hon'ble High Court Calcutta, vide its decision dated 15.07.2016 in GA No.1446 of 2015, the Ld.CIT(A) ought to have upheld the action of the Assessing Officer. In the above case referred in Para No.2.3, the Calcutta Benches of the Tribunal restored registration of the assessee invalidating the order of cancellation, against which, the Department preferred further appeal before the Hon'ble High Court. What way the above said case is relevant to the case in hand is better known to the concern ITO, NCW-6(4), Chennai. Thus, the case law relied on by the Department has no relevance to the facts of the present case.

7. Under the above facts and circumstances and in view of overwhelming judgements, we set aside the order of the Ld.CIT(A) and direct the AO to allow the deduction claimed under section 80P of the Act to the assessee. Thus, the ground raised by the assessee is allowed.

8. Coming to the Cross-Objections of the assessee, both the Cos are filed with a delay of 7 days before the Tribunal. The assessee has filed condonation petition in support of the Affidavit, to which, the Revenue has not raised any serious objection. Consequently, we condoned the delay of 7 days in filing of the COs. In the COs, the assessee has prayed to decide the issue involved in the appeals filed by the Revenue on merits and we have decided the appeals against the Revenue on merits, the COs filed by the assessee are infructuous.

9. In the result, the appeals in ITA Nos.1136-338/Chny/2018 filed by the Revenue are dismissed and the Cross-objections in CO Nos.94 & 95/Chny/2018 filed by the assessee are dismissed as infructuous.

Order pronounced on the 2nd day of January, 2019, in Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P.GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(धुव्वुरु आर.एल. रेड्डी)

(DUVVURU R.L. REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: January 02, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF