आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.296/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2020-21)

The Chinaogirala PACS Ltd, Chinaogirala Village, Vuyyuru Mandal, Krishna District, Andha Pradesh-521245. PAN: AACAT 8188 M	Vs.	Income Tax Officer, Ward-1, Gudivada, Andhra Pradesh-521301.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यार्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	28/02/2024
घोषणा की तारीख/Date of Pronouncement	:	14/03/2024

O R D E R

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax, National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1056669263(1), dated 29/9/2023

arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2020-21.

2. Briefly stated the facts of the case are that the assessee company e-filed its return of income for the AY 2020-21 on 31/12/2020 declaring total income at Rs. NIL after claiming deduction U/s. 80P of Rs. 28,22,258/-. It is the claim of the assessee that the assessee is a Primary Agricultural Cooperative Society registered under the Andhra Pradesh Cooperative Act and the main object of the assessee society is to carry on its business of banking and providing credit facilities to its members and also engaged in purchase of articles intended for agricultural needs of the members. The case was selected for scrutiny under CASS for the reason of 'High Creditors Liability, Investment/Advances/Loans and deduction from total income under Chapter-VIA. Thereafter, the Ld. AO issued notices U/s. 143(2) and 142(1) of the Act on various dates as mentioned in the assessment order and served on the assessee. Since no response was received from the assessee, the Ld. AO issued show cause notices dated 18/8/2022; 29/8/2022; 8/9/2022 and14/9/2022 wherein it was noted that *the assessee has earned interest income from investments as well as lending loans to the members*

of the assessee society. The interest income earned by the assessee is not eligible for deduction since it is generated from surplus or idle funds and therefore it is proposed to be taxed as income from other sources. The variation on account of the above is Rs. 85,71,420/-. In response, the assessee filed its reply to the above show cause notice and made submissions vide reply letters dated 12/9/2022, 16/9/2022 and 19/9/2022. On perusal of the replies and submissions made by the assessee, the Ld. AO observed that during the year the assessee has received interest income of Rs. 85,71,420/- on the funds parked at Krishna Cooperative Central Bank Limited and the same is not allowable / eligible for deduction U/s. 80P(2)(d) of the Act. The Ld. AO further observed that as per the Act, the interest income derived from any other Cooperative Society is eligible for deduction and not from Co-operative Bank as in the case of the assessee. Therefore the Ld. AO asked the assessee to explain as to why the said interest income cannot be brought to tax by disallowing the claim of deduction U/s. 80P of the Act. In reply, the assessee submitted that out of the income earned of Rs. 85,71,420/-, Rs. 47,82,069/- is interest on investments and the balance of Rs. 37,89,351/- is interest earned on loans and advances given to its members. The assessee has also furnished the calculation of

deduction U/s. 80P of the Act. The Ld. AO did not consider the submissions made by the assessee and denied the assessee's claim of deduction U/s. 80P(2)(a)(i) of the Act and made addition of Rs.27,00,393/- on account of interest income earned from cooperative bank as chargeable income under the head 'income from other sources'. While making the addition, the Ld. AO relied on the decision of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd vs. ITO [2010] 322 ITR 283 (SC). Accordingly, the Ld.AO determined the total income at Rs. 27,00,393/- and passed the assessment order U/s. 143(3) r.w.s 144B of the Act, dated 22/09/2022. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC with a delay of 93 days. On appeal, before the Ld. CIT(A)-NFAC the assessee filed affidavit seeking condonation of delay and explained the reasons that prevented the assessee to file the appeal beyond the prescribed time limit. On perusal of the submissions made by the assessee with respect to condonation of delay, the Ld. CIT(A)-NFAC did not convince with the reasons advanced by the assessee and observed that since the assessee failed to furnish any plausible explanation for the delay in filing the appeal, the assessee's case is not a fit case for condonation of delay and therefore did not condone the delay and

dismissed the appeal. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

1. *"Both in law and in Facts of the case, the order made by HON'BLE CIT(A) NATIONAL FACELESS APPEAL CENTER, DELHI is bad in law, arbitrary, contrary to the provisions of law and against the principles of natural justice.*

2. *HON'BLE CIT(A) NATIONAL FACELESS APPEAL CENTER, DELHI is unjust in dismissing the appeal without condoning the delay in filing the appeal though the delay was due to the circumstances beyond the control and with no comments on the grounds of appeal. The Andhra Pradesh high court held in the case of Pinjari Khasim v Chanda Saheb, 2023 SCC OnLine AP 698, decided on 28-03-2023 that "…. ordinarily the litigation should not be terminated by default either of the plaintiff or the defendant. The cause of justice does require that the adjudication be done on merits...."*

3. *The Assessment Unit Income Tax Department erred in law in making an addition of Rs.27,00,393/- on account of interest on deposits with Krishna District Central cooperative bank Limited (KDCC Bank) without allowing the claim of deduction u/s 80(P)(2)(a)(i) of IT Act, 1961.*

4. *The Assessment Unit, Income Tax Department is unjust in stating that the interest income is generated from surplus or idle funds from Cooperative bank when the operational funds have been deposited with KDCC Bank and Assessment Unit ought to have considered that Income generated from operational funds amount to operational income only.*

5. *The Assessment Unit failed to appraise that interest earned by the society on deposits constitute only operational income but not the other income that accrued to the society and such interest is not earned on the funds which are not required for the business/surplus funds.*

6. *The assessment unit erred on facts and in law in assessing the income which is arbitrary and contrary to the provisions of law as show-cause notice issued is general in nature with mentioning specific addition towards interest on deposits with KDCC Bank.*

7. *The order of the Assessment Unit in making the addition of Rs.27,00,393/- is bad in law since the deposits made in KDCC Bank are only out of the deposits collected from the Members as part of its business operations as per the objects of the society and again interest*

on deposits received from KDCC Bank are used only for operations of the society.

8. *The order passed by the Assessment Unit, Income Tax Department is against the principles of Law since cooperative banks are categorised as cooperative societies under Cooperative Societies Act and District Cooperative Banks are part of the cooperative Credit Structure.*

9. *The assessment unit, Income tax department is wrong in making an addition of Rs.27,00,393/- stating that interest of Rs.85,71,420/- is earned on money parked with KDCC Bank which infact interest on KDCC Bank is Rs.47,82,069/- only.*

10. *Additions made on mere presumptions and surmises are against the provisions of law.*

11. *The appellant craves leave to add, to alter, modify, amend, substitute, delete and/or rescind all or any of the grounds of appeal on or before the final hearing, if necessary so arises. In the light of above, the assessee hereby requests Honorable Commissioner of National Faceless Appeal Centre to delete the addition of Rs.27,00,393/- made by The Assessment Unit, Income Tax Department."*

3. At the outset, on the date of hearing of the appeal none-appeared on behalf of the assessee but filed an adjournment letter. However, considering the nature of issue involved in the appeal, I hereby reject the assessee's application for adjournment and proceed to adjudicate the appeal on merits with the help of the Ld. Departmental Representative.

4. Before me, the Ld. Departmental Representative submitted that as per the provisions of section 80P(2)(d) of the Act, *any income by way of interest or dividends derived the Co-operative Society from its investments with any other cooperative society is eligible for deduction.* The Ld. DR further submitted that in the

present case, assessee derived interest from the funds parked with Krishna Cooperative Central Bank Limited and not from a Cooperative Society and therefore the deduction claimed by the assessee is rightly disallowed by the Ld. AO. The Ld. DR further argued that as observed by the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd vs. ITO [2010] 322 ITR 283 (SC) the income in respect of which deduction is sought must constitute the operational income and not the other which accrues to the society. In the present case, the interest earned by the assessee is from investments made out of surplus or idle funds from Cooperative bank and hence the assessee is not eligible for deduction U/s. 80P of the Act and pleaded to uphold the orders of the Ld. Revenue Authorities.

5. I have heard the Ld. DR and perused the material placed on record. Now the question before me is to decide whether the assessee is eligible for deduction u/s 80P with respect to the interest earned on deposits parked with Krishna Co-operative Central Bank Limited, or not? It is an admitted fact that the assessee has claimed deduction u/s 80P of the Act. The contention of the Ld. AO and the Ld. DR is that interest accrued on Reserve Fund Deposits is not eligible for deduction U/s 80P of the Act. The Ld. Revenue Authorities relied on various case laws to state

that *income from interest on securities ear marked to reserve fund has been held not eligible for deduction u/s 80P.* The Ld. Revenue Authorities have also placed relied on the decision of Hon'ble Supreme Court of India in Civil Appeal No.1622 of 2010 in the case of M/s Totgars Cooperative Sale Society Ltd., wherein it was held that "*investment of surplus on hand not immediately required in Short Term deposits and securities by a co-operative society providing credit facilities to members or marketing agriculture produce to member*". However, in the instant case, the facts are distinguishable and hence, in my view, the ratio laid down in the case of M/s Totgars Cooperative Sale Society Ltd.(supra) shall not be applied to the instant case. On similar set of facts, coordinate Bench of this Tribunal in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society held in favour of the assessee vide I.T.A.No.107/Viz/2022, CO No.07/Viz/2022 dated 30.08.2023. For the sake of reference, relevant paragraphs of the order are extracted as under :

> *"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]

the collective disposal of the labour of its members, or

[(vi)

(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 nationalized 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."

6. Respectfully following the decision of the Hon'ble High Court of Andhra Pradesh in the case of Vavveru Cooperative Rural Bank Ltd.(supra) and the ratio laid down by the Coordinate Bench of the Tribunal in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society Limited (supra), I am inclined to quash the order passed by the Ld.CIT(A) and allow the appeal of the assessee.

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

Pronounced in the open Court on 14th March, 2024.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 14/03/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – The Chinaogirala PACS Ltd, Chinaogirala Village, Akunuru Post, Vuyyuru Mandal, Krishna District, Andhra Pradesh-521245.

2. राजस्व/The Revenue – Income Tax Officer, Ward-1, O/o. ITO, Opp. Bhaskar Talkies, Gudiwada, Andhra Pradesh-521301.
3. The Principal Commissioner of Income Tax,
4.आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam