

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 97/Ind/2023
(Assessment Year:2020-21)

Indore Mandal Dak Tar Karamchari Sahakari Sanstha Maryadit Dewas	Vs.	ACIT Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAAJI 0159 C		
Assessee by	Shri Venus Rawka, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.06.2023	
Date of Pronouncement	22.06.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 10.02.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2020-21. The assessee has raised following grounds of appeal:

“1.The Ld. Assessing Officer has erred in law and facts of the case and assessed the total income at Rs. 1,59,22,236/- as against the returned income of Nil.

2.The Ld. Assessing Officer erred in law and facts of the case and made an addition of Rs. 1,59,22,236/- on account of deduction claimed under section 80P under chapter VI-A of the Income Tax Act,

1961 as is admissible deduction to a co-operative society. The addition therefore made by the AO is totally wrong and without considering the facts of the case.

3. That the appellant craves to leave add alter or a mend any of the ground at or before hearing.”

2. The assessee is a credit co-operative society engaged in providing credit facilities to its members. The assessee filed its return of income for the year under consideration on 15.09.2020 declaring total income at nil after claiming deduction u/s 80P of the Act of Rs.1,59,22,236/-. During the scrutiny assessment the AO disallowed the claim of deduction u/s 80P of the Act for want of any explanation on behalf of the assessee to the show cause notices issued u/s 142(1) of the Act. On appeal the Ld. CIT(A) confirmed the disallowance made by the AO by following the judgment of Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. vs. ITO 188 taxmann.com 282.

3. Before us ld. Counsel for the assessee has submitted that the assessee society is established under Society Act and its members are the employees of the telephone and postal departments. The assessee society is accepting the deposits from its members and providing loans and advances to them. During the year, the assessee society has an interest income of Rs. 8,63,02,480/- which includes interest of Rs. 1,59,22,236/- as earned on the deposits made with some banks. The total interest received was claimed as deduction by the assessee society u/s 80P of the Act, however, the Assessing Officer has disallowed the interest deduction of Rs. 1,59,22,236/- by stating that it is not admissible u/s 80P of the Act as it is received from nationalized banks. In this regard, we would like to submit that assessee is a co-operative credit society, though not a co-operative Bank, but its nature of business is coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee society is required to maintain some liquid funds. That is why, generally, credit societies used

to invest in fixed deposits. Furthermore, in many cases, credit societies maintain overdraft facility with nationalized banks to augment its day-to-day business needs. Furthermore, to some extent, the deposits are also required to be kept, out of operational funds, as per extant legislative requirements. The same thing is done by the assessee society as well. Naturally, this entire activity and income arising there from is nothing but attributable to business of banking.

4. He has referred to the audited financial statement of Co-operative society at page 21 of paper book, the Interest earning breakup at Schedule 12 of Financials as below:

Particulars	Amount
Interest from Loan & Advances	6,19,45,864
Interest on Fixed Deposit IPC	2,38,21,371
Interest on savings IDBI	57,757
Interest on savings IPC	43,784
Interest on savings CBI	92,123
Interest on savings SBI	2,00,581
Interest on IT Refund	1,41,000
Total	8,63,02,480

5. the Ld. Counsel for the assessee submitted that assessee in totality have earned interest of Rs. 8,63,02,480/- amount out of which Rs. 6,19,45,864/- are from advances to members which is primary object and

purpose of credit cooperative society and Interest of Rs. 2,38,21,371/- from its deposits and advances lying with co-operative societies i.e. Indore premier co- operative bank societies which is ultimately having banking license under co-op society. Also the cumulative amount of deduction claimed by the assessee u/s 80P was only to the extent of Rs. 1,59,22,236/- which is less than the amount of interest earned from co-operative societies advances to its members. The interest earned from the schedule banks are only amounting to Rs. 3,94,245/- from savings accounts and most importantly assessee have no fixed deposits with any scheduled banks and the surplus is just lying with co-operative societies (Indore Premier Co-operatives Societies) whose income is also attributable to Business of Assessee Society as the object of Co-op Society providing credit is the only sole objective and not engaged in any other work. Therefore, Ld. AR submitted that the ultimate net profit of the co-operative society is within the ambit of Act u/s 80P(2)(a)(i) being primary object of the assessee society to carry on business of banking or providing credit facilities to its members

6. He has relied upon the decision of Karnataka High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd.* (**230 Taxman 309**) and submitted that the Hon'ble High Court has held 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, if deposit this amount in bank account then the interest income is attributable to the profits and gains of the business of providing credit facilities to its members and eligible for deduction u/s 80P of the Act.

7. He has submitted that the issue before the Hon'ble Supreme Court in case of *Totagars Co-operative Society vs. ITO (supra)* is restricted only on the interest income on the amount which was liability in the hands of society and therefore, the said amount was held to be not a business

income of the society. But such interest would be taxable u/s 56 of the Act and consequently not eligible for deduction u/s 80P of the Act.

8. He has also relied upon the decision of Hon'ble Karnataka High Court in the case of *Yamakanmardi Urban Co-operative Credit Society Ltd. vs. CIT 45 taxmann.com 297* as well as the order of the Ahmedabad Bench of the Tribunal in case of *Jafari Momin Vikas Co-op Credit Society Ltd. vs. ITO in ITANo.1491/Ahd/2012*.

9. On the other hand, Ld. DR has submitted that the assessee has not responded to the show cause notice issued by the AO u/s 142(1) and therefore, in absence of any explanation the AO has completed assessment u/s 144 r.w.s. 144B of the Act. He has further submitted that ld. CIT(A) has confirmed the order of the Assessing Officer by following the judgment of Hon'ble Supreme Court in case of *Totagars Co-operative Society vs. ITO (supra)*. He has relied upon the orders of the authorities below.

10. We have considered the rival submissions as well as relevant material on record. The assessee is a credit cooperative society and claim to have engaged in the providing credit facilities to the members of the society. The assessee claimed deduction u/s 80P of the Act on the entire income of the assessee including interest income. The AO denied this claim under section 80P for want of any explanation. The relevant part of the assessment order as under:

1.Reasons for selection of the case and type of case and background facts-

The assessee filed its return of income for the AY-2020-21 on 15.09.2020 video- ing acknowledgement no. 552994571150920 by showing total income of Nil. The case was selected for limited scrutiny assessment under the E-assessment Scheme, 2019 on the following reason(s):-

1 High Creditors/ liabilities

2 Investments/Advances/Loans

3. Deduction from Total Income under Chapter VI-A

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2. Details of opportunities given: -

Type of notice/ communication	Date of notice/ communication	Date of compliance given	Response of the assessee received/not received	Date of response, if received	Response type (Full/part/ adjournment)	Remarks, if any
143(2)	29.06.2021	14.07.2021	Not recd.	N/A	No compliance	-
142(1)	28.10.2021	12.11.2021	Not recd.	N/A	No compliance	Email bounced
142(1)	31.01.2022	15.02.2022	Not recd.	N/A	No compliance	This 142(1) was physically served to the assessee through Verification Unit
142(1)	14.03.2022	18.03.2022	Not Recd.	N/A	No compliance	Email bounced
142(1)	14.03.2022	16.03.2022	Not Recd.	N/A	No compliance	This 142(1) was physically served to the assessee through Verification Unit
Show-Cause notice	01.08.2022	08.08.2022	Not recd.	N/A	No compliance	-

3. Cases where variation is proposed

Update the table of opportunities given to include the details of SCN or additional SCN issued and further notices including personal hearing through VC given – Table updated.

3.1 Use the text of SCN issued to reproduce: -

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- Complete description of issues involved (Issue wise)

The assessee filed its return of income for the A.Y. – 2020-21 on 15.09.2020 vide e-filing acknowledgement no. 552994571150920 by showing total income of Nil. The case was selected for limited scrutiny assessment under the E-assessment Scheme, 2019 on the following reason(s): -

1. High Creditors/ liabilities
2. Investments/Advances/Loans
3. Deduction from Total Income under Chapter VI-A

- Synopsis of all submissions of the assessee relating to the issue and indicating the dates of submission.

The assessee has not responded to any of the notice u/s 142(1) dated 28.10.2021, 31.01.2022, & 14.03.2022 issued to it during the entire course of assessment proceedings. Thereafter, a show-cause notice was issued to the assessee proposing to complete the assessment proceedings in its case ex-parte u/s 144 of the Act fixing compliance on 08.08.2022 but still the assessee did not comply to the same.

- Summary of information/evidence collected which proposed to be used against it (attach documents, if required) -

On going through the ITR of the assessee for the year under consideration, it is seen that the assessee has claimed a deduction of Rs.1,59,22,236/- under Chapter VI-A but failed to furnish any details regarding the same although it was given several opportunities to explain the same.

- Variation proposed on the basis of inference drawn

1. Notice u/s 143(2) of the Income-tax Act, 1961 [hereinafter referred to as the "Act"] was issued to the assessee on 29.06.2021 and served through E-filing portal as per E-assessment Scheme, 2019. Subsequently, notice u/s 142(1) was also issued on 28.10.2021 along with questionnaire fixing compliance on 12.11.2021 at 11.00 am. But the status of the email was shown as bounced.

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2. Later, on 31.01.2022 & 14.03.2022 the case was referred to the Verification Unit (through Insight Portal) of the department for service of notice u/s 142(1) dated 28.10.2021 and the same were physically served by the Verification Unit. But still the assessee did not comply although the notices u/s 142(1) were physically served to the assessee by the Verification Unit. Therefore, penalty proceeding u/s 272A(1)(d) of the Act is proposed to be initiated separately for non-compliance to notice u/s 142(1) of the Act.

3. From the above, it is seen that despite adequate opportunities given to the assessee, the assessee has not submitted any reply or response to any of the said notices.

4. As per provisions of Section 144 of Income Tax Act, 1961, if the assessee fails to comply with terms of a notice issued u/s 143(2) or 142(1), the Assessing Officer is to gather relevant material and to make the assessment of the total income to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment. Relevant provision is reproduced hereunder:-

"Best Judgment assessment:

Section 144(1): If any person-

1. Fails to make the return required under sub section (1) of Section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or

2. Fails to comply with all the terms of a notice issued under sub-section (1) of Section 142 (or fails to comply with a direction issued under sub-section (2A) of that section), or

3. Having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of Section 143, the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, (shall, after giving the assessee an opportunity of being heard, make the assessment) of the total income or less to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment."

5. In view of the provisions of Section 144 of the Act, and for the failure on the part of the assessee to furnish any compliance in response to notice(s) u/s 142(1) of the Act dated 31.01.2022 and 14.03.2022, the Assessing Officer is proceeding with completion of 'best

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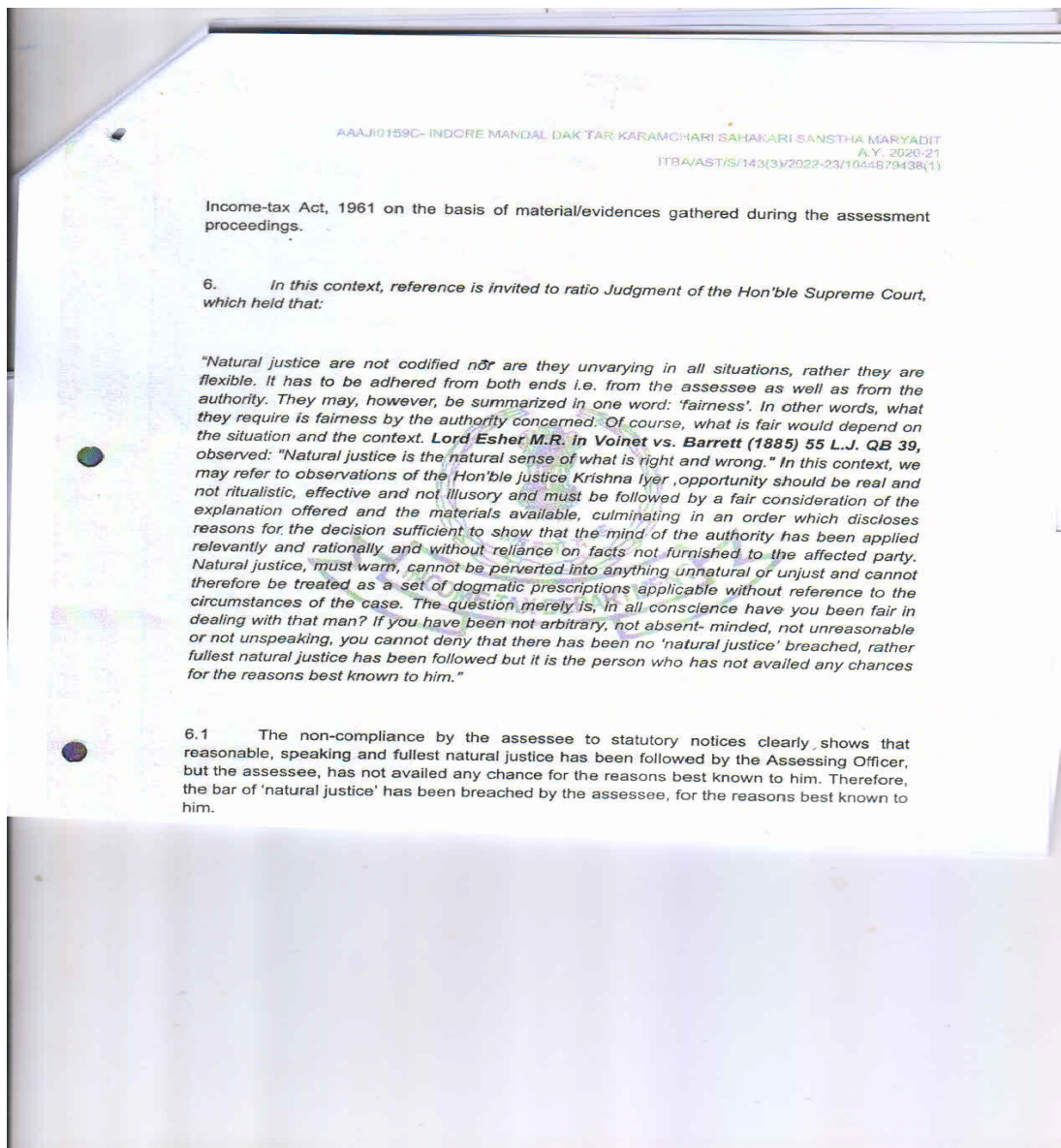
judgement assessment' through E-Proceedings. During the course of E-proceedings, notices u/s 142(1) of Act were issued and served upon the assessee from time to time through Registered Email id of the assessee and through Verification Unit, but no compliance was made by the assessee, the details given hereunder:

Sl. No.	Notice issued under section	Date of issue of notice	Response by assessee
1	142(1)	28.10.2021	No response (email bounced)
2	142(1) [Served physically through Verification Unit]	31.01.2022	No response
3	142(1)	14.03.2022	No response (email bounced)
4	142(1) [Served physically through Verification Unit]	14.03.2022	No response

5.1 As tabulated above, the assessee was given sufficient opportunities vide issue and service of statutory notices, but the assessee has failed to comply with the notices and failed to furnish details as called for vide this Office notice(s) dated 31.01.2022 & 14.03.2022.

5.2 The assessee has failed to furnish any details relating to nature of Income earned, details of bank accounts, deductions claimed, etc. Notices u/s 142(1) issued as detailed in above mentioned table remained un-complied with. On the appointed date no details were furnished through E-Proceedings. Therefore, the Assessing Officer is left with no option but to complete the assessment proceedings ex-parte i.e. to the best of judgment u/s 144 of the

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11. Thus, it is clear that after filing the return of income the assessee did not respond to the various notices issued by the AO and finally the AO had no option but to pass best assessment order. On appeal the Ld. CIT(A) has confirmed the disallowance made by the AO simply by following the judgment of Hon'ble Supreme Court in case of *Totagars Co-operative Society vs. ITO (supra)* without even considering the fact that whether entire interest income earned by the assessee from other than the members of the assessee society. As per the provisions of section 80P the business

income of the Co-operative Society is eligible for deduction u/s 80P of the Act. In case of credit Cooperative Society engaged in providing credit facilities to its members the interest income from the credit facility provided to the members would be a regular business income of the society eligible for deduction u/s 80P. Further as per the section 80P(2)(d) the interest received on the deposit with other cooperative society is also eligible for deduction u/s 80P of the Act. If the deposit is made with a Cooperative Bank then the said bank would be considered as a Cooperative Society for the purpose of section 80P(2)(d) of the Act so far as the income is eligible for deduction u/s 80P(1) of the Act. The AO has made the addition of the entire interest income has shown in profit and loss account without even considering the facts as to how much interest income received by the assessee from its members. The dispute may be regarding eligibility of deduction u/s 80P in respect of the interest income earned from the deposit made in the Schedule Banks or other than members. Therefore, the interest income received from the members against the credit facility provided by the assessee society is eligible for deduction u/s 80P(2)(a)(i). Further the interest received from its investment from other cooperative society is also eligible for deduction under section 80P(2)(d) of the Act. Since neither the AO nor the Ld. CIT(A) has examined the relevant facts regarding the amount of interest received from the members for providing credit facility being a regular business income of the assessee as well as the interest income received from other than members of the assessee society. Therefore, in the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of CIT(A) and matter is remanded to the record of the Assessing Officer for deciding the same afresh after verification of the relevant record and considering the explanation of the assessee. Needless to say before passing fresh order the assessee be given appropriate opportunity of hearing as well as considering the case laws relied upon by the assessee.

12. In the result, appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.06.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-s
(VIJAY PAL RAO)
Judicial Member

Indore, 22 .06.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore