

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH : PANAJI

(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND

SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA.No. 62/PAN./2022  
Assessment Year 2017-2018

|  |     |   |
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| The Khanapur VSS Sangh Ltd.,<br>Khanapur, Belgaum,<br>Karnataka.<br>PAN AAAJT0126A | vs. | Pr. CIT,<br>Income Tax Office, Central<br>Rajasva Bhavan, Nava Nagar,<br>Hubballi. Karnataka.<br>PIN – 580 025. |
| (Appellant)  |     | (Respondent)  |

|                |                         |
|----------------|-------------------------|
| For Assessee : | Shri Pramod Y Vaidya    |
| For Revenue :  | Shri Prabhakar Anand DJ |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 10.07.2023 |
| Date of Pronouncement : | 12.07.2023 |

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This assessee's appeal for assessment year 2017-2018, arises against the PCIT, Hubli, Hubli's Din and Order No. ITBA/REV/F/REV5/2021-22/1041457147(1), dated 24.03.2022, involving proceedings u/s.263 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal as under :

1. *“The order passed by the learned Principal Commissioner of Income Tax (Central), Hubli is opposed to the law and facts of the case.*
2. *The Pr.CIT erred in law in passing revision order u/s 263 on a issue of entitlement of deduction u/s 80P(2)(d) of interest on deposits with co-operative bank by a co-operative society which is decided in favour of the assesses by jurisdictional High Court in 392 ITR 74 and jurisdictional Panaji Bench of Tribunal in various decisions. [Rs.2,94,067/-].*
3. *On the facts and circumstances of the case and in law the Pr.CIT erred in revising the original order u/s 143(3) on a debatable issue or when two legal views are possible as held by Supreme Court in the case of Max India reported in 295 ITR 283.Reference can also be made to CIT v Gokuldas Exports 333 ITR 214 (Kar) and CIT v Munjal Castings 303 ITR 23 (P&H).*
4. *The Pune Bench of the Tribunal in the case of Rena Sahakari Sakhar Karkhana Ltd v Pr.CIT reported in 138 taxmann.com 532since Assessing Officer white framing assessment had taken a possible view and allowed assessee's claim for deduction under section 80P(2)(d) on interest income earned on its deposits with a co-operative bank, Pr.CIT was In error In*

*exercising his revisional jurisdiction under section 263 for disallowing same.*

*5. The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal.”*

3. There is hardly any dispute between the parties that the learned PCIT has termed the Assessing Officer's corresponding regular assessment framed u/sec.143(3) of the Act dated 30.11.2019 as an erroneous one causing prejudice to interest of the Revenue for not having disallowed assessee's sec.80P(2)(a)(i) r.w.s. 80P(2)(d) deduction claim representing interest on FDs of Rs.9,51,675/- from BDCC Bank i.e., a co-operative bank. Learned PCIT holds that such an interest income does not fulfill the necessary conditions in sec.80P of the Act. That being the case, we quote this tribunal's recent order in ITA.No.84/PAN./2018 *The Ugar Sugar Works Kamgar & Dr. Shirgaokar Shaikshanik Trust Nokar Co-op Credit Society, Belgaum vs. ITO* dated 27.05.2022 deciding the instant issue of sec.80P(2)(a)(i) deduction against the department as under :

*“5. First, we shall reproduce the ground of appeal no.3 filed by the assessee in appeal, which reads as under :-*

*“3. (a) The Learned CIT(A) further erred in denying the deduction of Rs. 284,574 claimed u/s. 80P (2)(d) in respect of interest received on the reserve fund FD*

*kept with Belgaum Dist. Central Co-Operative Bank Ltd (BDCC Bank)*

*(b) The Learned CIT (A) ought to have taken into consideration the fact that as per the Karnataka Co-Operative Societies Act, 1956, a society has to invest 25% of its net profit into a reserve fund. This is an obligatory regulation to be followed by a Society to carry on its activities. As such the CIT (A) should have refrained from disallowing the claim of the appellant U/s. 80P(2)(d). Alternatively, since the said interest income is attributable to carrying on the business of the appellant society, the same qualifies for deduction U/s. 80P (2)(a)(i) of the Income Tax Act, 1961.*

*(c) The ratio of Totgar Cooperative Sales Society Ltd Vs ITO cannot be applied to the appellant's case as the interest income derived is attributable to carrying on of business of providing credit facilities to its members whereas the business of Totgar Cooperative Sales Society didn't include business of providing credit facilities to its members."*

6. *Before us, it is submitted that the interest income was received by the assessee on the surplus deposited with BDCC Bank Ltd. and also investments of statutory reserve funds etc. The ld. AR submits that the appellant is not a cooperative bank*

*but a cooperative society and eligible for deduction u/s 80P(2)(a)(i) of the Act.*

7. *On the other hand, ld. Sr. DR placed reliance on the orders of the lower authorities.*

8. *We heard the rival submissions and perused the material on record. The only issue in the present appeal is pertaining to the allowability of deduction under the provisions of section 80P(2)(d) of the Act. On perusal of provisions of section 80P(2)(d), it is clear that the income derived by a cooperative society from its investment held with other cooperative societies shall be exempt from the total income of a cooperative society. Therefore, what is relevant for claiming of deduction u/s 80P(2)(d) is that interest income should have been derived from the investment made by the assessee cooperative society with any other cooperative society. In the present case, the reasoning given by the lower authorities for denial of exemption u/s 80P(2)(d) of the Act is that interest was received from cooperative bank has no legs to stand as a cooperative bank is also a cooperative society. 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 ratio of decision of the Hon'ble Supreme Court in the aforesaid case (supra) not to be applicable 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.*

9. *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 wherein the Tribunal after making reference to the decisions of the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd. (supra) and 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, decision of the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. (supra) had not been preferred to view of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. (supra). The relevant observation of the Pune Bench of the Tribunal in the case (supra) is 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.”*

10. *In the light of the above legal position of law and the reasoning adopted by the Assessing Officer as well as the ld. CIT(A) cannot be accepted. This ground of appeal no.3 stands allowed.”*

4. We adopt the foregoing reasoning *mutatis mutandis* to accept the assessee's sole substantive issue raised in the instant appeal. Ordered accordingly.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 12.07.2023.

Sd/-  
[G.D. PADMAHSHALI]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 12<sup>th</sup> July, 2023

VBP/-

Copy to

|    |                                 |
|----|---------------------------------|
| 1. | The appellant                   |
| 2. | The respondent                  |
| 3. | The Ld. CIT(A) concerned.       |
| 4. | The CIT concerned               |
| 5. | D.R. ITAT, Panaji Bench, Panaji |
| 6. | Guard File.                     |

//By Order//

Assistant Registrar, ITAT, Pune Benches,  
Pune.