

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA Nos.209, 210 & 211/M/2023
Assessment Years: 2014-15, 2018-19 & 2017-18**

M/s. New Satara Zilla Nagrik Sahakari Patsanstha Maryadit, S-1/B, Progressive Building, Dr. Compound, Chinchpokli (E), Mumbai – 400 012 PAN: AAATN0453E	Vs.	NFAC, Delhi - 110041
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vilas Jadhav, C.A. a/w
Ms. Priyanka Jadhav, Adv.

Revenue by : Shri Chetan Kacha, D.R.

Date of Hearing : 13 . 04 . 2023

Date of Pronouncement : 27 . 04 . 2023

ORDER

Per Bench:

Since common question of law and facts have been raised in these inter-connected appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellant, M/s. New Satara Zilla Nagrik Sahakari Patsanstha Maryadit (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned orders

all dated 30.11.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment years 2014-15, 2017-18 & 2018-19 on identical grounds except the difference in figure of addition/disallowance (for the sake of brevity grounds of A.Y. 2014-15 are extracted) inter-alia that :-

“1. On the facts of the case and in law, the learned CIT (Appeals), NFAC, Delhi has erred in confirming the addition of Rs.2,30,64,636/- made by the Assessing Officer by denial of admissible 100% deduction u/s 80-P(2)(a)(i) and u/s 80-P(2)(d) of the Income Tax Act for its Business Income and also Interest Income earned by appellant Co-operative Credit Society on Investments made in Fixed Deposits with Co-operative Banks as the Operational Income from its exclusive business activity of Providing Credit Facilities to its Members only, in accordance with the provisions of Maharashtra State Co-operative Societies Act, 1960 and Rules made thereunder as well as its Bye-Laws.

2. On the facts of the case and in law, the learned CIT(Appeals) has failed to consider that the ground of appeal raised by the Appellant Co-operative Credit Society that the aforesaid Interest Income of Rs. 10,22,81,916/- has been assessed under the head Income from Other Sources by Assessing Officer in incorrect, arbitrary & unlawful manner.

3. The learned CIT (Appeals) has also erred in not considering the orders of the binding judicial decisions of Jurisdictional ITATS, Hon. Bombay High Court & Apex Court followed in wherein Appellant's case is covered and wherein similar Interest Income earned from Investments from Co-operative was held to be Income from Business and not as income from Other Sources as well as allowing admissible 100% deduction u/s 80- P(2)(a)(i) of the Act.

4. (a) Without prejudice to the aforesaid, the learned CIT (Appeals) has erred in disallowing the claim of the appellant-society for deduction u/s 80P(2)(d) for the Interest Income earned from Co-operative Banks taken up as an alternate ground.

(b) Without prejudice to the aforesaid, the learned CIT (Appeals) has erred in disallowing the claim of the appellant-society for deduction u/s 57 for the Interest Income earned from Non-co-operative Banks taken up as an alternate ground.

5. Furthermore, the learned CIT (Appeals) has erroneously applied the judgments of The Totagar Co-operative Sale Society Limited (322 ITR283) (SC) & other decisions in respect of interest on Deposits kept with Co-operative Banks ignoring binding decisions of Jurisdictional

Hon'ble ITATS and Bombay High Court cited before the Learned Officials of the National Faceless Appeal Centre (NFAC), Delhi.

6. On the facts and in the circumstances of the case and in law, the Ld. AO erred in not granting General Deduction of Rs.50,000/- u/s 80 P (2) (c) of the Act, while calculating the demand of tax.

7. The appellant craves leave to add, alter, delete any or all ground(s) of appeal.”

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee being a co-operative credit society registered under Maharashtra Cooperative Society (MCS) Act, 1960, exclusively engaged in providing credit facilities to its members and transcribing its business with members only, filed its return of income for the years under consideration by claiming deductions under section 80P qua the interest income derived from deposits with nationalized and commercial banks namely Central Bank of India, IDBI Bank and Axis Bank. The Assessing Officer (AO) declining the contentions raised by the assessee society proceeded to disallow the deductions claimed by the assessee under section 80P and thereby added the amount of deduction of Rs.2,31,14,636/-, Rs.9,40,60,266/- & Rs.8,36,53,333/- for A.Y. 2014-15, 2018-19 & 2017-18 respectively to the total income of the assessee by framing the assessment under section 143(3) of the Income Tax Act, 1961 (for short 'the Act').

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeals who has confirmed the disallowance by dismissing the appeals. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeals.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Undisputedly the assessee society is wholly and exclusively engaged in providing credit facilities to members of the society and business is also being transacted with the members only. It is also not in dispute that the assessee society is classified as resource society under section 12 of MCS Act and is not a primary co-operative bank. It is also not in dispute that assessee society parked its surplus funds with nationalized banks in fixed deposit namely Central Bank of India, IDBI Bank and Axis Bank. It is also not in dispute that the assessee society has parked its surplus fund with commercial bank as per laws governing co-operative credit societies laying down that 25% of the deposit of the society were to be kept in fixed deposit in banks.

7. In the backdrop of the aforesaid undisputed facts the sole question arises for determination in all the aforesaid appeals is:

“As to whether earning of interest income by the assessee from its funds parked with nationalized and commercial banks during the years under consideration is to be construed as the profits and gains of the business, thus eligible for deduction under section 80P(2)(a) of the Act”

8. The Ld. A.R. for the assessee challenging the impugned order contended that the entire investment made by the assessee society in the form of FDR with nationalised banks are in compliance of CRR, SLR and investment of other funds as per provisions contained under Maharashtra Co-operative Society Act,

1960 and Rules thereunder for third party cheque clearance, for fund transfer to the branches of assessee society, for the ready availability of required cash for routine business for the overdraft facility obtained from these banks and that there is no danger of loss of invested funds like in case of co-operative banks and to carry out smoothly all the objectives of by laws of the assessee and as such the investment with the cooperative banks and other banks were attributable to the assessee's business.

9. When we examine the aforesaid question in the light of the undisputed facts inter-alia that as per laws governing cooperative credit society 25% of its deposit were to be mandatorily kept in FDs with the banks and that the assessee society has been wholly and exclusively engaged in providing credit facility to its members and business is also being transacted with members only; that investments are imperative for the business and as such legal part of its business; that in earlier years right from 2007-08 interest income earned by the assessee from these banks has been considered as business income by the lower Revenue Authority by allowing the deduction claimed under section 80P(2)(a)(i) of the Act, the interest income is certainly attributable to the business income, thus allowable under section 80P(2)(a)(i) of the Act.

10. The Ld. A.R. for the assessee further contended that the average interest income earned by the assessee society is lesser than the cost of funds involved in investment with Central Bank of India, IDBI Bank and Axis Bank as per detail given in the table below:

Loss on Investments with Bank's FDRs of other than Co-operative Banks			
Received Interest Fin. Year 2013-14 (AY 2014-15)			
Name of Bank	Interest Recd. Rs.	Cost of Investment In Bank FDRs Rs.	Loss Rs.
Central Bank of India	71,12,418	80,51,579	9,39,161
IDBI Bank	2,43,110	2,78,725	35,615
Axis Bank	57,383	79,920	22,637
Total Rs.	74,12,811	84,10,224	9,97,413

Received Interest Fin. Year 2016-17 (AY 2017-18)			
Name of Bank	Interest Recd. Rs.	Cost of Investment In Bank FDRs Rs.	Loss Rs.
Central Bank of India	1,93,12,684	2,54,68,380	61,55,696
IDBI Bank	2,92,802	3,79,399	86,597
Axis Bank	78,737	97,139	18,402
Total Rs.	1,96,84,223	2,59,44,918	62,60,695

Received Interest Fin. Year 2017-18 (AY 2018-19)			
Name of Bank	Interest Recd. Rs.	Cost of Investment In Bank FDRs Rs.	Loss Rs.
Central Bank of India	2,23,94,360	3,08,10,070	84,15,710
IDBI Bank	2,87,115	3,86,786	99,671
Axis Bank	80,919	1,12,889	31,970
Total Rs.	2,27,62,394	3,13,09,745	85,47,351

11. Aforesaid data shown in the table goes to prove that by parking its fund with the nationalized bank the assessee is continuously suffering losses, which further goes to prove that the funds are being parked with the banks to comply with the mandatory provisions contained under cooperative society Act and Rules framed thereunder, thus the bank interest is attributable to the business income is allowable under section 80P(2)(a)(i) of the Act.

12. Identical issue has already been decided by the co-ordinate Bench of the Tribunal in the cases cited as ITO vs. The Bombay Sales Tax Staff Coop. Credit Society Ltd. Mumbai in ITA

No.7064/M/2013 order dated 31.05.2018, ITO vs. Maharashtra Bank Employees Co-operative in ITA No.1763/Pun/2017 order dated 06.08.2019 & ITO vs. M/s. Shri Bhairavnath Multistate Co-operative Credit Society, Phaltan in ITA No.2996/Pun/2017 order dated 08.02.2019.

13. Furthermore, the Ld. A.R. for the assessee brought to our notice CBDT circular No.18/2015 wherein issue in question has been discussed and clarified as under:

“Interest from Non-SLR securities of Banks Taxable as Business Income

CIRCULAR No.18/2015

F.No.279/Misc./140/2015/ITJ

Government of India

Ministry of Finance

Directorate of Income-tax,

Legal & Research

New Delhi, 2nd November, 2015

Subject: Interest from Non-SLR securities of Banks - reg.

It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, "expenses relatable to investment in non-SLR securities need to be disallowed u/s 57(i) of the Act as interest on non-SLR securities is income from other sources."

2. Clause (id) of sub-section (1) of Section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if, the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

3. The matter has been examined in light of the judicial decisions on this issue. In the case of CIT Vs Nawanshahar Central Cooperative Bank Ltd. [2007] 160TAXMAN 48(SC), the Apex Court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

3.2 Even though the abovementioned decision was in the context of co-operative societies / Banks claiming deduction under section 80P(2)(a)(i) of the Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn / not pressed upon. This may be brought to the notice of all concerned.

*Sd/-
(D S Chaudhry)
CIT (A&J), CBDT,
New Delhi”*

14. Bare perusal of the circular (supra) goes to clarify that the investment made by a banking concern is part of the business of the banking and as such income arising from such investment attributable to business of banking falling under the head “profits and gains of business and profession”. **The co-operative societies/banks claiming deduction under section 80P(2)(a)(i) of the Act which have parked their funds in all banks/commercial banks are entitled for deduction under section 80P(2)(a)(i) of the Act.**

15. Identical issue has been decided by the co-ordinate Bench of the Tribunal in case of ITO vs. The Bombay Sales Tax Staff Co-op. Credit Society Ltd. (supra) by returning following findings:

“8. We have heard the ld. Departmental representative, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present case has been sought to adjudicate as to whether the CIT(A) is right in law and facts of the case in concluding that the interest and dividend income earned by the assessee co-operative society on the short term deposits with co-operative banks and nationalized banks, was eligible for claim of deduction under Sec.80P of the Act, or not. As observed by us hereinabove, the assessee is a co-operative society engaged in the

business of providing credit facilities to its members. We have perused the order of the coordinate bench of the Tribunal, viz. ITAT "H" Mumbai in the assessee's own case for A.Y 2012-13 in ITA No. 344/Mum/2016, dated 05.07.2017 and are persuaded to be in agreement with the claim of the ld. A.R that the issue under consideration before us in the present appeal is squarely covered by the said order of the Tribunal. The Tribunal in the aforementioned order passed in the assessee's own case for AY. 2012-13, viz. ITO-20(2)(1) Vs. The Mumbai Sales Tax Staff Co-op Credit Society Ltd (ITA No. 344/Mum/2016; dated 05.07.2017), had held as under:

"5. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 5.1 to 5.3 of its order. The operative portion of the order of Ld. CIT(A) is contained in para no.5.3 of its order and the same is reproduced below:-

"5.3 From the facts of the instant case, it is quite clear that the appellant has limited himself to his own members. The appellant has not provided banking facilities either to the general public at large or even to the members of the society. Even the bye laws of the appellant does not provide for banking activities. Therefore facts of this case are not identical with any of the case laws relied upon by the AO. On the other hand the facts of instant case are almost similar to the decisions of the ITAT Nagpur & Panaji Benches in the cases of (i) ACIT Vs. Buldana Urban Coop Credit Soc. Ltd 32 Taxman 69 ITAT Nagpur and (II) DCIT Vs. Jayalaxnmi Mahila Vividodeshagala Souharda Sahakart, Ltd. by ITA T Panaji Bench 23 Taxman 313 where the activities of the assessee were limited to the members of a specific group and the area of operations was also limited to the acceptance of deposits of members and providing credit facilities to only members, which have been held as not falling under banking activities as defined in the Banking Regulation Act. I also find persuasive value in the opinion of the RBI issued vide letter dated 1st Feb 2012 whereby the RBI states that where a banking license has not been issued to the cooperative credit society, the same cannot be considered as an Urban Cooperative Bank under the Banking Regulation Act 1949. Therefore respectfully following the aforesaid decisions of ITAT Nagpur & Panaji, the appellant cannot be held as a cooperative bank, hence deduction claimed u/s 80P(2)(a)(i) cannot

be denied to it I find that the A.O in the present AY has nowhere led any facts to show that banking facilities such as cheque books, drafts have been provided. Neither is it the case of the A.O that facilities have been provided to members of the general public without restricting on/v to its own members. On facts therefore the A.O has not demonstrated as to how the appellant qualifies to be a bank. In the circumstances, I hold that the appellant is a cooperative society and not a cooperative bank and is therefore eligible for deduction u/s 80P(2)(a)(i). A.O is accordingly directed to allow the deduction claimed by the appellant. Grounds 1, 2 are allowed in favour of the appellant.”


No new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT(A). Since the Ld. CIT(A) while deciding these grounds have relied upon the orders passed by the different benches of Hon’ble ITAT in identical circumstances, therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT(A) are judicious and are well reasoned. Resultantly, these grounds raised by the revenue stands dismissed.

7. We have given a thoughtful consideration to the observations of the Tribunal and finding no reason to take a different view, therefore, respectfully follow the same. We thus, in terms of our aforesaid observations, finding no infirmity in the order of the CIT(A), uphold the same.”

16. The Ld. A.R. for the assessee further contended that the cost of deposit as per the audit report is more than the average rate of interest earned by the assessee society with nationalized and commercial banks which further shows that the funds were deposited with the banks to comply with the mandatory provisions of Maharashtra Co-operative Society Act and explained the total cost of investment, average rate of interest earned and loss on deposits with nationalized/commercial banks in tabulated form as under:

|| Shree ||

NEW SATARA SAMUH (GROUP OF CO - OPERATIVES), MUMBAI



NEW SATARA
ZILLA NAGRIK MULTI STATE CO-OP. CREDIT SOCIETY LTD.

Reg. No.: MSCS/CR/1381/2022

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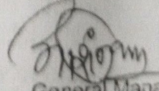
Ref. No.: N.S./

Date : 28/03/2023
Branch : Admin office

Bank Name	FY 2013-14	FY 2016-17	FY 2017-18
Central Bank			
Interest	7112418	19312684	22394360
% Avg Rate of Int.	9.00%	7.30%	6.60%
I.D.B.I. Bank			
Interest	653321	595776	451161
% Avg Rate of Int.	9.15%	7.30%	6.80%
AXIS Bank			
Interest	167129	271762	102246
% Avg Rate of Int.	8.75%	7.00%	6.75%
Weighted Avg. Rate for above 3 banks	8.96% say 9%	7.20%	6.72% say 6.75%

Cost of Deposit As per Audit Report.

Particulars of Cost	FY 2013-14	FY 2016-17	FY 2017-18
Avg Borrowing Rate	9.20%	9.31%	8.89%
½ of Admin Cost	1.23%	0.88%	0.79%
Other Expenses 1%	1%		-
Total Cost % of investment	11.43%	10.19%	9.68%
Avg Rate of int. Earn on deposits with Nationalize & Comm. Banks	9.00%	7.20%	6.75%
% Loss on deposits with Nationalize & Comm. Banks	2.43%	2.99%	2.93%


 General Manager
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17. Aforesaid factual position as to deposit of funds by the assessee society with the nationalized/commercial banks, earning interest thereon with total cost of investment shows that the investment made by the assessee society was in compliance to the mandatory provisions of Maharashtra Co-operative Society Act thus integral part of its business and profession. Furthermore, when the assessee is wholly and exclusively doing its business for its members, the earning of interest on FDs with the banks is incidental to the assessee society's business of accepting the deposit and provision of credit facilities from/to its members. Hence, the interest income has rightly been treated as business income by the assessee society and assessed to tax under the head "profit and gains of business". We are of the further view that in the present scenario parking of funds with nationalized and commercial banks is safe and easy for ease of business of the assessee society because many of co-operative banks have crumbled during the last many years.

18. In view of what has been discussed above, we are of the considered view that the Ld. CIT(A) has erred in disallowing the deduction claimed by the assessee society under section 80P(2)(a)(i) of the Act and consequently we direct the AO to allow the deduction claimed by the assessee society.

19. Resultantly, aforesaid appeals filed by the assessee society are hereby allowed.

Order pronounced in the open court on 27.04.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, Dated: 27.04.2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.