

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH "SMC" : PANAJI
[THROUGH VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.Nos.226 & 227/PAN./2019
Assessment Years 2015-16 & 2016-17

Sada Urban Co-Operative Credit Society Ltd., 24, Near Prince Bakery, Head Land Sada, Vasco-da- Gama, Goa – 403 802. PAN AACFT6071A	vs	The Income Tax Officer, Ward – 2 (5), Pundalik Niwas, Rue-de-Ourem, Panaji, Goa - 403001
Appellant		Respondent

Assessee by :	Shri Peter Dsouza
Revenue by :	Smt. Neelima Nadkarni, Sr.DR
Date of hearing :	29.11.2022
Date of pronouncement :	28.12.2022

ORDER

These assessee's twin appeals for Assessment Years 2015-16 & 2016-17 are directed against the Commissioner of Income Tax (Appeals), Panaji-1, Panaji's both order dated 15.03.2019 passed in case No.CIT(A), PNJ-1/10518/2017-18 [for the A.Y. 2015-16] and case No. CIT(A), PNJ-1/10275/2018-19 [for the A.Y. 2016-17] respectively, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short "the Act"].

2. Heard both the parties. Case files perused.
3. It emerges during the course of hearing that both the lower authorities have rejected the assessee's section 80P deduction claim regarding its interest income derived from

fixed deposits kept with the Goa State Cooperative Bank of Rs.16,16,368/- and Rs.3,65,426/-, respectively. The Revenue's vehemently pleads that such an interest income is indeed not eligible for the impugned deduction of claim. All these Revenue's arguments hardly carry any merit as this tribunal's recent coordinate bench's decision in ITA.No.103/PAN./2018 dated 17.11.2021 has rejected the department's stand as follows :

“6. We heard the rival submissions and perused the material on record. The solitary issue in the present appeal relates to the eligibility of exemption of income received from cooperative banks under the provisions of section 80P(2)(d) of the Act. The Assessing Officer as well as the ld. CIT(A) was of the opinion that the same does not call for exemption u/s 80P(2)(d) of the Act as they were received from a cooperative bank. The reasoning of the lower authorities cannot be sustained in the eyes of law as the cooperative banks also the spies of the cooperative societies and continue to be cooperative society despite the fact that they enjoy the license from Reserve Bank of India to carry out the business of the banking. Then the issue that comes up for consideration is that whether the cooperative banks

is also cooperative society or not?. This issue was considered by the Hon'ble Karnataka High Court in the case of CIT vs. Totagars Cooperative Sale Society, 392 ITR 74 (Karn) wherein the Hon'ble High Court referring to the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd. (supra) held that the exemption is not to be denied in respect of interest income on investment as same falls under the provisions of section 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act. Even the decision of Pune Bench of the Tribunal in the case of Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. vs. ITO, 120 taxmann.com 10 after making reference to the decisions of the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd. (supra), having noticed the divergent views of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. vs. ITO, 55 taxmann.com 447 and the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. vs. CIT, 50 taxmann.com 278, the decision of the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. (supra) was not preferred to the view of the Hon'ble

Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. (supra) by observing as under :-

“9. The Pune Benches of the Tribunal in Sureshdada Jain Nagari Sahakari Patsanstha Maryadit Vs. The Pr.CIT (ITA No.713/PUN/2016, dated 9-4-2019) decided the question of availability of deduction u/s 80P on interest income by noticing that the Pune Bench in an earlier case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO (ITA No.604/PN/2014, dated 19-8-2015) has allowed similar deduction. In the said case, the Tribunal discussed the contrary views expressed by the Hon'ble Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 Taxman 309 (Kar.) allowing deduction u/s. 80P on interest income and that of the Hon'ble Delhi High Court in Mantola Cooperative Thrift Credit Society Ltd. Vs. CIT (2014) 110 DTR 89 (Delhi) not allowing deduction u/s.80P on interest income earned from banks. Both the Hon'ble High Courts took into consideration the ratio laid down in the case of Totgar's Cooperative Sale Society Ltd. (2010) 322 ITR 283 (SC). There being no direct judgment from the Hon'ble jurisdictional High Court on the point, the Tribunal in Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit (supra)

preferred to go with the view in favour of the assessee by the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra).

10. *Insofar as the reliance of the ld. DR on the case of Pr. CIT and Another Vs. Totagars Cooperative Sales Society (2017) 395 ITR 611 (Kar.) is concerned, we find that the issue in that case was the eligibility of deduction u/s.80P(2)(d) of the Act on interest earned by the assessee co-operative society on investments made in co-operative banks. In that case, the assessee was engaged in the activity of marketing agricultural produce by its members; accepting deposits from its members and providing credit facility to its members; running stores, rice mills, live stocks, van section, medical shops, lodging, plying and hiring of goods and carriage etc. It was in that background of the facts that the Hon'ble High Court held that the assessee could not claim deduction u/s.80P(2)(d) of the Act. When we consider the impact of this decision, it turns out that the same is not germane to case under consideration in view of the position that the claim of the instant assessee is directly about the eligibility of deduction u/s.80P(2)(a)(i) of the Act and not u/s.80P(2)(d). Moreover, so many decisions relied on by the ld. AR amply go to prove that the view taken by the AO, cannot by any standard, be construed as not a possible view. We, therefore, hold that the ld. Pr. CIT*

was not justified in exercising the revisional power anent to interest income of Rs.22,34,270/- earned on investments made with co-operative banks.”

1. In the light of the above legal position, we hold that the interest income earned by the appellant society on investment made with the cooperative bank which are also cooperative societies is exempt from the Income Tax Act u/s 80P(2)(d) of the Act. Therefore, we hold that the lower authorities was not justified in denying the claim of deduction u/s 80P(2)(d) of the Act. Accordingly, we direct the Assessing Officer to allow the same as deduction u/s 80P(2)(d) of the Act.”

4. Learned DR next argued that the assessee is a cooperative bank than a cooperative credit society which is also derived interest income from nominal members. I find that hon'ble apex court's recent landmark decision in Mavilayi Service Co-operative Bank Ltd., vs., CIT [2021] 431 ITR 1 (SC) has rejected the Revenue's both arguments thereby settling the law that assessee's registration under the respective cooperative law holds the field and further that there could be no distinction between nominal and regular members, as the case may be. I thus accept the assessee's impugned deduction of claim *qua* interest income derived from the foregoing

cooperative bank(s), fixed deposits interest income receipts.

Necessary computation shall follow as per law.

5. Next came to the latter issue of assessee's eligibility of claim of its income from water and electricity bills collection amounting to Rs.1,55,170/- and Rs.2,36,474/-, assessment year-wise, respectively, for and on behalf of Government of Goa, for the purpose of claiming section 80P deduction claim. Suffice to say, case law CIT vs. Ahmedabad District Central Cooperative Bank Ltd. [2003] 264 ITR 38 (Bom.) has already rejected the Revenue's very arguments objecting sec.80P(2)(a)(i) deduction regarding commission derived from collection of bills, dues and charges for and on behalf of the government local authority MTNL etc. I, therefore, accept the assessee's instant latter arguments as well. The Assessing Officer shall frame his consequential computation as per law.

6. No other ground or argument has been pressed before me during the course of hearing.

7. These assessee's twin appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 28th December,
2022.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune, Dated 28th December, 2022

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. DR, ITAT, "SMC" Bench, Panaji, Goa.
6. Guard File.

BY ORDER,

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.