

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' A ' SMC Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member**

ITA No.1315/Hyd/2019		
Assessment Year:2016-17		
The HWPMO & T. Emp. Cooperative Credit Society Ltd, Aswapuram 507116, Bhadradrikothagudem Distt. Telangana PAN:AADAT6469L	Vs.	Asstt. Commissioner of Income Tax, Circle -1 Khammam
(Appellant)		(Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri Sunku Srinivas, DR	
Date of hearing:	14/11/2019	
Date of pronouncement:	21/11/2019	

**ORDER**

This is assessee's appeal for the A.Y 2016-17 against the order of the CIT (A)-7, Hyderabad, dated 10.06.2019.

2. Brief facts of the case are that the assessee is a cooperative society engaged in the business of extending credit facilities to its members. It filed its return of income for the A.Y 2016-17 on 24.01.2018 admitting "nil" income after claiming exemption u/s 80P(2)(a)(i) of the Income Tax Act. In reply to the show-cause notice as to why the interest on the FD's should not be disallowed, the assessee submitted that the business of the assessee involves collection of deposits from Members and lending the same to the needy members and that the assessee has to pay interest on deposits collected from members, while it earns interest on money lent to its members and in this process, the

assessee is always required to maintain funds for the purpose of lending the money to the Members whenever required. It is submitted that the idle funds before being lent to members are kept deposited in scheduled banks and in this process, the assessee earns interest which is to be treated as business income and not as "income from other sources". It was submitted that the collection of deposits, advancing of loans and maintaining bank balances is part and parcel of the business of the assessee and that several Courts have held that the interest income from Fixed Deposits is business income. He placed reliance upon the decision in the case of CIT vs. Musheerabad Distt. Cooperative Bank Ltd decided by the Hon'ble High Court of Allahabad in ITA No.509 of 2009.

3. The explanation of the assessee was not accepted by the AO and he held that the FDs are in the nature of investments and therefore, the interest earned thereon has to be treated as "income from other sources". He held that even if only the surplus money is deposited, the interest income has to be offered as "income from other sources". For coming to this conclusion, the AO also placed reliance upon the decision of the Hon'ble Supreme Court in the case of Totgars Coop. Sales Society Ltd vs. ITO reported in (2010) 322 ITR 283 (S.C). Thus, he treated the sum of Rs.1,21,248/- being the interest earned by the Society on FDs as "income from other sources" and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before the Tribunal.

4. The learned Counsel for the assessee reiterated the submissions made before the AO and also placed reliance upon the decision of the Hon'ble Supreme Court in the case of Totgars Coop. Sales Society Ltd vs. ITO (Supra) and also the decision of the B Bench of the Tribunal at Kolkata in the case of ITO vs. Kolkata Reserve Bank Employees Coop. Credit Society Ltd in ITA No.1340/Kol/2015, dated 18.10.2017. Further, he also submitted that the assessee has been making the claim by filing the return of income from A.Y 2013-14 onwards and the assessments u/s 143(3) were completed for the A.Ys 2014-15 and 2015-16 but no disallowance of the claim u/s 80P(2)(a)(i) was made. A copy of the same has been filed before the Tribunal.

5. The learned DR, on the other hand, supported the orders of the authorities below and also placed reliance upon the decision of the Hon'ble Supreme Court in the case of Totgars Coop. Sales Society Ltd vs. ITO (Supra). He further submitted a report of the AO that he has intended to reopen the assessments completed for the A.Ys 2014-15 and 2015-16. He also filed copies of the assessment orders for the A.Ys 2013-14 and 2015-16 wherein the claim of the exemption u/s 80P(2)(a)(i) was allowed, which are now to be reopened by the AO.

6. Having regard to the rival contentions and the material on record, I find that the reliance of the AO as well as the CIT (A) is on the decision of the Hon'ble Supreme Court in the case of Totgars Coop. Sales Society Ltd vs. ITO (Supra). Therefore, it is necessary to examine the facts of the said case and the applicability of the said decision to the facts of the case before the Tribunal. In the said case, the assessee was a cooperative sale

society providing credit facilities to its members and also marketing their agricultural produce. The surplus fund available during the relevant financial year were invested in short term deposits in the Bank and in the Govt. securities and interest was earned thereon. The interest income was treated as income from other sources and deduction u/s 80P(2)(a) was disallowed. The Hon'ble Supreme Court held that the interest income was not the interest received from the members for providing credit facilities to it, but the interest income had arisen out of the surplus short-term deposits and securities, as such surplus was not required for business purposes. In such circumstances, the Hon'ble Supreme Court held that the interest income earned from FDs of surplus funds was not eligible for deduction u/s 80P(2)(a)(i) of the Act.

7. In the case before us, the assessee being a cooperative society is required to maintain balances for lending the money to its members as and when required. For this purpose, the assessee is required to maintain a reserve fund which has been deposited in the scheduled bank. The earning of interest income on such deposits with the scheduled bank is incidental to the deposits. The purpose of the deposits is of paramount importance to consider the nature of the interest income. It is not the surplus funds available with the assessee which are deposited in the scheduled bank in order to earn interest income but the assessee is making FD of the funds in the scheduled bank to ensure its availability as and when required to lend it to its members. The learned DR's contention that the assessee has never broken the FDs and has been earning huge interest income thereon, is of no relevance as the purpose of the deposits is to be seen and not the

quantum of income from such deposits. The assessee may have been receiving huge cash deposits which are sufficient for lending the same to its members and may not have been required to break the FDs. As the purpose of the assessee is to maintain a reserve fund for the purpose of its business, then the interest earned therefrom, which is incidental is also to be treated as business income of the assessee and such business income is eligible for deduction u/s 80P(2)(a)(i) of the Act. Therefore, the assessee's appeal is allowed.

8. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 21<sup>st</sup> November, 2019.

**Sd/-**

<p><b>(P. MADHAVI DEVI)</b> <b>JUDICIAL MEMBER</b></p>
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Hyderabad, dated 21<sup>st</sup> November, 2019.

***Vinodan/sps***

Copy to:

- 1 The HWPMO & T. Emp. Cooperative Credit Society Ltd,  
Aswapuram 507116, Bhadrakothagudem Distt. Telangana
- 2 ACIT, Circle-1, Sarathi Nagar, Khammam 507003
- 3 CIT (A)-7 Hyderabad
- 4 Pr. CIT – 7 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*