

**IN THE INCOME TAX APPELLATE TRIBUNAL "G"  
BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &  
SHRI S. RIFAUH RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6780/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2013-14)

SBI Employees M.S. Patel Co. Op. Credit Society Ltd. 3 <sup>rd</sup> floor, State Bank of India Bldg. Horniman Circle, Mumbai-400 023	<b>बनाम/ Vs.</b>	ITO – 17(3)(4), Aayakar Bhavan, Maharshi Karve Marg, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AAAAS9621A		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Hemant Shah, AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri V. Vinod Kumar, DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	16.01.2020
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	31.01.2020

आदेश / ORDER

**PER S. RIFAUH RAHMAN (ACCOUNTANT MEMBER):**

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-28, Mumbai, in short 'Ld. CIT(A)' dated 28.09.18 for AY 2013-14.

2. The brief facts of the case are that assessee is a Co-operative Credit Society providing loans to its members after accepting deposits from its members only during the year under consideration. Assessee filed its return of income on 27.09.13 declaring total income at Rs. NIL. The return was processed u/s 143(1). Subsequently, the case was selected for scrutiny and accordingly, notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee filed the relevant information as called for. After considering the submission of assessee, AO passed assessment order u/s 143(3) of the Act determining the total income at Rs. 92,69,730/- by making disallowances u/s 80P of the Act.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, dismissed the appeal filed by the assessee.

4. Now before us, the assessee has preferred the appeal against the order of Ld. CIT(A).

5. At the outset, Ld. AR appearing on behalf of the assessee submitted that the grounds raised by the assessee are squarely covered by the order of Coordinate Bench of ITAT in the case of M/s Jaoli Taluka Sahakari vrs. ITO in ITA No. 6627/Mum/2014 for AY 2010-11, wherein the Co-ordinate Bench of ITAT has passed order on identical ground in favour of the assessee.

6. On the other hand, Ld. DR supported the orders passed by the revenue authorities.

7. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT in the case of M/s Jaoli Taluka Sahakari vrs. ITO in ITA No. 6627/Mum/2014 for AY 2010-11, wherein it was held as under:-

*9. I heard the parties and perused the record. In my view, the decision rendered by Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda*

*Credit Cooperative Ltd (supra) squarely applies to the facts of the present case. In the case before the Hon'ble Karnataka High Court also, the assessee claimed deduction u/s 80P(2)(a)(i) on the interest income earned from deposits kept with banks on the reasoning that the same shall form part of its business income. The Hon'ble High Court upheld the said view by duly considering the decision rendered by Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd (supra). For the sake of convenience, I extract below the observations made by the Hon'ble Karnataka High Court:-*

*“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 co-operative 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 Co-operative 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 members, 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 co-operative Bank Ltd., [2011] 200 Taxman 220/12 taxmann.com66. 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:”*

*10. Respectfully following the decision rendered by Hon’ble Karnataka High Court, referred above, I set aside the order of Ld CIT(A) on this issue and direct the AO to allow deduction u/s 80P of the Act.*

*11. In the result, the appeal filed by the assessee is allowed.*

8. Therefore, respectfully following the aforesaid decisions which is applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, we **allow** the grounds raised by the assessee.

9. In the net result, the appeal filed by the assessee stands **allowed.**

*Order pronounced in the open court on 31<sup>st</sup> Jan 2020.*

<i>Sd/-</i> (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai;दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 31.01.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File  
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उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai