

IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'SMC' BENCH, PUNE

BEFORE HON'BLE PARTHA SARATHI CHOUDHURY, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 1045 & 1046/PUN/2023

निर्धारण वर्ष / Assessment Year : 2018-19 & 2020-21

Karmaveer Bhaurao Patil Nagari Sahakari Patsanstha Maryadit

Sr No. 14, Satyaraj Complex,

Hadapsar, Pune-411028

PAN: AAAAK3735D

..... अपीलार्थी / Appellant

बनाम / V/s

Income Tax Officer,

Ward-14(1), Pune

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Pramod Shingte ['Ld. AR']

Revenue by : Mr Gaurav Singh ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 21/02/2024

घोषणा की तारीख / Date of Pronouncement : 21/02/2024

आदेश / ORDER

**Per G. D. Padmahshali, AM;**

These twin appeals of the assessee are assailed against the impugned DIN & Order No. ITBA/NFAC/S/250/2023-24/1055770481(1) dt. 05/09/2023 & 1055830680(1) dt. 07/09/2023 passed u/s 250 of Income-tax Act, 1961 ['the Act' hereafter] by National Faceless Appeal Centre, Delhi ['NFAC' hereafter] arising out of respective order of assessment passed u/s 143(3) of the Act for assessment year 2018-19 & 2020-21 ['AY' hereinafter].

2. During hybrid hearing, a common threadbare issue of disallowance u/s 80P(2) of the Act in these twin appeals brought to the attention of the bench.

On rival parties' request, these are taken up together for the sake of brevity

and for a common & consolidated order taking ITA No. 1045/PUN/2023 as lead case; resultantly adjudication laid in succeeding paragraphs shall *mutatis-mutandis* apply to ITA No 1046/PUN/2023.

3. Briefly stated common facts born out of case records are;

3.1 The assessee is a credit co-operative society registered under the provisions of Maharashtra State Co-op. Societies Act and is engaged in the business of providing credit facilities to its members. For the year under consideration the assessee earned total interest income of ₹32,21,707/- from fixed/term deposits and interest of ₹83,638/ from SB a/c held with various co-operative banks. The assessee filed its return of income [‘ITR’ hereinafter] declaring NIL income claiming a deduction of ₹33,05,345/- u/s 80P(2) of the Act. While framing regular assessment u/s 143(3) of the Act, the Ld. AO after vouching the source of interest as from various co-operative banks has denied the deduction u/s 80P(2)(a)(i) as well u/s 80P(2)(d) of the Act by pressing into service the decision of the Hon’ble High Court of Karnataka rendered in ‘*PCIT Vs Totagars Co-op. Sale Society*’ reported in 83 taxmann.com 140 [Equi: 395 ITR 611] and ‘*COC Vs Dilip Kumar*’ reported in 9 SCC 1 (SC).

3.2 Insofar as ITA No 1046/PUN/2023 i.e. AY 2020-21 is concerned, the assessment was framed denying the u/s 80P(2) of the Act deduction claimed against interest income of ₹39,01,621/- which was accrued/earned form Fixed/Term deposit investment held various co-operative banks.

3.3 Aggrieved by denial of claim for deduction the assessee filed separate appeals before first appellate authority. The submission of the assessee did fail to make out its case on merits, in the event the Ld. NFAC echoing the views of Ld. AO has confirmed the denial of deduction by placing strong reliance on '*PCIT Vs Totagars Co-op. Sale Society*' (supra).

3.4 Aggrieved assessee came in appeal alleging that both the tax authorities erred in law and facts in denying the assessee society the valid claim of deduction made u/s 80P(2) of the Act in-spite of catena of binding judicial precedents including the order of co-ordinate bench in appellant's own case in ITA No. 404/PUN/2022 anent to AY 2017-18.

4. During the course of hybrid hearing, Ld. AR appearing for assessee reiterated appellant's version of submissions as were laid before tax authorities below. Adverting to impugned orders appellant's made twofold submission that (i) interest accrued/earned on fixed/term deposits investment is solely attributable to the principal business of the appellant. The theory of surplus fund does have no application because investing liquid funds with other banks for generating income was to service interest liability on deposits accepted being the principal business activity of the society hence qualifies for deduction u/s 80P(2)(a)(i) of the Act and (ii) alternatively since no portion of interest is earned from nationalised bank but from co-operative banks like Janseva Sahakari bank, PDCC Bank, Rajashri Shahu Sahakari Bank,

Maheshwari Urban Development Co-op. Bank etc., where these are registered as credit co-operative societies therefore eligible for deduction u/s 80P(2)(d) of the Act. It is also brought to our notice that, the co-ordinate bench in assessee's own case for AY 2017-18 in ITA 404/PUN/2022 vide order dt. 06/12/2022 has adjudicated the very same issue in favour of the appellant by quashing the revisionary order. It is prayed that, since there is much less change in facts and circumstance, therefore the appellant is entitled to 100% deduction of u/s 80P(2)(d) of the Act.

5. *Per Contra*, the Ld. DR Mr Singh placed strong reliance on the impugned orders. However on the specific query, after reciting from para 3 & 4 of co-ordinate bench's decision in appellant's own case for AY 2017-18 (supra) has candidly solidified that there is no change in the facts of the present case.

6. Heard rival common contentions against twin appeals; and subject to provision of rule 18 of ITAT-Rules, 1963 perused material placed on record, case laws relied upon by both the rival parties and considered the facts in light of settled legal position which are forewarned to parties present.

7. The solitary issue in these appeals hinges around allowability of deduction u/s 80P(2) of the Act. We see strong force in the first contention of the appellant that, during the conduct of its principal business of providing

credit facilities to its members deposits therefrom are accepted and to service interest liability thereon it in turn generated interest by placing them either into investment with other financial institutions or by lending them to other members. The net positive interest generated out of such activities without a smoke of doubt partakes the character of business income as it possess all attributes of section 80P(2)(a)(i) of the Act, resultantly qualifies for deduction therein. Insofar as the deduction u/s 80P(2)(a)(i) is concerned the theory of surplus funds does not apply to credit co-operative society for the reasons that, (i) credit co-operative society owing to regulatory supervision operates with liquid funds which cannot be characterised as other than business funds and (ii) such liquid funds for the purpose of generation of income are invested into liquid assets like fixed deposits / term deposits, etc. The interest generated from such liquid investment partakes the character of business income being earned while carrying on the business of providing credit facilities to its members. The surplus fund theory as applied in '*Totagars Co-op. Sale Society*' and as binding precedents shall apply to societies other than credit co-operative societies. The appellant in the present case, undisputedly a registered credit co-operative society and engaged in the qualified business of providing credit facilities to its members, therefore the impugned interest earned by it out of liquid funds placed/invested with other co-operative banks qualifies the test laid in section 80P(2)(a)(i) of the Act, hence very much deductible.

8. Alternatively on perusal of section 80P(2)(d), it is ostensibly clear that interest & dividend income derived by one cooperative society from its investment held with other cooperative societies is eligible for deduction u/s 80P(2)(d) of the Act. For this purpose the chief determinant factor entitling a claim of deduction u/s 80P(2)(d) in the hands of assessee society is that, interest income should have been earned by it from an investment made with any other cooperative society registered under the provisions of law, irrespective of its nomenclature with which such paying society.

9. In the present case, the reasoning given by the tax authorities in denying the claim for deduction u/s 80P(2)(d) of the Act is that interest was received from banks, however this reasoning has no legs to stand as a cooperative bank is principally a cooperative society and holds a banking license to operate on a larger scale under the guidelines of RBI. This issue was came to consider by Hon'ble Karnataka High Court in '*CIT Vs Totagars Cooperative Sale Society*', finds reported in 392 ITR 74 wherein their lordships referring to the decision of Hon'ble Apex 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 applied in respect of interest income on investment as same falls u/s 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act. We further note that, the co-ordinate bench in '*Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. vs. ITO*', reported in 120 taxmann.com 10, after making reference to the decisions of the Hon'ble Supreme Court in

the case of *Totgars Cooperative 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 decision of Hon'ble Delhi High Court in 'Mantola Cooperative Thrift Credit Society Ltd. Vs CIT', reported at 50 taxmann.com 278, the decision rendered in '*Mantola Cooperative Thrift Credit Society Ltd.* (supra) had not been preferred to ratio laid in '*Tumkur Merchants Souharda Credit Co-op. Ltd.* (supra), the relevant observation of the co-ordinate bench are placed 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. Totgars 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 cooperative 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.”*  
(Emphasis supplied)

10. Without multiplying judicial precedents on the aforesaid issue, maintaining same parity we adopt equi reasoning and hold that, the interest income earned by the appellant society from its investment held with other co-operative banks since being a registered co-operative society under respective state laws, qualifies for deductions u/s 80P(2)(d) of the Act. Resultantly, we set-aside the impugned orders and reverse the denial of deduction.

**11. In result, both these appeals of the assessee are ALLOWED.**

In terms of rule 34 of ITAT Rules, order pronounced in open court on this Wednesday 21st day of February, 2024.

-S/d-

**PARTHA SARATHI CHOUDHURY**  
**JUDICIAL MEMBER**

पुणे / PUNE ; दिनांक / Dated : 21st day of February, 2024.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.  
4. The NFAC, Delhi, New Delhi

Ashwini

2. प्रत्यर्थी / The Respondent.  
5. DR, ITAT, SMC Bench, Pune

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

3. The Pr.CIT, -Concerned  
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order  
वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलार्थी न्यायाधिकरण, पुणे / ITAT, Pune.