

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.107/Viz/2022

(निर्धारण वर्ष / Assessment Year :2017-18)

Income Tax Officer,
Ward-1,
Tenali.

(अपीलार्थी/ Appellant)

Vs. The Kakateeya Mutually
Aided Thrift and Credit Co-
op. Society Limited,
Tenali.
PAN: AACAT 1759 J
(प्रत्यर्थी/ Respondent)

C.O. No. 07/Viz/2022

(In आयकर अपील सं./ I.T.A. No.107/Viz/2022)

(निर्धारण वर्ष / Assessment Year :2017-18)

The Kakateeya Mutually Aided
Thrift and Credit Co-op. Society
Limited, Tenali.
PAN: AACAT 1759 J
(Cross Objector)

Vs. Income Tax Officer,
Ward-1,
Tenali.
(Appellant in appeal)

अपीलार्थी की ओर से/ Assessee by

: Sri DL Narasimha Rao, AR

प्रत्यर्थी की ओर से / Revenue by

: Sri ON Hari Prasada Rao,
Sr. AR

सुनवाई की तारीख / Date of Hearing

: 12/07/2023

घोषणा की तारीख/Date of

: 30/08/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi [CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2021-22/1041365114(1), dated 23/03/2022 arising out of the order passed U/s. 143(3) vide order No. ITBA/AST/S/143(3)2019-20/1022350379(1), dated 14/12/2019.

2. Brief facts of the case are that the assessee is a Cooperative Society registered with Registrar of Mutually Aided Cooperative Societies, Guntur e-filed its return of income for the AY 2017-28 on 24/08/2017 admitting a total income of Rs. NIL by claiming the total income earned during the FY 2016-17 as deduction U/s. 80P amounting to Rs. 73,32,076/-. The Ld. AR observed the P & L Account that the assessee has claimed net interest income of Rs. 2,02,62,233/- derived out of its investments. During the course of scrutiny assessment proceedings, the assessee filed details pertaining to various activities of the Society before the Ld. AO. The Ld. AO found that the Society is investing its surplus funds in the form of Fixed Deposits in various banks and derived interest income on such deposits for Rs. 2,02,62,233/-. The Ld. AO also observed that the interest receipts out of its

deposits made with another entity other than its members should be categorized as business receipts and ought to be treated as income from other sources. After considering the submissions made by the assessee and going through the by-laws of the Society, the Ld. AO by relying on the ratio laid down by the Hon'ble Apex Court in the case of Totgars Cooperative Sale Society Ltd., vs. ITO, Karnataka reported in [2010] 188 taxman 282 (SC) and also relying on the Coordinate Bench's decision as well as the decisions of the various High Courts considered the interest income received by the assessee as Fixed Deposit with banks as not eligible for deduction U/s. 80(P)(2)(a)(i) of the Act and taxed it under the head 'income from other sources'. Further, the Ld. AO also observed a sum of Rs. 1,60,825/- towards locker rent during the relevant FY as not eligible for deduction U/s. 80(P)(2)(A)(i) of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the assessee placed various submissions before the Ld. CIT(A)-NFAC. On consideration of the submissions and the facts of the case, the Ld. CIT(A)-NFAC by relying on various case laws as discussed in para 5.4.3 of the order of the Ld. CIT(A)-NFAC and partly allowed the appeal of the assessee.

Aggrieved by the order of the Ld. CIT(A)-NFAC, the Revenue is in appeal before us.

4. The Revenue has raised the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is erroneous both in law and in facts and circumstances of the case.*
- 2. The Ld. CIT (A) erred in not appreciating the aspect that the ratio laid down by the Hon'ble Apex Court in the case of M/s. Totgars Cooperative Sale Society Ltd (322 ITR 283) is squarely applicable to the facts and circumstances of the case.*
- 3. The Ld. CIT(A) ought to have considered that the deduction U/s. 80P(2)(a)(1) is allowable to the income earned from the activities done with its members only.*
- 4. The Ld. CIT(A) erred in deleting the addition U/s. 80P of the Act since the interest earned on fixed deposits is not attributable to the activities of the assessee society with its members.*
- 5. The Ld. CIT (A) erred in allowing the deduction U/s. 80P of the Act based on the reliance placed on by the assessee on various judicial decisions which are distinguishable to the facts of the case as discussed in details by the AO in the assessment order.*
- 6. The Ld. CIT(A) failed to appreciate the intent of legislature in keeping the provision of section 80P(2)(d) of the Act that investments by Cooperative Societies be not made in entities other than cooperative societies.*
- 7. The Ld. CIT(A) erred in not appreciating the legislative aspect of Sec. 80P(2)(d) that the expression "attributable to" used in sec. 80P(2)(a) cannot include under its ambit the incomes accrued on investments made by the cooperative societies in investments belonging to entities other than cooperative societies.*
- 9. Any other grounds that may be urged at the time of hearing."*

5. Grounds No. 1 & 8 are general in nature and therefore they need no adjudication.

6. Grounds No.2 to 7 relates to the issue of allowance of interest on deposits earned by the Cooperative Society from the fixed deposits in various bank accounts can be allowed as deduction U/s. 80P(2)(a)(i) of the Act.

7. At the outset, the Ld. Departmental Representative placed heavy reliance on the decision of the Hon'ble Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd (322 ITR 283). The Ld. DR also argued that as per section 80P(2)(d) of the Act, interest income earned on investments with any other Cooperative Societies is only eligible for deduction. Further, the Ld. DR also submitted that as per the judgment of the Hon'ble Supreme Court in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) interest income arising out of the short term bank deposits needs to be taxed as income from other sources and cannot be held eligible for deduction U/s. 80P(2)(a)(i) of the Act. The Ld. DR therefore pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. Authorized Representative submitted that the facts in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) are entirely different from that of the instant case. The Ld. AR also submitted that as per Para-11 of the

judgment in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) it is clearly mentioned that "*this judgment is confined to the facts of the present case*" and therefore it cannot be applied in the assessee's case. The Ld. AR also placed reliance on the decision of the ITAT, Visakhapatnam Bench in the case of M/s. Kakinada Cooperative Building Society Ltd vs. Addl. CIT in ITA Nos. 348 & 349/Viz/2013, dated 22/01/2016 and submitted that the jurisdictional Visakhapatnam Bench of ITAT by relying on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Andhra Pradesh State Cooperative Bank Ltd [2011] 336 ITR 516 (AP) wherein it was held that the interest earned on deposits in the bank shall be quantified for deduction U/s. 80P of the Act. Countering the arguments of the Ld. AR, the Ld. DR submitted that the jurisdictional High Court allowed the deduction U/s. 80P(2)(a)(i) of the Act since the Andhra Pradesh State Cooperative Bank Ltd has to make statutory deposits and it has not invested its surplus funds which were not otherwise used for business purposes. He therefore pleaded that the case relied on by the Ld. AR is distinguishable on facts.

8. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue

Authorities. It is an admitted fact that the assessee has claimed deduction U/s. 80P(2)(a)(i) of the Act on the interest accrued and received by the assessee U/s. 80P(2)(a)(i) of the Act. The contention of the Ld. AO is that as per section 80P(2)(d), the assessee is eligible to claim deduction U/s. 80P(2)(a)(i) of the Act only when it is invested with any other cooperative society. The Ld. AO also placed heavy reliance in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) while disallowing the claim made by the assessee U/s. 80P(2)(a)(i) of the Act. We have perused the ratio laid down by the Hon'ble Apex Court in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) and found that in that case the society is engaged in marketing of the agricultural produce by its members as per section 80P(2)(a)(iii) while carrying on the business of banking or providing credit facilities to its members U/s. 80P(2)(a)(i) of the Act. In that case, the Society retained the sale proceeds which was otherwise payable to its members from whom the produce was bought which was invested in short term deposits / securities. It is also found that the amount payable to its members realized from sale proceeds of the agricultural produce of its members was retained by the society and was shown as liability on the balance sheet. Therefore, the Hon'ble Apex Court has held that interest earned

from retaining the amount payable to its members shall not be considered as income from other sources. However, in the instant case the facts are distinguishable and hence in our view the ratio laid down in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) shall not be applied. Section 80P(1) of the Act entitles the Cooperative Societies to deduct the sums specified in sub-section (2) from its gross total income while computing the total income. Sub-section (2) of section 80P, in the sub-clause (a) allows deduction to cooperative society which is engaged in the following activities:

- “(a) in the case of a co-operative society engaged in—*
- (i) carrying on the business of banking or providing credit facilities to its members, or*
 - (ii) a cottage industry, or*
 - [(iii) the marketing of agricultural produce grown by its members, or]*
 - (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or*
 - (v) the processing, without the aid of power, of the agricultural produce of its members, [or]*
 - [(vi) the collective disposal of the labour of its members, or*
 - (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,]*
the whole of the amount of profits and gains of business attributable to any one or more of such activities:”

9. Further, we also extract below the provisions of section 80P2(d) and (e) of the Act for reference:

“(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;”

10. From the plain reading of section 80P(2)(a)(i) of the Act, the whole of amount of profits and gains of the business attributable to one or more of such activities shall be allowed as a deduction. Further, section 80P(2)(d) and 80P(2)(e) of the Act also allows similar deductions. It is clear that the deductions available under clauses (a) to (e) of section 80P(2) are activity based whereas clauses (d) and (e) are investment based. The distinction between clauses (a) and clauses (d) & (e) on the other hand is that the benefit under clause (a) is restricted to only into those activities of a cooperative society enlisted in sub-clause (a) whereas the benefit of clauses (d) & (e) are available to all cooperative societies without any restriction on the activities carried on by them. In simple terms, the benefit under clause (a) will be limited only to the profits & gains of the business attributable to any one or more of such activities. But in case, if the cooperative society has an income not attributable to any one or more of such activities listed in sub-clauses (i) to (vii) of clause-(a), the same may go out of the purview of clause (a) but

still the cooperative society may claim the benefit of clause (d) or (e) as per the conditions laid down therein. In the instant case, the original source of investments made by the assessee in Nationalized Banks is admittedly the income of the assessee derived from the activities listed in sub-clauses (i) to (vii) of clause (a). The character of such income must be last, especially when the statute uses the expression "attributable to" and not any one of the expressions viz., "derived from" or "directly attributable to". The Hon'ble jurisdictional High Court of Andhra Pradesh and Telangana in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another [2017] 396 ITR 0371 (AP) in para 34 has discussed about the decision of the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd (supra) and distinguished the facts while deciding the case. For the sake of brevity, we extract the relevant para 34 of the judgment of the Hon'ble Andhra Pradesh and Telangana High Court herein below:

"34. The case before the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) was in respect of a co operative credit society, which was also marketing the agricultural produce of its members. As seen from the facts disclosed in the decision of the Karnataka High Court in Totgars, from out of which the decision of the Supreme Court arose, the assessee was carrying on the business of marketing agricultural produce of the members of the society. It is also found from paragraph-3 of the decision of the

Karnataka High Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) that the business activity other than marketing of the agricultural produce actually resulted in net loss to the society. Therefore, it appears that the assessee in Totgars was carrying on some of the activities listed in clause (a) along with other activities. This is perhaps the reason that the assessee did not pay to its members the proceeds of the sale of their produce, but invested the same in banks. As a consequence, the investments were shown as liabilities, as they represented the money belonging to the members. The income derived from the investments made by retaining the monies belonging to the members cannot certainly be termed as profits and gains of business. This is why Totgar's struck a different note."

11. Further, the Hon'ble jurisdictional High Court of Andhra Pradesh and Telangana in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another (supra) held that the cooperative society is eligible for deduction U/s. 80P(2)(a)(i) of the Act on the interest income received from investment in banks. The Hon'ble High Court in paras 35 to 37 of its judgment held as under:

"35. But, as rightly contended by the learned senior counsel for the petitioners, the investment made by the petitioners in fixed deposits in nationalised banks, were of their own monies. If the petitioners had invested those amounts in fixed deposits in other co-operative societies or in the construction of godowns and warehouses, the respondents would have granted the benefit of deduction under clause (d) or (e), as the case may be.

36. The original source of the investments made by the petitioners in nationalised banks is admittedly the income that the petitioners derived from the activities listed in sub-clauses (i) to (vii) of clause (a). The character of such income may not be lost, especially when the statute uses the expression "attributable to" and not any one of the two expressions, namely, "derived from" or "directly attributable to".

37. Therefore, we are of the considered view that the petitioners are entitled to succeed. Hence, the writ petitions are allowed, and the order of the Assessing Officer, in so far as it relates to treating the interest income as something not allowable as a deduction under section 80P(2)(a), is set aside."

12. Further, the Coordinate Bench of Hyderabad in Tirumala Tirupati Devasthanams Employees Coop. Credit Society vs. ITO also affirmed the same view by following the decision of the Hon'ble AP High Court in the case of Vavveru Cooperative Rural Bank Ltd (supra). In the instant case also, the assessee has invested surplus funds out of the activities carried out as per the provisions of section 80P(2)(a) of the Act. We therefore by respectfully following the jurisdictional High Court are of the view that interest income should be allowed as deduction U/s. 80P(2)(a)(i) of the Act and thereby the Ld. CIT(A)-NFAC has rightly held by deleting the addition made by the Ld. AO and hence we find no infirmity in the order of the Ld. CIT(A)-NFAC.

13. In the result, appeal of the Revenue is dismissed.

14. With respect to the Cross Objection, the assessee has raised the following grounds:

"1. The Ld. First Appellate Authority erred in not adjudicating the Ground No.9 (as contained in the appeal petition in Form No.35 filed before it. Specifically in that the claim for allowing the expenditure of Rs. 2,39,53,821/-

against the interest receipts of Rs. 2,02,62,233/- charged to tax by the AO under section 56 of the Act.

2. The Ld. First Appellate Authority erred in sustaining the addition of Rs. 1,60,825/- for the AY 2017-18.

3. The Ld. First Appellate Authority erred in non-adjudication of the Ground no. 8 specifically (contained in form-35 filed before it) for the AY 2017-18 with regard to exemption of income under the Doctrine of Mutuality."

14. Since, the main appeal of the Revenue has been dismissed and held in favour of the assessee, the grounds of Cross Objections raised by the assessee need no separate adjudication and hence considered as infructuous.

15. In the result, Cross Objection raised by the assessee is dismissed.

Pronounced in the open Court on 30th August, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :30.08.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – The Kakateeya Mutually Aided Thrift and Credit Coop. Society Limited, D.No. 22-3-4, Kothapet, Tenali, Guntur District, Andhra Pradesh – 522 201.
2. राजस्व/The Revenue – The Income Tax Office, D.No. 19-15-47, Opp. Sai Baba Temple, Bose Road, Tenali, Guntur District, Andhra Pradesh – 522201.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam