

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "A" BENCH : PUNE

[THROUGH VIRTUAL HEARING]

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT  
AND  
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.Nos.29 & 30/PUN./2024 [E-APPEALS]  
Assessment Years 2018-2019 & 2020-2021

|   |     |  |
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| The Income Tax Officer,<br>Ward-2(1), 31 C/2,<br>E-Ward, Aayakar Bhavan,<br>Tarabai Park, KOLHAPUR.<br>Maharashtra. PIN-416003. | vs. | Kolhapur Zilha Madhyamik<br>Shikshan Sevkanchi Sahakari<br>Pat Sanstha, 534/KH, E-Ward,<br>Mahalaxmi Center, Vyapari<br>Peth, Shahupuri, KOLHAPUR.<br>PIN – 416001. Maharashtra. |
| (Appellant)   |     | (Respondent)   |

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| For Revenue :  | Shri Keyur Patel, CIT-DR &<br>Shri Ramnath P Murkude |
| For Assessee : | Shri Pramod S. Shingate                              |

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| Date of Hearing :       | 23.04.2024 |
| Date of Pronouncement : | 24.04.2024 |

**ORDER**

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

These Revenue's twin appeals for assessment years 2018-19 & 2020-2021, arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's as many Din and Order Nos.ITBA/NFAC/S/250/2023-24/1057869236(1) and 1057875607(1), both dated 10.11.2023, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act"), respectively.

Heard both the parties. Case file perused.

2. It emerges at the outset that the Revenue herein seeks to raise identical sole issue of assessee's sec.80P(2)(a)(i) deduction claim(s) of Rs.3,84,74,924/- and Rs.6,92,80,329/-; assessment year-wise, respectively, interest income derived from surplus funds invested in co-operative bank(s)/similar other institution(s) etc. The assessee in it's former appeal ITA.No.29/PUN./2024 for assessment year 2018-2019 at the "lead" case raising the following substantive grounds :

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in allowing claim of deduction of Rs.3,84,74,924 u/s 80P(2)(a)(i) of the Act without appreciating the fact. During the course of assessment proceedings the assessee Pat Sanstha failed to produce any evidence to establish that it had expended any expenditure wholly and exclusively to earn interest income from co-operative bank, commercial banks and other financial institutions. The Ld. CIT(A) erred in deletion of quantum addition of Rs.3,84,74,924/- made by the Assessing Officer.*
2. *The appellant prays that the order of the Ld. CIT(A), Kolhapur be vacated and that order of the Assessing Officer be restored.*
3. *The appellant craves leave to add, alter, amend and modify any of the above or all grounds raised at the time*

*of proceedings before the Hon'ble Tribunal which may please be granted.”*

3. We next note with the able assistance coming from both the parties that the NFAC's impugned lower appeal discussion accepting the assessee's claim of sec.80P92)(a)(i) deduction of Rs.3,84,74,924/- representing interest income derived from deposits made in cooperative banks and similar other institutions; reads as under :

*“6. The first issue to be decided is whether the interest and dividend earned on deposit with banks count as business income or should it be assessed under the head, income from other sources. In coming to the conclusion that interest earned on deposits should be assessed under the head, Income From Other Sources, the AO has relied on the decision of the Hon. Supreme Court in Totgars Co-Operative Sales Society Ltd vs CIT [2010] 322 ITR 283 (SC). In this decision the Hon. Supreme Court held that income from investment was liable to treated under the head Income From Other Sources under certain circumstances and that such income will not be therefore eligible for deduction under section 80P(2)(a)(i). In the case before the Hon. Supreme Court, the assessee had two distinct activities, giving of credit to members and marketing of agricultural produce of members. There was*

*a finding that amount invested was the idle funds of members parked temporarily with the assessee. Therefore the Hon. Supreme Court reached the conclusion that it was not operational funds. The observations of the Hon. Supreme Court is reproduced below :*

*“We are confining this judgment to the facts of the present case. To say that the source of income is not relevant for deciding the applicability of section 80P of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee-Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other*

*Income" which has been rightly taxed by the Department under section 56 of the Act."*

6.1. *In this case, there is no finding of fact in the assessment order that the amount deposited in banks constitute surplus or idle funds of the assessee and that it has no relation to the activities of the assessee of extending credit facilities to its members. In the absence of such a finding, the interest earned on deposit as well as dividend is liable to regarded as "income attributable" to the activity of extending credit to the members. Therefore, this income comes within the purview of section 80P(2)(a)(i). Reliance is placed on the decision of the Hon. Karnataka High Court in Tumkur Merchants Souharda Credit Co Operative Ltd vs ITO [2015] 55 taxmann.com 447 (Karnataka). The observations of the Hon Court are reproduced below :*

*"A co-operative society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is*

*attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under section 80P.”*

*“In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It 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 the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. 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)” . [Para 10].*

6.2. *In the light of the foregoing discussion, I hold that the interest and dividend earned by the appellant from investment in co-operative banks is attributable to the*

*activity of banking and extending credit facility to its members. Therefore, it is part of the business income of the appellant and is covered by deduction under section 80P(2)(a)(i).*

6.3. *From the submission of the appellant, it emerges that apart from interest earned from co-operative banks, the appellant has also earned interest of Rs.99,601 from RBL Bank which is not a co-operative bank. Section 80P(2)(a)(i) allows deduction to the whole of the income which is attributable to the activity of banking and extending credit facility to members. Unlike section 80P(2)(d), this section does not limit deduction to income earned from co-operative societies. Since I have held that earning of interest from deposits in banks is attributable to the banking/credit activity, interest income from RBL Bank is also covered by deduction under section 80P(2)(a)(i). Ground 1 is therefore allowed.”*

4. We have given our thoughtful consideration to the vehement rival stands against and in support of the correctness of the NFAC’s foregoing lower appellate findings holding the assessee as entitled for the impugned sec.80P(2)(a)(i) deduction. Suffice to say, there is hardly any dispute on facts regarding the assessee having derived the impugned interest income from deposit of surplus funds in co-

operative bank(s) and similar other institutions. That being the case, the learned NFAC has already discussed a catena of case law (supra) having decided the very question in assessee's favour and against the department. No clinching rebuttal thereto is forthcoming from the Revenue side during the course of hearing. Faced with this situation, we hold that the NFAC has rightly accepted the assessee's impugned sec.80P(2)(a)(i) deduction claim of its interest income derived from investments made in cooperative bank(s) and similar institutions. Ordered accordingly.

5. This Revenue's appeal ITA.No.29/PUN./2024 is dismissed in above terms.

6. Same order to follow in Revenue's latter appeal ITA.No.30/PUN./2024 since involving identical facts and issue(s).

7. These Revenue's twin appeals ITA.Nos.29 & 30/PUN/2024 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 24.04.2024.

Sd/-  
[RAMA KANTA PANDA]  
VICE PRESIDENT

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 24<sup>th</sup> April, 2024

VBP/-

Copy to

|    |                             |
|----|-----------------------------|
| 1. | The appellant               |
| 2. | The respondent              |
| 3. | The Pr. CIT, Pune concerned |
| 4. | D.R. ITAT, "A" Bench, Pune. |
| 5. | Guard File.                 |

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.