

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH : PANAJI

(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

DR. DIPAK RIPOTE, ACCOUNTANT MEMBER

ITA.No.90/PAN./2023  
Assessment Year 2017-2018

The Athani Credit Co-Op Society Ltd., Kalagi Galli, Saree Bazaar, Athani, Dist. Belagavi-591 304 Karnataka. PAN AAAAT2608L	vs.	The Income Tax Officer, Ward – 1, Feroj Khimjibhai Complex, Opp. Civil Hospital, Dr. Ambedkar Road, Belagavi – 590 001 Karnataka.
(Appellant)		(Respondent)

For Assessee :	Shri Chetan Chaugule
For Revenue :	Shri N. Shrikanth

Date of Hearing :	09.10.2023
Date of Pronouncement :	12.10.2023

**ORDER**

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

This assessee's appeal for assessment year 2017-2018, arise against the National Faceless Appeal Centre [in short "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2021-22/1040738436(1), dated 15.03.2022, involving proceedings u/s. 143(3) 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 ground in the instant appeal :

1. *“Because, the learned Commissioner of Income Tax (Appeals) and Assessing Officer denied the deduction claimed under section 80P(2)(a)(i) of the Income Tax Act.*
2. *Because, the Cooperative Banks are also registered under cooperative societies act, the interest income earned from cooperative banks of Rs.11,84,158/- is eligible for deduction under section 80P(d) of the Income Tax Act, hence entire interest income received from cooperative banks to be allowed as deduction under section 80P of the Income Tax Act.*
3. *Because, the Appellant has received interest income of Rs.4,21,645/- from deposits with banks other than cooperative banks from the accounts maintained under savings bank account and short term fixed deposit account, which are attributable to providing credit facilities to the members of the society, the entire interest income to be allowed as deduction under section 80P of the Income Tax Act.*
4. *Because, the learned Commissioner of Income Tax (Appeals) upheld the additions under section 68 of the Income Tax Act, without giving proper opportunity to the Appellant and without asking for the documents which are necessary for the conclusion of the Appeal, thereby deprived the natural justice.*

5. *Because, the Assessing Officer made additions wrongly under section 68 of the Income Tax Act, for cash credits based on deposits in bank, without going through the books of accounts maintained by the Appellant.*
6. *The appellant craves leave to add and or alter any of the grounds of appeal before or at the time of hearing.”*

3. Coming to the first and foremost issue of the assessee's claim of sec.80P(2)(a)(i) deduction, there is hardly any dispute that the same represents its interest income derived from deposits made with cooperative banks wherein the learned lower authorities are of the view that it is not allowable in absence of the regular banking business transactions with the members concerned. We note that this tribunal's order in Mahishwadagi Grama Seva Sahakari Sangh Ltd., vs. ITO in ITA.No.65/PAN./2018, dated 12.11.2021 has rejected the Revenue's very stand as under :

*“7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the exemption of interest income on investment from other hanks of Rs.3,27,868/- u/s 80P(2)(d) of the Act. Admittedly, the interest income of Rs.3,27,868/- was received from the following :-*

S. No.	Income from other sources	Amount
1	BDCC Bank Dividend	Rs.52,471
2	AXIS Bank Interest received	Rs.28,768
3	BDCC Bank Interest on FD deposits	Rs.1,74,039
4	Interest on other Deposits	Rs.72,590
	Total	Rs.3,27,868

8. From the above details, it is clear that in respect of income received from Axis Bank of Rs.28,768/-, the balance of interest income was received from other cooperative banks. Then the issue that comes up for consideration is that whether the cooperative banks is the cooperative society or not?. 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 exemption is not to be denied 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. Even on going through 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)

*had noticed that 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. The Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. (supra) had referred the view of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. (supra). The Pune Bench of the Tribunal in the case of Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. (supra) after referring to the decision of the Hon'ble Karnataka High Court in the case of Pr.CIT vs. Totagars Co-operative Sales Society Ltd., 395 ITR 661 held that no application exemption under the provisions of section 80P(2)(d) of the Act by observing 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.”*

9. *In the light of the above legal position, we hold that the interest income earned by the appellant society on investment made with the cooperative bank which are cooperative societies is also exempt from the Income Tax Act. Therefore, we remand the matter back to the file of the Assessing Officer with a direction to allow the deduction u/s 80P(2)(d) of the Act after satisfying himself that the interest income is earned on investment from the cooperative societies. Thus, the grounds of appeal raised by the assessee are partly allowed for statistical purposes.”*

4. We adopt the foregoing detailed discussion mutatis mutandis to reject Revenue’s vehement arguments supporting the impugned disallowance. The assessee’s instant former substantive ground succeeds in very terms.

5. Next comes the latter issue of sec.68 addition of unexplained cash credits made by the learned lower authorities invoking sec.68 of the Act. The same admittedly forms part of the assessee’s cash deposits amounting to Rs.37,66,500/- made in five banks during de-monetization period. It’s case before us is that these cash deposits involve it’s members in cooperative banking activity having duly complied with all the relevant KYC norms. We find no substance in the assessee’s instant arguments once the

clinching reconciliation of the corresponding members vis-à-vis the impugned cash deposits has nowhere been done throughout. Coming to the CIT(A)'s order, it is evident that he has confirmed only a sum of Rs.6,14,989/- thereby taking the balance amount as duly explained. We thus see no ground to reverse the learned CIT(A)'s findings to this extent. The assessee fails in its instant latter substantive grievance thereafter.

No other ground or argument has been argued or pressed during the course of hearing.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open Court on 12.10.2023.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

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

VBP/-  
Copy to

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

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches, Pune.