

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.Nos.104 & 103/ PAN./2022  
Assessment years 2011-12 & 2018-19

The Canacona Urban Cooperative Credit Society Limited, Chavdi, Canacona Market, Goa 403702 PAN AABAT4730E	vs.	The Income Tax Officer, Ward-5, Income Tax Office, Blessings Pioneer Bldg., Margao, South Goa – 403 601
(Appellant)		(Respondent)

For Assessee :	Shri Amogh Arlekar
For Revenue :	Shri N. Shrikanth

Date of Hearing :	10.07.2023
Date of Pronouncement :	13.07.2023

**ORDER**

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

These assessee's twin appeals ITA.Nos. 104 & 103/  
PAN./2022, for assessment years 2011-2012 and 2018-2019 arise  
against the National Faceless Appeal Centre [in short the  
"NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2022-  
23/1043966325(1) and 1043966521(1), both dated  
21.07.2022, involving proceedings u/s. 143(3) of the Income  
Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case files perused.

2. The assessee pleads the following substantive  
grounds in it's lead appeal ITA.No.104/PAN./2022 as under:

1. *“That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as ‘the Ld. CIT(A)] erred on facts and in law in upholding and confirming the addition of Rs.37,69,406/- under section 80P(4) of the Income-tax Act, 1961, made by the Ld. Assessing Officer (hereinafter after referred to as Ld. AO) vide order u/s143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter after referred to as ‘the Act’) and disallowing the deduction u/s 80P(2)(a)(i) of Rs.37,69,406/-.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in upholding the addition of Rs.37,69,406/- Ld. AO under section 80P(4) of the Act, ignoring the fact that the Appellant is a Cooperative Society and not a Cooperative Bank.*
  - 2.1 *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in ignoring the fact that the Appellant is not registered under the Banking Regulation Act, 1949.*
  - 2.2 *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in observing that Section 80P(4) would be applicable to the Appellant although the Appellant is a Cooperative Society and not a Cooperative Bank and the abovementioned section is only applicable to Cooperative Banks.*
  - 2.3 *That on the fact and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that the intention of the Legislature was never to not grant*

*deduction to Cooperative Societies u/s 80P(2)(a)(i) for carrying out the business of credit facilities to its members.*

- 2.4 *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law by not appreciating that Part V of the Banking regulation Act, 1949 is not applicable to Cooperative Societies and hence would not be applicable to the Appellant.*
- 2.5 *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in not appreciating the fact that the Appellants operate in a far- flung area of the state. The CA's and other consultants of the Appellant operate at the District Headquarters, i.e. Margao and hence frequent commute for communication is not possible. This was the reason the Appellant could not r appear before the Authorities within the stipulated time. It was a mere logistical problem caused by the lack of facilities and no malice was ever intended.*
- 2.6 *That the Ld. CIT(A) erred on facts and in law in ignoring the Judgment of the Jurisdictional High Court of Bombay at Goa in PCIT v M/s The Quepem Urban Co-operative Credit Society (Tax Appeal No. 2/2018) dated 7/52021 which clearly and unambiguously decides the issue in favour of the Appellant.*
- 2.7 *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in upholding the addition made without noticing that the Ld. AO has without providing any cogent basis in the assessment order stated that the amount of*

*Rs.37,69,406/- be added to the income of the Appellant by virtue of section 80P(4) of the Act.*

*2.8 That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in only making a bold assertion devoid of merit that since the Appellant is a Cooperative Society and not Cooperative Bank registered under the Banking Regulation Act, 1949.*

*3. That on the facts and the circumstances of the case the Ld. CIT(A) erred on facts and in law in upholding the disallowance deduction totaling to Rs.37,69,406/- without providing any reasons/basis whatsoever for such disallowance.*

*The Appellant craves leave to add to alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.”*

3. The factual position is hardly any different in the assessee's latter appeal ITA.No.103/PAN./2022 since the only difference therein is that of quantum of the impugned sec.80P(4) disallowance/addition involving a sum of Rs.12,35,843/-. We thus proceed to adjudicate the assessee's both these appeals by our common adjudication hereunder.

4. Now comes the sole dispute between the parties wherein both the learned lower authorities have disallowed the assessee's claim of sec.80P(2)(a)(i) deduction holding that it is not a cooperative society as well as the fact that the impugned interest income had been derived from cooperative banks and

similar institutions. Hon'ble apex court's recent landmark decision in Mavilayi Service Co-operative Bank Ltd. vs. CIT [2021] 431 ITR 1 (SC) has already settled the issue in assessee's favour and against the department that a co-operative society is not a co-operative bank.

4.1. Coupled with this, 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 has also decided 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.”*

5. We adopt the foregoing reasoning *mutantis mutandis* to accept the assessee’s identical instant grievance raised in both the instant appeals. Ordered accordingly.

6. This 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 13.07.2023.

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

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 13<sup>th</sup> July, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The NFAC, Delhi
4.	The CIT, Goa
5.	D.R. ITAT, Panaji Bench, Panaji
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,  
Pune.