

आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" 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.88/Viz/2024 & 89/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2018-19 and 2020-21)**

The Indupalli Primary Agriculture
Cooperative Credit Society Ltd.,
No.KR356 DNo.5-46, Indupalli Village
Indupalli Post
Unguturu Mandalam
Krishna
[PAN : AACAT9205B]

Vs. Income Tax Officer
Ward-1
Gudiwada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri C.Subrahmanyam, AR
: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 10.04.2024

घोषणा की तारीख/Date of Pronouncement

: 19.04.2024

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

These appeals are filed by the assessee against the orders of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059461103(1) dated 08.01.2024, arising out of order passed u/s 147 r.w.s.144 of the Income Tax Act, 1961 (in short 'Act') dated 07.02.2023 for the Assessment Year (A.Y.) 2018-19

and ITBA/NFAC/S/250/2023-24/1059519024(1) dated 09.01.2024 arising out of order passed u/s 143(3) of the Act dated 06.09.2022 for the A.Y.2020-21. Since the grounds raised in these appeals are identical, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under. Facts are extracted from I.T.A.88/Viz/2024, A.Y.2018-19.

2. Brief facts of the case are that the assessee is a Primary Agriculture Cooperative Credit Society, engaged in the banking activities of lending money to the members for agriculture purpose and collecting the deposits from the members and also supplying, marketing of agricultural products and manures for the benefit of members (farmers). The assessee did not file any return of income for A.Y.2018-19. As per AIR/CIB data, the assessee had deposited total cash of Rs.1,38,60,103/- with Krishna District Cooperative Central Bank Ltd.(KDCCB) and had withdrawn cash of Rs.1,14,61,000/-. Accordingly, notice u/s 148 was issued by the Assessing Officer (AO) on 31.03.2022. In response, the assessee filed it's return of income on 03.05.2022, declaring Nil income, but the assessee failed to verify it's return of income in the prescribed time limit and the same was treated as invalid return of income for the year under consideration. During the assessment proceedings, the AO

considered the replies and documents furnished by the assessee. In the computation of income / ITR, the assessee had claimed deduction u/s 80P(2)(a)(i)-Banking / Credit Facilities to its members at Rs.14,79,948/- towards interest earned, but not claimed any deduction u/s 80P(2)(d) of the Act. The AO observed that the deduction of interest income of Rs.14,79,948/- was not allowable as the assessee had earned interest income from other than “co-operative society”, which is not allowable as deduction u/s 80P(2)(a)(i) of the Act. Relying on the decision of the Hon’ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. 322 ITR 283, the AO disallowed the claim of deduction u/s 80P(2)(a)(i) on interest income amounting to Rs.14,79,948/-.

3. Aggrieved by the order passed by the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds :

1. *The order passed by the assessment unit NFAC u/s 143(3) r.w.s. 144B of the IT Act dt.06.09.2022 and upheld by the Learned CIT(A) vide orders passed under Sec.250 of the IT Act dt.09.01.2024 is challenged on the grounds that it is contrary to the facts of the case and provisions of law.*

2. *The impugned order passed under Sec 147 r.w.s. 144B of the IT Act is in violation of the provisions of law. The notices issued by the*

jurisdictional assessing officer under Sec.148A(d) dt.31.03.2022 and under Sec 148 dt.31.03.2022 are invalid and contrary to the provisions of statute as envisaged under Sec.144B and Sec.151A of the Act.

3. *The invalid notices issued by the assessing officer vitiate the subsequent proceedings, rendering the assessment null and void. Therefore, the orders passed under section 143(3) r.w.s. 144B of the IT Act are liable to be quashed.*

4. *The assessee, being a primary agricultural cooperative thrift society is entitled to claim deduction under section 80P(2)a)(i) of the IT Act for income earned on its activities. The Ld.CIT(A) erred in confirming the disallowance of the claim of Rs.14,79,948/- without due consideration of the provisions of sec.80P(2)(a)(i).*

5. *The interest income earned from fixed deposits, which is invested out of surplus funds, is attributable to the activities of the assessee society. The CIT(A)'s reliance on the judgement in the case of "TOTGARS Cooperative Society Ltd. 322 ITR 283" is misplaced as the facts of the present case are distinguishable.*

6. *The appellant prays for the quashing of the impugned orders and seeks relief in accordance with the grounds stated above and any additional grounds to be urged during the hearing of the case.*

5. Ground No.2 is not pressed, hence, the ground is dismissed as not pressed.

6. Ground No.6 is general in nature, which does not require specific adjudication.

7. Grounds No.1 and 3 to 5 relate to the issue of allowance of interest on deposits earned by the cooperative society from fixed deposits in various bank accounts can be allowed as deduction u/s 80P2(a)(i) of the

Act or not. At the outset, the Ld.AR submitted that the assessee had deposited total cash of Rs.1,38,60,103/- with KDCC Bank Ltd. and claimed deduction u/s 80P(2)(a)(i) of the Act on interest income earned. The Ld.AR further submitted that the interest income earned from fixed deposits, which is invested out of surplus funds is attributable to the activities of the assessee society, hence eligible for claiming deduction u/s 80P(2)(a)(i) of the Act. The Ld.AR further submitted that the facts of the case relied on by the Ld.AO in the case of M/s Totgars Cooperative Sale Society Ltd. (supra) are distinguishable to the facts of the present case on hand, wherein, as per para 11 of the judgement, it is clearly mentioned that “this judgement is confined to the facts of the present case” and therefore it cannot be applied to assessee’s case. Taking our attention to page No.39 of the paper book, the Ld.AR submitted that on similar set of facts, the Tribunal has allowed the appeal of the assessee in the case of The Kakateeya Mutually Aided Thrift and Credit Co-operative Society Ltd. in I.T.A.No.107/Viz/2022 dated 12.07.2023 and also in the case of Rangaraya Large Sized Cooperative Society in I.T.A.No.160/Viz/2023 dated 14.09.2023. He, therefore, pleaded to set aside the orders passed by the revenue authorities and allow the deduction claimed by the assessee.

8. Per contra, the Ld.DR relied on the decision of Hon'ble Apex Court in the case of M/s Totgars Co-operative Sale Society Ltd. (322 ITR 283) and argued that as per section 80P(2)(d) of the Act, interest income earned on investments with any other cooperative society only is eligible for deduction, but interest income arising out of the short term bank deposits needs to be taxed as income from other sources and cannot be held eligible for deduction u/s 80P(2)(a)(i) of the Act. The Ld.DR, therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

9. I have heard both the parties and perused the material available on record. It is an admitted fact that the assessee has claimed deduction u/s 80P(2)(a)(i) of the Act. Now the question before me is to decide whether the assessee is eligible for claiming deduction u/s 80P(2)(a)(i) on interest earned on deposits held with KDCCBL or not. On similar set of facts, this Tribunal in the case of The Kakateeya Mutually Aided Thrift and Credit Coop Society Ltd. vide I.T.A.No.107/Viz/2022, CO No.07/Viz/2022 dated 30.08.2023, held in favour of the assessee, relying on the decision of 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). For the sake of clarity and convenience, I extract relevant part of the order of the Tribunal as follows :

“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]

[(vi) the collective disposal of the labour of its members, or

(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 nationalised 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."

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.

10. In the result, appeals of the assessee are allowed.

I.T.A. No.88/Viz/2024 & 89/Viz/2024, A.Y.2018-19 & 2020-21
The Indupalli Primary Agriculture Co-op Credit Society Ltd., Unguturu Mandalam 

Order pronounced in the open court on 19th April, 2024.

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

Dated :19.04.2024
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- The Indupalli Primary Agriculture ooperative Credit Society Ltd., No.KR356 DNo.5-46, Indupalli Village, Indupalli Post Unguturu Mandalam, Krishna
2. राजस्व/The Revenue - The Income Tax Officer, Ward-2, Gudiwada, Krishna Dist.
3. The Principal Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam