

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ SMC ‘ Bench, Hyderabad**

BEFORE

SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.432/Hyd/2023		
Assessment Year: 2017-18		
Andhra Pragathi Farmers Service Co-operative Society, Yerraguntla, Kurnool. PAN : AAAAR2374M.	Vs.	The Income Tax Officer, Ward – 1, Nandyal.
(Appellant)		(Respondent)
Assessee by:		Shri K. A. Sai Prasad, C.A.
Revenue by:		Sri Aravindakshan, Sr. A.R.
Date of hearing:		12.09.2023
Date of pronouncement:		12.09.2023

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) – Delhi dt.30.06.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

“1. The order of the Ld. First Appellate Authority confirming the order U/s 143(3) of the I. T. Act is arbitrary and contrary to the provisions of law and facts of the case.

2. The Ld First Appellate Authority is not justified in confirming the order disallowing the deduction claimed. u/s.80P(2)(a) in respect of Rs.29,97,587/- being the interest received from M/s. Andhra Pragati Grameen Bank.

3. The Ld. First Appellate Authority is not justified in treating the sum of Rs.29,97,587/- as income from other sources and there by denying the deduction claimed u/s 80P(2)(a) of the I.T.Act.”

3. Facts of the case, in brief, are that assessee is a Co-operative Society, who filed its return of income on 22.08.2017 declaring a total income of NIL after claiming the entire amount for Rs. 29,97,587/- as deductions u/s 80P of the Act. The case of the assessee was selected for complete scrutiny under CASS. Subsequently, notices u/s 143(2) and 142(1) along with questionnaire were issued and served upon the assessee. After considering the submissions of the assessee, the AO arrived at the conclusion that the assessee is not eligible for deduction of Rs. 29,97,587/- claimed by it u/s 80P of the Act and assessed the income of the assessee Rs.29,97,587/- for the AY 2017-18. Thus, the Assessing Officer completed the assessment and passed order on 29.11.2019 u/s 143(3) of the Act.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was subsequently, migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.
5. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before me.
6. Before me, Ld.AR submitted that the case of the assessee is covered with the decision of the Tribunal in its own case in ITA No.246/Hyd/2021 for A.Y. 2015-16, wherein the Tribunal vide Paragraphs 3 to 5 held as under :

“3. We next advert the sole substantive issue between the parties, qua correctness of the Pr.CIT’s identical revision direction treating the corresponding regular assessments, dated 28.6.2017, 29.6.2017 and 27.6.2017; respectively as erroneous ones causing prejudice to the interest of the Revenue on the ground that the Assessing Officer (s) had accepted these taxpayer identical section 80P(aa) deduction claims pertaining to the interest income derived from nationalized banks. Learned Pr.CIT holds that the hon’ble apex court’s decision in Totgars Co-operative Society Ltd vs, Income Tax Officer (322 ITR 283) (S.C) as well as CIT vs. Nawanshahar Central Co-op Bank Ltd (289 ITR 6) (S.C) have already held that such deduction isn’t available to a society like the assessee but banks only. He has also referred to the CBDT Circular No.18/2015 to the very fact.

4. Both the parties reiterated their respective stands against and in support of Pr.CIT’s foregoing revision directions. We notice in this factual backdrop that the instant issue of as to whether a cooperative society is eligible for section 80P(2a) deduction qua, the interest income derived from deposits made in the nationalized banks is no more resintegra as the Tribunal coordinate bench decision in ITA No.284/Hyd/2021, dated 30.09.2021 takes note of the hon’ble jurisdictional High Court decision in Vavveru Coop. Rural Bank Ltd vs. CCIT (396 ITR 371(A.P) as under:

“3. We now come to the correctness of learned PCITs revision directions under challenge holding the corresponding regular assessment framed on 27.12.2018 and 27.10.2017 as erroneous ones causing prejudice to the interest of the Revenue on the ground that both the said Assessing Officers' had accepted the assessee's section 80P(2)(d) deduction claim(s) regarding interest income(s); derived from deposits made in SBI/Nationalised Bank(s) as eligible for the said relief. Learned PCITs rely on hon'ble apex court's landmark decision in The Totgar Co-operative Sale Society Limited Vs. ITO 322 ITR 283 (SC) that the impugned deduction is exigible only in case of income derived from co-operative banking activity or interest income from a certified institution than deposits made in nationalized banks. Learned PCIT therefore hold both the foregoing assessments as an instance inviting application of ITA Nos.284 & 286/Hyd/2021 section 263 revision jurisdiction. This leaves the assessee's aggrieved.

4. We have given our thoughtful consideration to rival pleadings qua correctness of the learned PCITs foregoing revision direction and find no reason to uphold the same. This is primarily for the reason that hon'ble jurisdictional high court decision in Vavveru Co-operative Rural Bank Ltd. Vs. CCIT 396 ITR 371 (A.P) holds that a co-operative society's income derived from deposits in nationalized banks/SBI is also eligible for 80P deduction. Their lordships have duly taken into consideration the hon'ble apex court's foregoing decision (supra). We therefore hold that both the Assessing Officers therein had not committed any error in not disallowing the assessee's section 80P(2)(d) deduction claims in issue qua the respective interest income derived from fixed deposit in nationalized banks. The PCITs' revision direction under challenge herein forming subject matter of these two appeals stand reversed on the very analogy therefore. We lastly quote hon'ble apex court's ITA Nos.284 & 286/Hyd/2021 landmark decision Malabar Industrial Co. Ltd. Vs. CIT 243 ITR 83 (SC) that an assessment has to be both erroneous as well as causing prejudice to the interest of revenue; simultaneously before the CIT or the PCIT; as the case may be, sets section 263 revision mechanism in motion. And that it is not each and every assessment which would attract revision proceedings but only those wherein the Assessing Officer has not taken one of the two possible views. We thus restore both the assessments herein as a necessary corollary. No other ground has been pressed before us”.

5. We adopt the foregoing detailed discussion mutatis mutandis to hold that the Pr.CIT's revision direction therein under challenge are not sustainable in law. The same stand reversed in all the instant three cases therefor. No other ground has been pressed before us. These three assessee's appeals are allowed in above terms. A copy of this common order be placed in the respective case files."

7. On the other hand, ld. DR relied on the orders of lower authorities.

8. I have heard the rival submissions and perused the material on record. The issue in the present case is with respect to disallowance of deduction of Rs.29,97,587/- claimed by the assessee u/s 80P(2)(a) of the Act. Before me, ld. AR submitted that the case is already covered in favour of the assessee and filed the order of Tribunal wherein the Tribunal gave decision in favour of assessee. Further, the said decision is not stayed or over-ruled by any of the higher Judicial Forums. In view of the above circumstances, I respectfully following the decision of the coordinate Bench of the Tribunal passed in the assessee's own case for A.Y. 2015-16, allow the appeal. Thus, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 12th September, 2023.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 12th September, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Andhra Pragathi Farmers Service Co-operative Society, Yerraguntla, Kurnool. C/o. Katrapati & Associates, 1-1- 298/2/B/3, 1 st Floor, Ashok Nagar, Hyderabad – 500 020.
2	The Income Tax Officer, Ward – 1, Nandyal.
3	Pr.CIT,
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order