

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 2982/Del/2018
Asstt. Year 2013-14

ITO, Ward-63(5) New Delhi.	Vs.	The Jwala Cooperative Urban Thrift and Credit Society Ltd. 218, DDA Cycle Market, Jhandewalan Extn., New Delhi. PAN AABAT0924C
(Appellant)		(Respondent)

Department by:	Shri Jagdish Singh, Sr. DR
Assessee by :	Ms. Gunjan Jain, CA
Date of Hearing	09/11/2021
Date of pronouncement	12/11/2021

ORDER

PER O.P. KANT, AM

This appeal is filed by the revenue against the order dated 15.2.2018 passed by the CIT (A) - 27 New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under :-

“(I)On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.

3,29,89,464/- made on account of disallowance of deduction claimed u/s 80P of the Income Tax Act, 1961 on the interest received from Bombay Mercantile Bank Ltd. and Ramgharia Co-operative Bank Ltd. without appreciating the fact that it is a case of parking of surplus funds and the case is squarely covered by the decision of Hon'ble Supreme Court in the case of Totgar's Co-operative Sales Society Ltd. and also by the decision of Hon'ble Delhi High Court in the case of M/s Mantola Co-operative Thrift and Credit Society Ltd.

(II) The appellant craves leaves to add, to alter or amend any ground of appeal raised above at the time of hearing."

3. Return of income was filed on 9.8.2013 declaring gross taxable income at Rs. 61,36,164/- and after claiming exemption u/s 80P(2)(d) of Rs. 60,76,431/-, net taxable income was shown at Rs. 59,733/-. During the assessment proceedings, the AO observed that the following interest income earned by the assessee is not allowable as deduction u/s 80P of the Income Tax Act, 1961 :-

1	Interest on FDR with Bombay Mercantile Bank Ltd.	Rs. 3,26,09,237/-
2.	Interest on FDR with Ramgarhia Co-op Bank Ltd.	Rs. 3,80,227/-
3	Saving Bank Interest	Rs. 87,385/-
4.	Interest on income tax Refund	Rs. 59,755/-
	Total	Rs. 3,31,36,604/-

4. Consequently the AO completed the assessment after making the addition of Rs. 3,31,96,340/- to the income of the assessee.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). CIT(A) partly allowed the appeal of the assessee.

6. The Ld. DR submitted that the CIT(A) erred in deleting the addition of Rs. 3,29,89,464/- made on account of disallowance of deduction claimed u/s 80P of the Income Tax Act 1961 on the interest received from Bombay Mercantile Bank Ltd. and Ramgarhia Co-operative Bank Ltd. without appreciating the fact that it is a case of parking of surplus funds and the case is squarely covered by the decision of Hon'ble Supreme Court in the case of M/s. Totgar's Co-operative Sales Society Ltd. and also by the decision of the Hon'ble Delhi High Court in the case of M/s. Mantola Co-operative Thrift and Credit Society Ltd.

7. Ld. AR submitted that in the earlier year the Tribunal has dismissed the contention of the revenue and also distinguish the decision of the Hon'ble Supreme Court in the case of Totgar's Co-operative Sales Society Ltd.

8. Ld. AR further submitted that the CIT(A) has rightly granted the partial relief to the assessee.

9. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that in the

earlier years on the identical issue revenue's appeal were dismissed and there is no distinguishing factors pointed out by the Ld. DR in the present appeal as well. Therefore, the matter is squarely covered by the decision of the Tribunal in assessee's own case for earlier years, The relevant part of decision of the Tribunal in ITA No. 2900 & 2901 for Assessment Years 2010-2011 & 2011-2012 is reproduced as under :-

"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 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.

8.1. In the said decision, the Judgment of Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd., (supra) have been considered by the High Court and it was held that the said decision is confined to facts of that case. The appeal of assessee was allowed. The Ahmedabad Bench of the Tribunal in the case of Arbuda Credit Co-op. Society Ltd., vs. ACIT (supra), followed the Order in the case of same assessee for A.Y. 2008-2009 and decision of the Hon'ble Karnataka High Court above and decided the issue in favour of the assessee and held

that assessee is eligible for deduction under section 80P(2)(a)(i) of the I.T. Act for the interest income earned on unutilized idle funds kept for business purposes of the Society being deposited with Banas Bank. The Ld. CIT(A) in the case of the same assessee for A.Y. 2013-2014 vide order dated 15.02.2018 following the order of the Tribunal for A.Y. 2008- 2009 allowed the claim of assessee. therefore, there were no justification for Ld. CIT(A) in not following the order of the Tribunal in the case of same assessee for A.Y. 2008-2009. The Hon'ble Madhya Pradesh High Court in the case of Agrawal Warehousing and Leasing Ltd., 257 ITR 235 held that the Ld. CIT(A) not only committed judicial impropriety but also erred in law in refusing to follow the order of the Appellate Tribunal. The conditions of Section 80P(2)(a)(i) and also 80P(2)(d) are satisfied by assessee.

8.2. Considering the totality of the facts and circumstances, we are of the view that authorities below were not justified in refusing to grant deduction under section 80P of the I.T. Act in favour of the assessee. We, accordingly, set aside the orders of the authorities below and delete the entire addition. The appeal of assessee is allowed. “

10. Respectfully following the Tribunal (supra), the appeal of the revenue is dismissed.

11. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 12th November, 2021.

**sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 12/11/2021

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1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi