

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2026/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Shriram Cooperative Bank Ltd.,
Market Yard Shopping Centre,
Dindori Road, Panchavati,
Nashik-422003.

PAN : AAAAS3118A

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(3),
Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Dhiraj Dhandgaval
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 20.12.2019
घोषणा की तारीख / Date of Pronouncement : 17.01.2020

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of the CIT(A)-1, Nashik dated 03.04.2017 for the assessment year 2014-15.

2. In this appeal, the assessee filed the following revised grounds :-

“1. The Hon’ble Commissioner of Income Tax (Appeals) - 1, Nasik (Hereinafter referred to as CIT(A)) is not justified in upholding disallowance of deduction claimed u/s 80P(2)(a) of the Income Tax Act, 1961 (Henceforth ‘the Act’) relating to interest earned on deposits with Banks made during the course of business of banking by the appellant. For this appellant placed reliance on the decisions reported at 39 ITR 114 (SC), 289 ITR 6 (SC), 29 DTR 158 (Bom), 229 CTR 73 (Bom). Therefore, it is prayed to direct the AO to treat the interest earned on deposit with State Bank of India as income earned from the business eligible for deduction u/s 80P(2) (a) of the Act.

2. The AO erred in calculating the deduction available u/s 80P and also erred in determining the total income of the appellant. Therefore, it is prayed to direct the AO to determine the correct total income.

3. Appellant craves leave to add/amend/alter any or all grounds of appeal before or at the time of hearing.”

3. Briefly stated the relevant facts include that the assessee is an AOP (Co-operative Society) and filed its return of income declaring total income of Rs. NIL. The assessee was functioning as a Co-operative Bank till May 2006. On 12.06.2006, Reserve Bank of India cancelled the banking license of the assessee vide order u/s 22 of the Banking Regulations Act, 1949. Thereafter, the assessee merely remained a co-operative society, which continued its business of providing credit facilities to its members with the permission of the Registrar of Co-operative Societies. There is no dispute about the fact that the assessee is a credit co-operative society though its name consists a word "Bank". For the year under consideration, the assessee earned interest income from its deposits with State Bank of India amounting to Rs.48,86,743/-. Assessee filed its return of income considering above amount as "business income" and claimed deduction u/s 80P(2)(a)(i) of the Act. During the assessment proceedings, the Assessing Officer observed that, the interest is received from a nationalised bank and not from any co-operative society. The Assessing Officer further opined that the same shall be treated as "Income from other sources" instead of "business Income". Therefore, the Assessing Officer denied the claim deduction u/s 80P(2)(a)(i) of the Act on the amount of Rs.48,86,743/- being interest received from Nationalised Bank and added the same to the total income of the assessee. The CIT(A) confirmed the action of the Assessing Officer.

4. Being aggrieved with the decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted grounds.

5. Before me, at the outset, ld. Counsel for the assessee submitted that an identical issue already decided in favour of the assessee by the Coordinate Bench of the Tribunal in **assessee's own case** in ITA No.960/PUN/2012 for the assessment year 2009-10 order dated 19.02.2014. Copy of the said decision (supra) is placed on record. Further, ld. Counsel for the assessee relied on para 3 onwards of the said order of the Tribunal (supra) in support of the case of the present case.

6. On the other hand, ld. DR for the Revenue heavily relied on the orders of the revenue authorities.

7. On hearing both the sides, I find, the issue involved in this appeal is covered one by the order of the Tribunal (supra). On perusing of the said order of the Tribunal (supra), I find the contents of para 3 onwards of the said order of the Tribunal (supra) are relevant and the same are extracted hereunder :-

“3. The matter was carried before the first appellate authority wherein, the order of Assessing Officer was confirmed. Same has been opposed before us on behalf of assessee. The learned Authorized Representative has pointed out that the issue before us is covered in favour of assessee by the decision of Tribunal in ITA No.1336/PN/2011 in the case of ITO Vs. Niphad Nagari Sahakari Patsanstha Ltd., wherein, the Tribunal has decided the issue in favour of assessee as under:

“11. 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. In the instant case there is no dispute to the fact that the assessee is a cooperative society engaged in the business activity of credit cooperative society, i.e. providing credit facility to its members. According to the Revenue the income of the society on account of interest from banks other than cooperative banks, interest on mutual funds, long term and short term capital gain on sale of mutual funds etc. are not covered by the activity of providing credit facilities to its members and hence not eligible for deduction u/s.80P(2)(a)(i) of the Income Tax Act in view of the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale

Society Ltd. (Supra). We find the Ld. CIT(A) allowed the claim of the assessee on the ground that the assessee is entitled to deduction u/s.80P(2)(a)(i) on account of interest from banks other than cooperative banks, interest on mutual funds long term and short term capital gain on mutual funds etc. While doing so, he held that the decision in the case of Totagar's Cooperative Sale Society Ltd. (Supra) is not applicable to the facts of the present case since in that case the amount invested in short term deposits and securities was not out of interest bearing deposits collected from members but out of sale proceeds of agricultural produce of farmer members marketed by the society. Further, the Hon'ble Apex Court has considered only the latter part of section 80P(2)(a)(i), i.e. income of a cooperative society engaged in providing credit facilities to its members is eligible for deduction and has not considered the earlier part of section 80P(2)(a)(i), i.e. income of a cooperative society engaged in carrying on the business of banking is eligible for deduction.

11.1 We find the Ahmedabad Bench of the Tribunal in the case of M/s. Jafari Momin Vikas Cooperative Credit Society Ltd. (Supra) after considering the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra) has observed 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 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."*

11.2 *We find the Cochin Bench of the Tribunal in the case of Muttom Service Cooperative Aplappuzha Bank Ltd. Vs. ITO (Supra) after considering the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra) and various other decisions has observed as under :*

"5. We have considered the rival submission on either side and also perused the material available on record. We have

also carefully gone through the order of the lower authority. No doubt, the latest judgment in *Totgar's Co-operative Sale Society Ltd vs ITO (supra)*, the Apex court found that the deposit of surplus funds by the co-operative society is not eligible for deduction u/s 80P(2). In the case before the Apex Court in *Totgar's Co-operative Sale Society Ltd vs ITO (supra)*, the assessee co-operative society was to provide credit facility to its members and market the agricultural produce. The assessee is not in the business of banking. Therefore, this Tribunal is of the opinion that the judgment of the Apex court in *Totgar's Co-operative Sale Society Ltd (supra)* is not applicable in respect of the co-operative society whose business is banking. Admittedly, the assessee has invested funds in state promoted treasury small savings fixed deposit scheme. Since Government of India has withdrawn India Vikas Patra, as a small savings instrument, funds invested at the discretion of the bank is one of the activities of the banking as per the Banking Regulation Act. Since the assessee co-operative society is in the business of banking the investment in the state promoted treasury small savings fixed deposit certificate scheme is a banking activity, therefore, the interest accrued on such investment has to be treated as business income in the course of its banking activity. Once it is a business income, the assessee is entitled for deduction u/s 80P(2)(a)(i). therefore, this Tribunal is of the opinion that the judgment of the Larger Bench of the apex Court in *Karnataka State Co-operative Apex Bank (supra)* is applicable to the facts of this case. By respectfully following the judgment of the Apex court in *Karnataka State Co-operative Bank (supra)*, the order of the Commissioner of Income-tax(A) is upheld.

6. In the result, the appeal of the revenue stands dismissed.”

11.3 In the instant case there is no dispute to the fact that the society is a credit cooperative society authorised by the registrar of cooperative societies for accepting deposits and lending money to its members as per license granted by the registrar of cooperative societies and the main object of the society is to provide credit facility to members who can be any person of the society. We find the Pune Bench of the Tribunal in the case of *Mahavir Nagari Sahakari Pat Sanstha Ltd.* reported in 74 TTJ 793 (Pune) has held that the credit society which is carrying on the business of banking activity and providing credit facility to its members is eligible for deduction u/s.80P(2)(a)(i). In view of the above discussion and following the decisions of the Ahmedabad Bench of the Tribunal and Cochin Bench of the Tribunal which in turn have considered the decision of the Hon'ble Supreme Court in the case of *Totagar's Cooperative Sale Society Ltd. (Supra)* we find no infirmity in the order of the Ld.CIT(A). Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

12. In the result, the appeal filed by the Revenue is dismissed.”

4. *Nothing contrary was brought to our knowledge. Facts being similar, so following the same reasoning, we are not inclined to concur with the findings of CIT(A). The Assessing Officer is directed to allow the assessee's claim as prayed."*

8. Considering the above decision of the Tribunal (supra) and facts of the present case, I find, the facts of the present case are similar to that of the earlier year and no change has brought to my notice. Therefore, following the parity of reasoning as well as rule of consistency, the order of the CIT(A) is set-aside and the grounds raised by the assessee are allowed in favour of the assessee.

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

Order pronounced on this 17th day of January, 2020.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 17th January, 2020.
Sujeet

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune