

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.679 & 680/PUN/2024
निर्धारण वर्ष Assessment Years : 2018-19 & 2020-21

Shri Hariom Nagari Sahakari Patsanstha Maryadit, 1, Malegaon Road, Satana, Nashik 423 301 Maharashtra PAN : AAAJH0183R	Vs.	ITO, Ward-1(1), Nashik
Appellant		Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Shanshank Deogadkar

Date of hearing : 03.06.2024
Date of pronouncement : 03.06.2024

आदेश / ORDER

PER BENCH:

These two appeals filed by the assessee are directed against separate orders of the National Faceless Appeal Centre (NFAC), Delhi both dated 07.02.2024 for the Assessment Years 2018-19 and 2020-21 respectively. Identical grounds have been taken by the assessee in these appeals. Therefore, we proceed to dispose of these appeals by the consolidated order for the sake of convenience.

A.Y. 2018-19 :

2. Briefly, the facts of the case for the A.Y. 2018-19 are that the appellant is a Cooperative Society established under the Maharashtra Co.op Societies Act, 1960. It is engaged in the business of providing credit facilities to its

members. The Return of Income for the assessment year 2018-19 was filed on 30.10.2018 declaring Nil after claiming deductions under Chapter VIA of the Act. The case was selected for 'Limited Scrutiny' under E-assessment Scheme, 2019. Thereafter, the case was selected for complete scrutiny for verification of substantial deductions claimed under Chapter VIA. Statutory notices were served on the assessee. In absence of submission of any documentary evidence in support of the claim, the Assessing Officer (AO) completed the assessment u/s.143(3) disallowing the deduction claimed u/s.80P(2)(a)(i). While doing so, the Assessing Officer had brought to tax the interest income of Rs.45,11,201/- earned on FDs with co-operative banks and nationalised banks holding that the said interest does not qualify for deduction u/s 80P(2)(a)(i) of the Act.

3. Being aggrieved, an appeal was filed before the NFAC, who vide impugned order placing reliance on the judgments of Hon'ble Supreme Court in the case of *Totgar Cooperative Sale Society Ltd. 322 ITR 283 and Mavilayi Service Cooperative Bank Ltd. Vs. CIT 123 taxmann.com 161 (SC)* restricted the disallowance to Rs.24,17,446/-, partly allowing the appeal of the assessee.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The ld. AR submits that the case of the assessee is covered by virtue of decisions passed by the Pune Benches of the Tribunal allowing the deduction u/s.80P(2)(a)(i)/80P(2)(d), therefore, prayed for reversing the order of the authorities below.

6. On the other hand, ld. Sr. DR placing reliance on the orders of the lower authorities submits that no interference is called for.

7. We heard both the sides perused the material on record. The only issue in the present appeal relates to the eligibility of the assessee for exemption u/s. 80P(2)(a)(i) or u/s 80P(2)(d) of the Act in respect of interest income earned from Cooperative banks and Nationalised banks. The issue is no more *res integra* as the same is covered by catena of decisions passed by the Pune Benches allowing the deduction u/s.80P of the Act.

8. The Co-ordinate Bench of the Tribunal in the case of The Ugar Sugar Works Kamgar & Dr. Shirgaokar Shaikshanik Trust Nokar Co-op Credit Society vs. ITO in ITA No.84/PAN/2018 for A.Y. 2012-13 order dated 27.05.2022 held in favour of the appellant society. The relevant paragraphs of the said order of Co-ordinate Bench of the Tribunal (*supra*) is reproduced herein under :-

*“8. We heard the rival submissions and perused the material on record. The only issue in the present appeal is pertaining to the allowability of deduction under the provisions of section 80P(2)(d) of the Act. On perusal of provisions of section 80P(2)(d), it is clear that the income derived by a cooperative society from its investment held with other cooperative societies shall be exempt from the total income of a cooperative society. Therefore, what is relevant for claiming of deduction u/s 80P(2)(d) is that interest income should have been derived from the investment made by the assessee cooperative society with any other cooperative society. In the present case, the reasoning given by the lower authorities for denial of exemption u/s 80P(2)(d) of the Act is that interest was received from cooperative bank has no legs to stand as a cooperative bank is also a cooperative society. This issue was considered by the Hon’ble Karnataka High Court in the case of CIT vs. Totgars Cooperative Sale Society, 392 ITR 74 (Karn) wherein the Hon’ble High Court referring to the Hon’ble Supreme 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 applicable in respect of interest income on investment as same falls under the provisions of section 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act.*

9. *Even the decision of Pune Bench of the Tribunal in the case of Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. vs. ITO, 120 taxmann.com 10 wherein the Tribunal after making reference to the decisions of the Hon’ble Supreme Court in the case of Totgars Co-operative 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 the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. vs. CIT, 50 taxmann.com 278, decision of the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. (supra) had not been preferred to view of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. (supra). The relevant observation of the Pune Bench of the Tribunal in the case (supra) is 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. Totagars 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 co-operative 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.”

9. Following the decision of the Co-ordinate Bench of this Tribunal (supra), we are of the considered opinion that even the interest income earned by cooperative society on deposits made out of surplus funds with cooperative banks as well as schedule banks qualify for deduction both under the provisions of section 80P(2)(a)(i) and section 80P(2)(d) of the Act, therefore, the reasoning given by the lower authorities on this issue cannot be accepted. Thus, we direct the Assessing Officer to allow deduction u/s 80P(2)(a)(i) and 80P(2)(d) in respect of interest income earned from Cooperative banks and Nationalised banks. The grounds of appeal filed by the assessee stands allowed.

A.Yr. 2020-21 :

10. The facts stated in ITA No.679/PUN/2024 are identical even in appeal bearing ITA No. 680/PUN/2024. The finding given in ITA No. No.679/PUN/2024 equally holds good for the appeal ITA No. 680/PUN/2024.

11. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on this 03rd day of June, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03rd June, 2024

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune