

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC-1" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 292/MUM/2022
Assessment Year: 2017-18**

The Sarvoday Co-operative Credit
Society Ltd.,
19, Shiv Shopping Centre, Shivaji
Talao, Sardar Pratap Singh Marg,
Bhandup (W),
Mumbai-400078.
PAN No. AAAAT 9173 A
Appellant

Income Tax Officer,
Ward 26(3)(6),
315, 3rd floor, Kautilya Bhavan,
C-41 to C-43, G Block, BKC,
Bandra (E),
Mumbai-400051.
Respondent

Assessee by : Mr. Kumar Kale, AR
Revenue by : Mr. Kiran P. Unavekar, DR

Date of Hearing : 02/06/2022
Date of pronouncement : 21/06/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 26/07/2021 passed by the Ld. Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre (NFAC) [in short 'the Ld. CIT(A)'] for assessment year 2017-18, raising following grounds:



1. *On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in holding that interest of Rs.58,27,522/- (restricted to Rs.35,21,707 /-) received by the appellant-society on fixed deposits kept with co-operative banks did not form part of the appellant's business income, and therefore, it was not eligible for deduction u/s.80P(2) (a)(i) of the Act. The appellant, therefore, prays that deduction u/s. 80P(2) (a) (i) be allowed also in respect of aforesaid interest income.*
2. *On the facts and in the circumstances of the case, and also in law, the Ld. CIT (A)erred in confirming the addition of Rs.35,21,707/- made by the Ld. AO due to denial of the deduction u/s. 80P(2) (d) claimed by the appellant in respect of interest earned by it on deposits kept with co-op. banks, holding that a co-op bank is not a co-op society. Your appellant, therefore, prays in the alternative, and without prejudice to the prayer made in Ground No.1 above, that deduction u/s. 80P(2)(d) be allowed in respect of the aforesaid income.*

2. Briefly stated facts of the case are that the assessee is a Co-operative Credit Society, registered under the Maharashtra Cooperative Societies Act, 1960 and is engaged in the business of providing credit facility to its members. The assessee accepts various types of deposits from its members and gives loan to its members. For the year under consideration, the assessee filed



return of income on 29/10/2017 declaring ₹Nil income after claiming deduction of ₹35,21,707/-under section 80P(2) of the Income Tax Act, 1961 (in short 'the Act'). The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. The Assessing Officer in assessment order passed under section 143(3) of the Act on 30/11/2019 denied the claim of deduction under section 80P(2) of the Act on the ground that the assessee was engaged in carrying on the banking business, so it was a co-operative bank and not cooperative society. The relevant finding in assessment order is reproduced as under:

“7.3 In the present case assessee is/also a Co operative, society which is engaged in carrying on business of banking or providing credit facilities to its member. Further, assessee also invested the surplus funds in short term deposit, which is not immediately required in the business. Therefore, assessee is not entitled for deduction u/s 80P(2)(a)(i) of the Act in this case.

7.4 The Co-operative banks are not the co-operative society but these are banks and governed by the principal of banking



formulated by the Reserve Banks of India (RBI). In case of number of co-operative banks, the RBI has put restriction for their being deviating from normal banking principal. Thus, Co-operative Banks are the sub species of normal banks and not the normal co-operative society.

7.5 From the above it is stated that assessee is neither entitled to get deduction u/s 80P(2)(d) nor u/s 80P(2)(a)(i). Therefore, the interest amount of Rs 35,21,707/- received from Co op Bank is disallowed and added back to the total income of the assessee as income from other sources.”

3. On further appeal, the Ld. CIT(A) admitted that assessee society is not a cooperative bank. The relevant observation of the Ld. CIT(A) are reproduced as under:

“6.6 It is admitted fact that the appellant society accepts deposits only from its members and advances loans only to its members. The Appellant also did not have the license from the RBI for doing the Banking Business. The Appellant Co-operative Society do not possess banking license and are formed with the object of promotion of economic interests of its members only. Hence, the appellant co-operative society maintains accounts and accepts deposits from its members only. Therefore, in these facts and above discussion it is admitted fact that the Appellant is engaged in the banking business with their members of the Society only. The appellant society is not accepting the deposit from public and not lending the money to the public. The



appellant society do not have license from the RBI as per Banking Regulation Act, therefore it is held that the appellant society is not the Co-operative Bank. Thus appellant will be eligible for deduction u/s 80P(2)(a)(i) of the Act, if there is any business income from the activity of credit facilities to its members.”

3.1 However, the Ld. CIT(A) denied the deduction under section 80P(2)(a)(i) of the Act on the ground that interest income earned on fixed deposit is not from the business of providing credit facility to its members and therefore the assessee is not eligible for said deduction. The relevant finding of the Ld. CIT(A) is reproduced as under:

“6.7.1 On perusal of Profit & Loss Account it has been observed that the appellant society has earned interest income of Rs 58,27,522/- from investment in Co-operative Banks: Out of this interest income available to the extent of Rs 35,21.707/- is not the business income being it has been not earned through the business activity carried out by it i.e. by credit facilities to its members. Rather it has been earned from investment of surplus fund in the Co-operative Bank.

6.7.2 Thus it is admitted fact that during the year under consideration the appellant has earned interest income of Rs



58,27,522/- on fixed deposit with Co-operative Banks. As such this is not the income from the business activity of the appellant society as per provision of section 80P(2)(a)(i) of the Income tax act, which says that, "carrying on the business of banking or providing credit facilities to its members or". Being income of Rs 58,27,522/- has no relation with lending of loan to its members and accepting the deposits from its members, therefore this interest income cannot be business income. Therefore, on this interest income the appellant society shall not be eligible for deduction u/s 80P(2)(a)(i) of the Act."

4. Before us, the Ld. counsel of the assessee in support of ground No. one of the appeal, submitted that interest received by it on the fixed deposits kept with cooperative banks was part of its business income "attributable" to the activity of providing credit facility to its members and therefore it is included in the business profit deducted under section 80P(2)(a)(i) of the Act. He submitted that it was neither possible, nor prudent to advance all the available funds to its members and it was essential parts of business to keep a portion of its funds invested in liquid instruments likes fixed deposit with the banks and therefore any interest income that are generated out of



those investment in fixed deposit is undoubtedly “attributable” to its business of providing credit facility to its members. The Ld. counsel referred to section 80P(2)(a)(i) of the Act and submitted that profit “attributable” to the activities of credit societies is eligible for deduction. He submitted that word attributable is wider in scope as compared to the expression ‘derived from’.

5. He submitted that Hon’ble Karnataka High Court in the case of **Tumkur merchants Souharda Credit Cooperative Ltd versus ITO (2015) 55taxmann.com 447 (Karnataka)** has held that interest income from fixed deposits is attributable to the business of providing credit facility to its members and therefore it was deductible under section 80 P(2)(a)(i) of the Act in the case of credit cooperative societies .

6. The Ld. counsel further submitted that decision of the Tumkur Merchants (supra) has been followed by the Tribunal in following cases :



- ***Jaoli Taluka Sahakari Patpedhi Maryadit vs. ITO [2017] 83 taxmann.com 247 (Mumbai)***
- ***Shri Tatyasaheb Mohite Nagari Sahakari Patpedhi Ltd. v. ITO [ITA No. 412/Mum/2018]***

7. The Ld. DR on the other hand relied on the order of the lower authorities.

8. We have heard rival submission on the issue in dispute and perused the relevant material on record. The issue in dispute whether the interest income earned on fixed deposits with banks by a Credit Cooperative Society is in the nature of business income attributable to its activity of the credit corporate society of accepting deposits and providing credits to its members. The issue in dispute before us is squarely covered by the finding of the coordinate bench of Tribunal in the case of Jaoli Taluka Sahkari Patpedi Maryadit (supra). The relevant part of the said decision is reproduced 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."

8.1 In the instant case before us also being identical facts, interest earned from fixed deposits is held to be "attributable" to the



business of the assessee credit cooperative society and accordingly eligible for deduction under section 80P(2)(a)(i) of the Act. The finding of the Ld. CIT(A) on the issue in dispute are accordingly set aside and the ground No. one of the appeal of the assessee is allowed.

8.2 The ground No. two has been raised only in alternative prayer. Since we have already allowed the ground No. 1 (one) of the appeal of the assessee, the ground No. 2 is rendered only academic in nature and, therefore we are not adjudicating on the same. The ground No. 2 of the appeal is accordingly dismissed as infructuous.

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

Order pronounced in the Court on 21/06/2022.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 21/06/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :



1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai