

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE “SMC” BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.878/Ind/2018
Assessment Year: 2013-14

Shri Swetamber Jain Credit Co-op. Society, Indore (Appellant)	बनाम/ Vs.	ITO, Ward- 2(2), Indore (Revenue)
P.A. No. AAAAS 4867 N		

Appellant by	Shri P.D. Nagar, CA
Respondent by	Shri V.J. Boricha, Sr. DR
Date of Hearing:	14.1.2020
Date of Pronouncement:	28.1.2020

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is against order of the CIT(A)-III, Indore dated 25.9.2018 pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

1. *“That the Ld. CIT(A) erred in law in not appreciating the fact that the assessee being a Credit Co-op. Society exclusively formed for the benefit of the members only was eligible for deduction u/s 80P(2)(a)(i) of the Act.*
2. *With prejudice to the above, the ld. CIT(A) further erred in law in not allowing the set off expenditure incurred by the Society towards establishment and interest paid to members on their deposits. Treatment of interest earned on bank at Rs.20,77,230/- as a separate taxable income without considering the activities of the Society and levy of tax on gross amount is wholly unjustified, improper, bad in law and deserves to be quashed.*
3. *That the ld. CIT(A) ought to have appreciated that even if interest on deposits with bank is considered as non-eligible for deduction u/s 80P of the Act, loss incurred by the credit Co-op. Society as per audited accounts (excluding interest on bank deposits) was eligible for set off against interest income earned from banks. There being net income of Rs.13,05,964/- only, assessed income determined by Assessing Officer to the extent of Rs.20,77,230/- as gross total income is wholly unjustified, bad in law and deserves to be quashed.”*

2. The facts giving rise the present appeal are that the assessee being a credit co-op. society was formed with the sole object to provide credit facility to the members exclusively. Based on the books of accounts audited, return of income was submitted declaring the income at Rs.13,05,964/- which was claimed exempt u/s 80P(2)(a)(i) of the Act. As per the audited accounts, the Society had earned interest income as under:

- | | |
|--------------------------------|----------------|
| a) On loan to its own members | Rs.26,76,070/- |
| b) On fixed deposits with bank | Rs.20,77,226/- |

The Assessing Officer framed assessment and determined total income at Rs.20,77,230/- being the gross amount of interest earned on fixed deposit with bank. Aggrieved

against this order, the assessee preferred an appeal before Ld. CIT(A), who also confirmed the stand of the Assessing Officer following the judgment in the case of Totgar’s Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (S.C.). Now the assessee is in appeal against this order.

3. Before me, the learned counsel for the assessee reiterated the submission made before revenue authorities and filed the following written synopsis:

“SYNOPSIS

ISSUES INVOLVED

- 1) Denial of deduction claimed u/s 80P(2)(a)(i) of the Act Rs.13,05,964/-,
- 2) Determination of taxable income at Rs.20,77,230/-, without allowing deduction of establishment expenses and interest paid to members on pro-rata basis.

FACTS :

- The appellant, a credit Co.op. Society, was formed with the sole object to provide credit facility to the members exclusively. Based on the books of accounts audited by Asstt. Registrar (Audit) Co-op. Society, return of income was submitted declaring the income at Rs.13,05,964/- which was claimed as exempt u/s 80P(2)(a)(i) of the Act.
- As per the audited profit and loss account, net income earned by the Society was as under :-

A) <u>Income</u>			
i) Interest on loan to its own members	Rs.26,76,070/-		
ii) Interest on fixed deposits with bank	Rs.20,77,226/-		
iii) Other income	<u>Rs. 16,285/-</u>		Rs.47,69,581/-
B) <u>Expenditure</u>			
i) Interest paid to members on FDRs, Savings etc.	Rs.25,04,353/-		
ii) Establishment expense	<u>Rs. 9,66,869/-</u>	<u>Rs.34,71,222/-</u>	
	Net profit		<u>Rs.12,98,359/-</u>

- Vide order passed u/s 143(3) of the Act, the assessing authority determined total income at Rs.20,77,230/- being interest earned on fixed deposits with bank as “income from other sources”. He ignored the fact that against the interest income on FDR with banks, the Society had paid interest to its members on deposits accepted from them and establishment expenses. Thus, as against net income of **Rs.13,05,964/-** (after adjustment of permissible depreciation) which was claimed as deduction u/s 80P(2)(a)(i), the assessment was completed on total income of Rs.20,77,230/-.
- On appeal the learned Commissioner of Income tax (A) confirmed the rejection of deduction claimed u/s 80P(2)(a)(i) following the judgment in the case of **Totgar’s Co. Operative Sale Society Limited vs. ITO (2010) 322 ITR 283(SC)** and did not decide the alternative ground regarding deduction of establishment expenses and interest paid to members on pro-rata basis.

SUBMISSIONS

- As evident from audited accounts (**copy annexed**), interest income earned on fixed deposits lying with schedule bank was a part of routine banking business hence income earned on fixed deposits **was assessable as “Income from business” and it should not have been treated as “income from other sources”** specially because the appellant is engaged in banking activities by providing credit facilities to the members exclusively. All conditions specified in section 80P(2) were complied with by the appellant.
- In order to categorize an income under the head profits and gains or profession, it is imperative that the income should have arisen from business carried on by the assessee. **Expression “Profit and gains of business” is wider in scope** and encompasses not only income chargeable under the head “Profits and gains of business or profession” but also other income also having some relation with the business, though not arising directly from the carrying on the business. Further the **term “gain” is of wider import than the word “profit”**. Therefore, the expression profits and gains in section 80P(2) also includes other item of income (as covered by gains) which have some relation with the business of banking.
- The appellant, being Co-operative Credit Society, its nature of business is coupled with banking with its members. It accepts deposits from members and lends the same to members only. To meet any eventuality, the appellant society is required to maintain

some liquid funds hence it used to invest funds in fixed deposits with nationalized banks as it maintains overdraft facility with with them to augment its day to day business needs.

- Naturally, entire activity of the Co-operative Society and income arising there from is nothing but *attributable to business of banking*. **Relevant extract of Section 80P of Income tax Act is reproduced hereunder :-**

“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”.

- Considering the nature of business, the appellant is required to deposit the funds with nationalized banks for statutory purposes and also for its operational purposes in the form of fixed deposits.

Interest earned on such FDRs, is attributable to the core and principle activities of the society, viz. carrying on the business of banking hence income earned on funds parked in FDRs with nationalized Bank is assessable as “Income from business” and falls within the meaning of the expression “Profits and gains of business”. The phrase **“attributable to business”**, brings within its fold not only the items of income having direct nexus but also items of income having some commercial or causal connection with the source.

- We submit that the word **‘attributable’ used is of great importance. The interest so earned on deposits with the banks is very much attributable to the core activity of the appellant.** The character of such income will not be changed, especially when the statute uses the expression ‘attributable to’ and not other expressions viz. “derived from” or “directly attributable to”. The Apex Court had an occasion to consider the meaning of the work ‘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 vs. CIT (1978) 113 ITR 84 (SC)**.

- The assessing authority did not appreciate the submissions paid before him and interest income earned by the appellant Co. Operative society on fixed deposits with bank was assessed under the head “Income from other sources” u/s 56 of the Act instead of “Income from Business”. An income can be assessed u/s 56 of the Act only when such income is not chargeable to income tax under the head “Profits and gains of business or profession” u/s 28 of the Act.
- The appellant credit Co. operative society carries on such business since F.Y. 1996-97 duly registered with the sole object under MP Co. Operative Society Act 1960. It has been assessed accordingly under the Act whereby deduction u/s 80P(2) has been allowed vide assessment orders passed u/s 143(3) of the Act pertaining to A.Y. 2004-05. (Copies annexed).
- To disallow the deduction claimed u/s 80P(2)(a)(i) of the Act, the Assessing Authority applied the judgment in the case of *Totgars’ Co-operative Sale Society Ltd. Vs Income-tax Officer [2010]; 322 ITR 283 (SC) and Devi Ahilya New Cloth Market Co. Ltd vs. CIT 222 CTR 583 (MP.)* Both judgments are distinguishable on the facts of the appellant’s case hence they are not applicable. The distinguishing features are summarized as under:

(A) Totagar’s Co. Operative Sale Society Ltd :

Facts of appellant’s case	Facts of Totgars Co. Operative Sale Society Limited
1. Income by way of interest on fixed deposit with Scheduled banks, is related to activity inextricably linked with business referred to in section 80 P (2) (a) (i) of the Act.	1) In that case income by way of interest on fixed deposits in the commercial bank was earned. Such FDRs were obtained from retained amount of agriculture sales proceeds and invested in short terms deposit. Such interest income was not earned by any business activity of advancing funds as such not entitled in section 80(A) (2) (a)(i) of the Act.
2. The society accepts interest bearing deposit from its members and surplus funds are parked with bank. Against lien of these FDR’s, interest bearing loan is taken and disbursed to member.	(2) The society did not accept interest bearing deposit from its members and does not pay interest to its members. Its activity of retaining amount from members is not deposit covered U/S 269SS of the IT Act. The

<p>3. The sole object of deposits with nationalized bank is not only to earn interest income thereon but to maintain the faith of members and to provide liquidity to the members besides facility to members for transfer of their funds.</p> <p>4. As the earning of interest is during the course of regular business of society hence interest income is assessable as income from business.</p> <p>5. The society is engaged exclusively in doing banking business to facilitate its members only.</p> <p>6. The Society is liable to pay interest on deposits from members and such burden which has to be discharged by earning interest income on surplus funds.</p> <p>7. Interest income is earned regularly</p>	<p>retained amount is parked with banks for short term and no loan is taken against it from bank.</p> <p>3. There is on statutory binding provision for marketing Society to keep the funds in F.D. with Nationalized Banks</p> <p>4. Earning of interest was not in the name of business income because the society is engaged in marketing of agriculture produce. Such interest income may be assessable as “income from other sources”. Interest income was not attributable to gains and profits of society as it was not doing any banking business .</p> <p>5. In Para-11 and 12 the Hon’ble Karnataka High Court has observed that it is undisputed that Totgar’s is not doing any banking business. The said society was not involved in full fledged banking services to its members.</p> <p>6. There is no interest burden upon the society.</p> <p>7. Interest income is earned casually.</p>
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The authorities below also relied upon the decision of MP High Court which is not relevant because *Devi Ahilya New Cloth Market Co. Ltd* was not engaged in the business of banking but it had the objects to develop new market by acquiring land and constructing shops for its members and thereafter to execute sale deeds in their favour. MP High Court therefore, held that “Interest received from banks on FDRs is liable to tax the principal of mutuality is not applicable on such interest. In that case, deduction was not claimed u/s 80P(2)(a)(i) of the Act **hence this judgment is also not applicable** to the facts of the case of the appellant.

➤ We submit that the judgment of the Apex Court in the case of **Totgars Co. Operative Sale Society Limited was distinguished in following cases and deduction u/s 80P was allowed :-**

01) M/s. Jafari Momin Vikas Co. Operative Society Ltd, ITA No. 1491/Ahd/2012 (Ahd)

The Hon’ble Bench after due consideration of the decision of Supreme Court (Supra) held that nature of activity of the Society is of accepting deposits from the members and lending to its members and to meet eventuality which was required to maintain the liquidity funds and these liquidity funds used to be invested in short term deposits and interest income earned on such short term deposits were held to be income from activities of co-operative society and **not to be taxed u/s 56 of the Act.**

02) ITO vs. Muttom Service Cooperative I.T.A. No. 372/Coch/2010 (Coch)

Held that the object of Totgar’s Co-operative Sale Society Ltd (Supra), was to market the agricultural produce and to provide credit facility to its members and it was not in the business of banking.

01) M/s. Guttigedarara Credit C-Operative Society Ltd vs. Income tax Officer (2015) 377 ITR 0464 (Kar HC).

02) CIT vs. Andhra Pradesh state Co. Operative Bank Ltd (2011)336 ITR 0516 (AP).

03) The Hon’ble Mumbai High Court in case of ITO VS. The Mahanagar Cooperative Bank Ltd dated 28.07.2011 in ITA No. 123 of 2010. In the said appeal the question of law raised by the Revenue was whether Hon’ble ITAT was right in holding that interest income being interest on fixed deposits placed with other banks other than cooperative banks.

04) ITO vs. Malad Sahakari Bank Ltd. Malad, Mumbai, in ITA No.3489/Mum/2010, B Bench, Mumbai.

05) ACIT-1(1), Bhopal vs. MP State Co-operative Housing Federation Society, Bhopal in ITA No. 1055/Ind/2016 the claim of assessee u/s 80P(2)(a)(i) of the Act was allowed.

06) MP Police Sakh Sahkarita Maryadit, Indore, ITA No.422/Ind/2017 order dated 17.12.2019, (Indore Bench) - [Copy annexed].

ALTERNATIVE GROUND :

- Without prejudice to submissions made above, the Ld. CIT(A) also erred in rejection the alternate claim of the appellant for allowing the proportionate expense including interest paid as deduction against the interest earned from the bank. He did not appreciate that even if interest on deposits with bank is considered as non-eligible for deduction u/s 80P of the Act, loss incurred by the credit Co-op. Society as per audited accounts (excluding interest on bank deposits) was eligible for set off against interest income earned from banks. That on the facts and in the circumstances of the case, the said claim of the appellant being legal and proper ought to have been allowed and is prayed to be now allowed.

There being net income of Rs.13,05,964/- only, taxable income determined by AO at Rs.20,77,230/- is wholly unjustified, improper, bad in law and deserves to be quashed.”

4. Ld. D.R. opposed these submissions and supported the orders of the authorities below.

5. I have considered the rival submissions of both the sides. The grievance of the assessee society is two-fold. Firstly, interest earned out of fixed deposits is out of inextricable business activity, hence, same would partake character of business receipt. Moreover, such claim has been allowed in past, therefore, the assessee has rightly claimed the deduction u/s 80P of this amount. Secondly, even if it is assumed that the interest accrued out of FDR is

income from other sources even then corresponding expenditure incurred for earning of interest should be allowed.

6. So far as the last grievance of the assessee is concerned, the disallowance can be made in respect of amount deposited under the statutory obligation in the form of FDR and interest income earned out of such deposit. In the present case, it would be 25%. The assessee is required to keep 25% of its fund in the form of fixed deposits under the Madhya Pradesh Society Act. Rest of the interest income would excisable to tax under the head 'income from other sources'. I hold accordingly. My view is supported by the order of the Division Bench of this Tribunal passed on 17.12.2019 in ITA No.422/Ind/2017 & ITA No.649/Ind/2018 for the assessment years 2013-14 & 2014-15 in case of M.P. Police Sakh Sahkarita Maryadit, Indore, wherein the issue was decided as under:

“9. In the present case, the undisputed fact is that the assessee society is required to deposit 25% of its profit as mandated by section 43(2) of the M.P./Chattisgarh Societies Act, 1960. Hence, the assessee is under legal obligation to keep 25% of its profits as reserves. Any interest accrued there on would certainly, in our

considered view partake character of business income of the assessee. Hence, it would be eligible for deduction. Therefore, the A.O. is directed to allow deduction on the interest earned out of amount so reserved by the assessee i.e. 25% of profit transferred to reserves.”

On consideration of above, the Assessing Officer is directed to re-compute the disallowance.

7. Regarding other grievance that corresponding expenditure incurred for earning interest, I find merit in the contention, therefore, the Assessing Officer is directed to re-compute the disallowance after giving deduction of corresponding expenses, if any. In the light of above, the Assessing Officer is directed as under:

- a) to allow deduction u/s 80P in respect of interest received on the amount deposited under statutory obligation.

- b) to allow the corresponding expenses incurred for remaining interest income, if any.
- c) re-compute the disallowances.

Hence, grounds raised in the appeal are allowed for statistical purposes .

8. In result, the appeal filed by the assessee is allowed for statistical purposes.

Order was pronounced in the open court on 28.1.2020.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 28/1/2020

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Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore