आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील स / ITA No.1250/PUN/2018
निर्धारण वर्ष / Assessment year : 2015-16

Dhanashree Multistate Credit Co-operative Society Limited,
Damaji Road, Murlidhar Chowk,
Mangalwedha, Solapur – 413 305.

..... अपीलार्थी / Appellant

PAN : AABAD1879N.

बनाम v/s

The Income Tax Officer,
Ward 1, Pandharpur.

..... प्रत्यर्थी / Respondent

Assessee by : Shri P.S. Shingte.

Revenue by : Shri Rajesh Gawali.

सुनवाई की तारीख / Date of Hearing : 22.01.2019		घोषणा की तारीख / Date of Pronouncement: 01.03.2019

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of the Commissioner of Income Tax – (Appeals) – 7, Pune dated 27.04.2018 for the assessment year 2015-16.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Society and its main activities are accepting deposits and granting loans to its Members. Assessee electronically filed its return of income on 23.09.2015 declaring total income at Rs. Nil. The case was selected for scrutiny and thereafter

assessment was framed u/s 143(3) of the Act vide order dt30.10.2017 and the total income was determined at Rs.20,16,130/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.27.04.2018 (in appeal No.PN/CIT(A)-7/Wd-1/10152/2017-18) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following effective ground :

> *"On the facts and in the circumstances of the case and in law the lower authorities have erred in denying the deduction u/s 80P(2)(a)(i) for the interest earned from deposits with nationalized bank, a sum of rs.19,83,126/- treating it as a income from other sources by disregarding appellant's contention in this regard."*

3. During the course of assessment proceedings, on perusing the Profit and Loss account, AO noticed that assessee had earned interest income from Nationalized banks, the details of which are listed at Para 6.1 of the assessment order. The aggregate of such interest was Rs.19,83,126/- which was claimed as deduction u/s 80P(2)(a)(i) of the Act. AO was of the view that the interest income earned by the assessee from Nationalized Banks do not qualify for deduction u/s 80P(2) of the Act, as it is not out of the main business activity of the assessee. He therefore considered the aforesaid interest income to be taxable as "income from other sources" and denied the claim of deduction u/s 80P of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

4. Before us, at the outset, Ld.A.R. submitted that the issue in the present case is with respect to denial of claim of deduction u/s 80P(2)(a)(i) of the Act. Ld.A.R. further submitted that the issue in the

present case is directly covered in assessee's favour by the decision of Pune Tribunal in the case of ITO Vs. Swa Ashokrao Bankar Nagar Sah. Patsanstha Maryadit (in ITA No.1395/PUN/2015 dated 25.01.2018). He also placed on record the copy of the aforesaid decision. He further submitted that the facts in the year under consideration are identical to the case of Swa Ashokrao Bankar Nagar Sah. Patsanstha Maryadit (supra), wherein the issue was decided in favour of the assessee. Ld.D.R. on the other hand, supported the order of AO.

5. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80P(2)(a)(i) of the Act. We find that identical issue on denial of claim of deduction u/s 80P of the Act on the interest earned from deposits from banks arose in the case of Swa Ashokrao Bankar Nagar Sah. Patsanstha Maryadit (supra) wherein the Co-ordinate Bench of the Tribunal, by following the order of the Tribunal in the case of ITO Vs. Niphad Nagari Sahakari Patsanshta Ltd (in ITA No.1336/PUN/2011 dated 31.07.2013) and other decisions, decided the issue in favour of the assessee by observing as under :

> *"9. On the perusal of record, we find that the issue in the present appeal is against the claim of deduction under section 80P(2)(a)(i) of the Act on interest income received from fixed deposits with Bank of India, HDFC Bank, State Bank of India, ICICI Bank and Bank of Baroda. The said issue is squarely covered by the order of the Tribunal in ITO Vs. Niphad Nagari Sahakari Patsanstha Ltd. (supra) wherein the Tribunal had held that the assessee is entitled to claim deduction under section 80P(2)(a)(i) of the Act on the interest income received by it on bank fixed deposits. The relevant findings of the Tribunal are reproduced at page 9 of the appellate order but are not being reproduced for the sake of brevity.*
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> *10. We further find that the issue of allowability of deduction under section 80P(2)(a)(i) of the Act on interest income earned by the assessee in the hands of assessee was decided by the Tribunal in ITA No.1584/PN/2012, relating to assessment year 2009-10, vide order dated 30.04.2014; thereafter in ITA No.1394/PN/2015, relating to assessment year 2011-12, vide order dated 22.07.2016 and also in ITA No.2006/PUN/2014, relating to assessment year 2010-11, vide order*

dated 04.05.2017. The Tribunal in assessment year 2011- 12 had made reference to the ratio laid down in the case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit in ITA No.604/PN/2014, relating to assessment year 2010-11, order dated 19.08.2015, wherein reliance was placed on the ratio laid down by the Honble High Court of Karnataka in Tumkur Merchants Souhards Credit Cooperative Ltd. Vs. ITO reported in 55 taxmann.com 447, wherein it was held that interest earned from short term deposits with the bank was entitled to deduction under section 80P(2)(a)(i) of the Act. The Honble High Court of Karnataka after considering the decision of the Hon'ble Supreme Court in the case of Totgar''s Cooperative Sale Society Ltd. Vs. ITO (2010) 322 ITR 283 (SC) held that the interest earned by such Cooperative Societies on short term deposits with scheduled banks is eligible for deduction under section 80P(2)(a)(i) of the Act. The Tribunal also considered the contrary decision of the Honble High Court of Delhi in Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT and held as under:-

> *"9. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. The only dispute to be decided in the grounds raised by the assessee is that whether the interest amounting to Rs.25,01,774/- earned by the assessee on short term deposits with banks has to be treated as "income from other sources" u/s.56 or the assessee is eligible for deduction u/s.80P(2)(a)(i). We find the AO following the decision of Hon'ble Supreme Court in the case of The Totgar's Cooperative Sale Society Ltd. (Supra) treated the interest earned from such short term deposits as "income from other sources" and brought the same to tax which has been upheld by the CIT(A).*
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> *10. It is the case of the assessee that in view of the decision of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souhards Credit Cooperative Ltd. (Supra) the interest earned from such short term deposits with bank is entitled to deduction u/s.80P(2)(a)(i). We find the Hon'ble High Court of Karnataka after considering the decision of Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd. (Supra) held that the interest earned by such cooperative societies on short term deposits with scheduled banks is eligible for deduction u/s.80P(2)(a)(i). The relevant observation of the Hon'ble High Court from para 6 onwards read as under :*
>
> > *"6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs. 1,77,305/ represents the interest earned from short term deposits and from savings bank account. The assessee is a Cooperative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard, it is necessary to notice the relevant provision of law i.e., Section 80P(2)(a)(i):*
> >
> > *"Deduction in respect of income of cooperative societies:*
> >
> > *80P (1) Where, in the case of an assessee being a cooperative society, the gross total income includes any*

income referred to in subsection (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in subsection (2), in computing the total income of the assessee.

(2) The sums referred to in subsection (1) shall be the following, namely:

(a) in the case of cooperative society engaged in—

(i)

carrying on the business of banking or providing credit facilities to its members, or

(ii) to (vii) xx xx xx

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

7. The word 'attributable' used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 ITR 84 (SC) as under:

As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the legislature, has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General, it has used the expression "derived from", as, for instance, in section80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.

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 cooperative 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 Cooperative 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 member's, 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 CIT v. Andhra Pradesh State cooperative Bank Ltd., [2011] 200 Taxman 220/12 taxmann.com 66. 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:"

11. No doubt, a contrary decision to this effect was also cited by the Ld. Departmental Representative where the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift & Credit Society Ltd. (Supra) has held that where the assessee cooperative society was engaged in providing credit facilities to its members earns interest income on surplus funds deposited as fixed deposits, such interest income would be assessable as

"income from other sources" and thus not eligible for deduction u/s.80P(2)(a)(i). However, it is also the settled proposition of law that when two views are possible, the view which is in favour of the assessee has to be followed. Since in the instant case, two divergent decisions were cited before us and no decision of the Hon'ble jurisdictional High Court is available, therefore, following the decision of the Hon'ble Supreme Court in the case of CIT Vs. Vegetable products reported in 88 ITR 192 we hold that the view in favour of the assessee, i.e. the decision of the Hon'ble Karnataka High Court has to be followed. Accordingly, we hold that the interest income earned by the assessee on short term deposits kept with banks has to be allowed as deduction u/s.80P(2)(a)(i) of the I.T. Act. The order of the CIT(A) is accordingly set aside and the grounds raised by the assessee are allowed."

11. In view of the issue being decided by the Pune Bench of Tribunal in assessee's own case in different years, we find no merit in the grounds of appeal raised by the Revenue and the same are dismissed."

Before us, Revenue has not pointed out any contrary binding decision nor has placed on record any material to demonstrate that the aforesaid decisions have been set aside/stayed/over-ruled by any higher Judicial Forum. In view of the aforesaid facts, we, following the aforesaid decision of Pune Tribunal, hold that interest income of Rs.19,83,126/- earned by the assessee on the deposits held with Nationalized Banks would be eligible for deduction u/s 80P(2)(a)(i) of the Act. We therefore direct so. **Thus, the ground of the assessee is allowed.**

6. **In the result, the appeal of the assessee is allowed.**

Order pronounced on 1st day of March, 2019.

Sd/-	**Sd/-**
(**VIKAS AWASTHY**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 1st March, 2019.
Yamini

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

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

आदेशानुसार/ BY ORDER

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