

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No. 114/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Nuclear Fuel Complex Income Tax Officer,
Employees Co-operative Vs. Ward-15(3),
Credit Society, Hyderabad
Hyderabad
[PAN: AABAN9198E]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR
राजस्व द्वारा/Revenue by: Shri K. Meghnath Chowhan, CIT-DR

सुनवाई की तारीख/Date of hearing: 14/03/2024
घोषणा की तारीख/Pronouncement on: 07/05/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 19/03/2022 passed by the learned Principal Commissioner of Income Tax, Hyderabad-4, ("Ld. PCIT") under section 263 of the Income Tax Act, 1961 (for short "the Act") in the case of Nuclear Fuel Complex Employees Co-operative Credit Society, ("the

assessee”) for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a co-operative society, earned Rs. 12,50,488/- towards interest from State Bank of India. By order dated 26/11/2019 passed under section 143(3) of the Act, learned Assessing Officer accepted the claim of assessee under section 80P of the Act. Subsequently, the learned PCIT on a perusal of the assessment record found that in terms of *The Totgars Co-operative Sale Society Ltd., vs. ITO [322 ITR 283] (SC)*, the assessee would be entitled to claim deduction of interest earned on operational income only, but not the interest income received by it on the deposits made out of surplus funds and since the learned Assessing Officer failed to verify the nature of surplus funds, the order is erroneous insofar as it is prejudicial to the interest of Revenue. He, therefore, exercised jurisdiction under section 263 of the Act and set aside the assessment order to the extent of Rs. 12,50,488/- relating to the deduction under section 80P(2)(d) of the Act with a direction to the learned Assessing Officer to cause necessary enquiry on that aspect.

3. Aggrieved, assessee preferred this appeal, mainly contending that when the Commissioner had a doubt as to whether the assessee earned interest on the operational income or on the deposits made out of surplus funds, the learned PCIT himself has to examine the said aspect and he cannot pass an order of remit, asking the learned Assessing Officer to decide whether the assessment order was erroneous. Reliance is placed on the decision of the Hon’ble Delhi High Court in the case of *ITO vs. D.G.*

Housing Projects Ltd., [2012] 20 taxmann.com 587. Second ground urged by the learned AR is that in terms of the decision of the Hon'ble jurisdictional High Court in the case of Vavveru Co-operative Rural Bank Ltd., vs. CCIT 88 taxmann.com 728, the assessee is entitled to deduction under section 80P in respect of the interest income from fixed deposits with nationalized bank when the source of such investment was income derived from activities listed in sub-clauses (i) to (vii) of clause (a) of section 80P(2) of the Act. Learned AR submitted that the decision in Vavveru Co-operative Rural Bank Ltd., (supra) is rendered after noticing the decision of the Hon'ble Apex Court in the case of The Totgars Co-operative Sale Society Ltd., (supra).

4. Per contra, learned DR argued that the assessment order does not reflect the verifications, if any made by the learned Assessing Officer before accepting the claim for deduction under section 80P(2)(d) of the Act and, therefore, it is erroneous insofar as it is prejudicial to the interest of Revenue. On that score, he justified the impugned order.

5. We have gone through the record in the light of the submissions made on either side. At the outset it must be stated that basing on the decision of the Hon'ble Apex Court in the case of The Totgars Co-operative Sale Society Ltd., (supra), learned PCIT opined that the assessee being a co-operative society, is not entitled to claim deduction in respect of the interest earned on the deposits with State Bank of India, which is a scheduled bank, but not another co-operative society under section 80P(2)(d) of the Act and in that context, learned PCIT held that the deduction can be claimed against the interest earned on operational

income only, but not the interest income received by the society on the deposits made out of surplus funds, and, therefore, directed the learned Assessing Officer to verify the nature of surplus funds deposited by the assessee.

6. Firstly, to this set of facts, the decision of the Hon'ble Delhi High Court in the case of D.G. Housing Projects Ltd., (supra), is applicable on all fours and when the learned PCIT entertained a doubt as to the nature of funds deposited by the assessee with the State Bank of India, he himself should have conducted enquiry on that aspect and recorded his satisfaction as to the erroneous nature of the impugned order insofar as it is prejudicial to the interest of Revenue, without recording the satisfaction of the twin conditions under section 263 of the Act as laid down by the Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd., vs. CIT [2000] 109 Taxman 66 (SC). On this score, the assessee succeeds.

7. Be that as it may, even on merits also the assessee succeeds because the Hon'ble jurisdictional High Court after noticing the decision of the Hon'ble Apex Court in the case of The Totgars Co-operative Sale Society Ltd., (supra), held in the case of Vavveru Co-operative Rural Bank Ltd., (supra) that the assessee is entitled to claim deduction under section 80P of the Act in respect of the interest income from fixed deposits with nationalised bank when source of such investment was income derived from activities listed in sub-clauses (i) to (vii) of clause (a) of section 80P(2) of the Act. On the face of this binding precedent, we find it difficult to subscribe to the finding of the learned PCIT that the assessee could claim deduction of interest earned only from any other co-operative society, but

not from a scheduled bank. While respectfully following the decisions cited above, we find it difficult to sustain the impugned order and, therefore, quash the same. Grounds are accordingly allowed.

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

Order pronounced in the open court on this the 7th day of May, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 07/05/2024

TNMM

Copy forwarded to:

1. M/s. Nuclear Fuel Complex Employees Co-operative Credit Society, C/o.
P. Murali & Co., Chartered Accountants, 6-3-655/2/3,
Somajiguda, Hyderabad.
2. The Income Tax Officer, Ward-15(3), Hyderabad.
3. The Pr.CIT-Hyderabad-4.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD