

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

<b>ITA No. 685/Bang/2023</b>
<b>Assessment Year : 2017-18</b>

M/s. Raythara Sahakari Sangha Ltd., Dhanalaxmi Building, Main Road, Hiriadka, Udupi – 576 241. <b>PAN: AAAAR2313L</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 1, Udupi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	None
Revenue by	:	Shri Nischal .B, Addl. CIT DR

Date of Hearing	:	06-12-2023
Date of Pronouncement	:	14-12-2023

**ORDER**

**PER MADHUMITA ROY, JUDICIAL MEMBER**

The instant appeal filed by the assessee is directed against the order dated 13.07.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi arising out of the order dated 16.12.2019 passed by the ITO, Ward – 3, Udupi u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2017-18 whereby and whereunder the interest on investments derived by the appellant from co-operative banks has been disallowed for deduction u/s. 80P(2) as claimed by the assessee. The assessee is a co-operative

society filed its return of income on 24.10.2017 for A.Y. 2017-18 declaring gross total income at Rs.73,37,467/- and returned income at Rs.5,39,390/- after claiming Rs.67,98,074/- as deduction u/s. 80P(2)(a)(i) of the Act which was finalised determining income at Rs.1,71,37,467/- rejecting the claim of deduction u/s. 80P of the Act.

2. The issue before us is this as to whether the interest on investment derived by the appellant from scheduled bank and co-operative bank is eligible for deduction u/s. 80P(2)(d) of the Act.
3. At the time of hearing of the instant appeal, the Ld.Counsel appearing for the assessee submitted before us that the issue is squarely covered in favour of the assessee by the judgment passed by the Jurisdictional High Court in case of PCIT & Anr. Vs. Totagars Cooperative Sale Society reported in (2017) 392 ITR 74 and the judgment of Hon'ble Gujarat High Court in case of State Bank of India vs. CIT reported in (2016) 389 ITR 578 whereby and whereunder it was held that the interest income earned by a co-operative society on its investment held with the co-operative bank would be eligible for claim of deduction u/s. 80P(2)(d) of the Act.
4. It was further submitted by the Ld.Counsel that these two judgments were duly taken into consideration by the Coordinate Bench while passing the order in an identical issue in ITA Nos. 376 to 379/Bang/2023 for A.Ys. 2015-16 to

2018-19 in the case of The Totgars' Co-operative Sale Society Ltd. vs. ACIT by order dated 18.07.2023. A copy whereof has also been filed before us. Needless to mention that the order was passed by the Coordinate Bench in favour of the assessee was not been able to be controverted by the Ld.DR appearing for the revenue. Neither any judgment against the ratio laid down in the above two matters have been cited by the Ld.DR.

5. We have heard the rival submissions made by the respective parties. We have also considered the relevant materials available on record. We have further perused the judgment passed by the Coordinate Bench in case of The Totgars' Co-operative Sale Society Ltd. vs. ACIT (supra). While dealing with the identical issue, the Bench was pleased to observe as follows:

*“9. We have perused the submissions advanced by both the sides in the light of the records placed. When we look at the decision of Hon’ble Supreme Court in case of Totgars Co-operative Sale Society's case reported in (2010) 188 Taxman 282, relied by the Ld.DR. Hon’ble Supreme Court was dealing with a case where the assessee therein, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such amount retained by the assessee therein was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. On these facts Hon’ble Supreme Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Hon’ble*

Supreme Court, also clarified that, they are confining the said judgment to the facts of that case.

9.1 In the instant case, the amount which was invested in banks to earn interest was not any amount due to its members. Further the claim of the assessee in u/s 80P(2)(d) was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a co-operative bank again which interest/dividend was earned.. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State Co-operative Bank Ltd. [2011] 336 ITR 516/200 Taxman 220/12 taxmann.com 66.

9.2 Therefore, reliance was placed by the Ld.DR on the decision of Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO reported in (2010) 188 Taxman 282 is distinguishable on facts. The adjudication by the Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. vs. ITO(supra) was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a cooperative society towards deduction under Sec.80P(2)(d) on the interest income on the investments/deposits parked with a cooperative bank.

9.3 At this juncture, we refer to subsequent decision of Hon'ble Karnataka High Court in the case of PCIT Vs. Totagars cooperative Sale Society reported in (2017) 395 ITR 611, wherein Hon'ble Court held that, a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we find, that the Hon'ble Karnataka High Court in the case of PCIT & Anr. vs. Totagars Cooperative Sale Society reported in (2017) 392 ITR 74 and Hon'ble Gujarat High Court in the case of State Bank Of India Vs. CIT reported in (2016) 389 ITR 578, held, that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

9.3 At this juncture, we respectfully following the view taken by the Hon'ble Karnataka High Court in the case of PCIT & Anr. Vs. Totagars Cooperative Sale Society

*reported in (2017) 392 ITR 74 and Hon'ble Gujarat High Court in the case of State Bank Of India Vs. CIT reported in (2016) 389 ITR 578, hold that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.*

*9.4 It is directed that the interest earned by the assessee from commercial banks may be considered under the head 'income from other sources' and relief may be granted as available to the assessee u/s 57 of the Act in accordance with law."*

6. As the issue before us is identical and already been decided in favour of the assessee in the above matter as discussed in the foregoing paragraphs, respectfully relying upon the same, we hold that the investment held with the co-operative bank would be eligible for claim of deduction u/s. 80P(2)(d) of the Act and we direct the Ld.AO to pass orders in respect of the interest earned by the assessee from commercial banks considering under the head "Income from other sources" and to grant relief to the assessee in accordance with law u/s. 57 of the Act.

**In the result, the appeal filed by the assessee stands allowed.**

Order pronounced in the open court on 14<sup>th</sup> December, 2023.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(MADHUMITA ROY)  
Judicial Member

Bangalore,  
Dated, the 14<sup>th</sup> December, 2023.  
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore

By order

Assistant Registrar,  
ITAT, Bangalore