



।आयकरअपीलीयअधिकरण "बी" न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.644/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

Yashwant Nagari Sahakari Patsanstha Maryadit, Yashwant, Pimpalwandi, Taluka Junnar, Dist.Pune, Maharashtra – 412210. PAN: AAAAY0450F	V s	The Income Tax Officer, Ward-10(1), Pune.
Appellant/ Revenue		Respondent /Assessee

Assessee by	Shri Abhay A Avchat – AR
Revenue by	Shri Sourabh Nayak, IRSAddl.CIT(DR)
Date of hearing	30/05/2024
Date of pronouncement	04/06/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax(Appeal)[NFAC] dated
24.01.2024 for A.Y.2017-18. The Grounds of appeal raised by the
assessee are as under :

“Each ground is taken without prejudice to each other.

On the facts and in the circumstances of the case and in law and

- 1. The learned AO has erred in not considering and in not allowing
deduction under section 80P(2)(a)(i) and 80P(2)(d) of the Income Tax*



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Act claimed by assessee in respect of bank interest, dividend income, etc., and the learned CIT A erred in disallowing and confirming the same.

2. *The learned AO has erred in disallowing the entire deduction of Rs. 1,17,59,141/- claimed by assessee u/s 80P despite compliance with relevant provisions and the Id. CIT A erred in confirming the same.*
3. *The Id. CIT A has erred in holding that assessee is not entitled to the benefit of deduction u/s 80P(2)(d) of the Act in respect of interest income earned out of investments made with nationalised and cooperative Banks.*
4. *The Id. CIT A has erred in directing the AO not to allow the deduction u/s 80P(2)(d) on the interest earned from cooperative banks and nationalised banks.*
5. *The CIT A has erred in directing the AO not to allow the deduction u/s 80P(2)(a)(i) on the interest earned from non-members despite that the AO has not pointed out / brought on record any such instance of having non-member in the assessment order. Such general direction may kindly be set aside or withdrawn.*
6. *The assessee hereby requests for allowing any other relief as available under the law.*
7. *The assessee craves leave to add, alter, amend, modify, delete all or any of the grounds of appeal.”*

Brief facts of the case :

2. In this case, assessee is a Co-operative Society engaged in the business of providing credit facilities to its members. Assessee is registered under Maharashtra State Co-Op Society Act, 1960, the



Ld.AR filed copy of registration certificate dated 12/03/1986 (page 21 of the Paper book). For A.Y.2017-18, assessee filed return of income on 31.10.2017 declaring total income at Rs.NIL after claiming deduction under section 80P. In the Assessment Order the AO observed that the assessee has invested surplus fund in PDCC and other Banks, and earned interest income of Rs.1,26,45,671/-. In para 9 of the Assessment Order the AO held that the Assessee society can be treated as Co-Operative banks as paid-up share capital and reserve are more than Rs.1 lac. The Assessing Officer has produced chart as under :

	31/03/2016	31/03/2017
Paid up share capital	1,98,51,610/-	2,12,56,610/-

2.1 The AO further observed that Assessee society can be treated as Co-Operative Bank based on nature of its activities. Then the AO relied on Hon'ble Supreme Court's decision in the case of the Totagars Co-Operative Sale Society and held that the assessee is not eligible for deduction u/s 80P of the Act. The AO denied assessee's claim or deduction and added the amount of Rs.1,17,59,141/-. Aggrieved by the order of the AO, the assessee filed appeal before the ld.CIT(A). The ld.CIT(A) sustained the



addition made by the AO without considering any of the case laws relied by the assessee which contained decisions of the ITAT Pune bench. Aggrieved by the same, the assessee filed appeal before this Tribunal.

Submission of Id.AR :

3. The Id.AR for the assessee filed the written submissions which is reproduced here as under :

“1. The assessee coop society has filed appeal before your honour against the appellate order passed by the CIT (A) NFAC. The CIT appeal has sustained / confirmed the disallowance of deduction claimed by assessee u/s 80P(2)(d) in respect of bank interest from coop banks which the AO disallowed in his assessment order passed u/s 143(3).

2. The sole issue in appeal is the disallowance of entire deduction claimed by assessee u/s 80P(2) of Rs. 1,17,59,141/- as per ITR.

3. The assessee has invested surplus funds with the co-operative and other banks and earned interest on the said investment amounting to Rs. 1,26,45,671/-. It comprised of interest of Rs 1,25,14,471/- from various coop banks and Rs1.31,200/- from nationalized / private banks. Kindly refer page 28 of the paper book filed on 27th May 2024 for breakup of bank interest.

4. The AO is of the view that the issue of bank interest from coop banks and its taxation, deduction, etc. is squarely covered by judgement of the Hon'ble Supreme Court of India and Hon'ble Karnataka High Court in the case of The Totagars Co-Operative Sale Society.

5. Further the CIT A while deciding appeal has relied on the Supreme Court's decision in the case of Totagars Co-operative Sale Society vs. ITO in 188 taxmann.com 282 (SC) and is of the view that the said judgement is applicable to decide the taxability of interest income u/s



80P(2)(d) also.

6. The CIT A states that as discussed from the Supreme Court decision in the case of Totagars Co-operative Sale Society and Mavilayi Service Cooperative Bank; it is hereby held that the interest income from deposits kept with Schedule Banks and Cooperative Banks are to be taxed under the head income from other sources and their nature of income cannot be changed to business income.

7. However, the Pune ITAT is consistently deciding and holding the issue of deduction of bank interest from coop banks and scheduled banks in assessee's favour. It has been held by Pune ITAT in a number of cases that interest income earned by a co-operativesociety on deposits made out of surplus funds with co-operative banks as well as scheduled banks qualifies for deduction both under section 80P(2)(a)(i) and section 80P(2)(d).

8. In this respect we are enclosing latest favourable judgements delivered by the Hon. Pune ITAT bench on the issue of deduction of bank interest u/s 80P.

9. [2024] 158 taxmann.com 322 (Pune - Trib.) IN THE ITAT PUNE BENCH 'SMC' in Kolhapur District Central Co-Op. Bank Kanista SevakanchiSahakari Pat Sanstha Ltd. v. Income-tax Officer, IT APPEAL NO. 1365 (PUNE) OF 2023 [A.Y. 2018-19] dated - JANUARY 1,2024.

10. The Income Tax Officer, Ward - 5(2), Pune vs. Yantranirman Nagari SahakariPatsanstha, I.T.A.NO.1081/PUN/2023 [E-APPEAL] Assessment Year 2020-2021 dated 26/3/2024.

11. Copy of both the judgements is enclosed.

12. In view of this, your honour is requested to delete the disallowance and grant relief to us."

Submission of ld.DR for the Revenue :

4. The ld.DR relied on the order of AO and ld.CIT(A). The ld.DR submitted that from the assessment order it is not clear



whether assessee had given loans exclusively to the members or not! Therefore, ld.DR submitted the case may kindly be set-aside to the Assessing Officer for de-novo adjudication. The ld.DR invited our attention to para 5.2, 5.4 and 5.9 of the ld.CIT(A)'s order.

Findings & Analysis :

5. We have heard both the parties and perused the records. It was pleased by the ld.AR that the issue of eligibility for deduction under section 80P(2) of the Act is covered by decision of ITAT Pune in various Co-operative Society Cases.

5.1 Admittedly, the Assessee is a Co-Operative Society registered under the Maharashtra State Co-Operative Society Act 1960 vide registration certificate dated 12/03/1986. The activities of the assessee as submitted by assessee are as under :

- (i) To enroll the members
- (ii) To educate the members in the cause of better savings out of their earning.
- (iii) To effect operation among members
- (iv) To accept deposits under the various schemes and pay interest
- (v) To lend money to members on reasonable interest.



5.2 In the case under consideration, the AO has held assessee to be a Co-Operative Bank based on the Capital and Reserve of the assessee and based on the activities of the Assessee. No where neither the AO nor the CIT(A) has stated that the Assessee has received Banking License from RBI under the Banking Regulation Act.

5.3 The Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT [2021] 431 ITR 1(SC) observed as under :

Quote "Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative -societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI." Unquote

5.4 Thus, a Co-Operative Society will be treated as a Co-Operative Bank only if it has received License from RBI. In the case of the Assessee neither the AO nor the CIT(A) has stated that the Assessee is in receipt of License from RBI. Therefore, in the absence of Banking License, respectfully following the Hon'ble Supreme Court (Supra), it is held that the assessee is not a Co-



Operative Bank as envisaged in section 80P(4) of the Income Tax Act. Hence, provisions of Section 80P(4) will not be applicable in the case of the Assessee.

5.5 It is specifically mentioned in the Assessment Order that Assessee has invested 'Surplus funds' in the PDCC and other banks and earned Interest Income. Thus, it is an admitted fact by the Assessing officer that the investment is of the income derived from the Business of the assessee. As per para 7.1 of the Assessment Order the main object of the assessee society is to provide credit facility to its members and also accept deposits from members. Thus, admittedly the assessee is providing credit facility to its members. Thus, the investments made by the assessee are from the Surplus generated by assessee during the course of providing credit facility to its members and the assessee has earned Interest Income by investing these surplus funds in PDCC Bank. Therefore, the section 80P(2)(a) is applicable in the case of the assessee.

5.6 The Hon'ble High Court of Andhra Pradesh and Telangana in the case of Vavveru **Co-operative Rural Bank Ltd.** [2017] 396



ITR 371 analyzed the provisions of Section 80P, succinctly distinguished the decision of Hon'ble Supreme Court in the case of Totagar Cooperative Sale Society, and held as under :

Quote, “**8.** Therefore, the real controversy arising in these writ petitions is as to whether the income derived by the petitioners by way of interest on the fixed deposits made by them with the banks, is to be treated as profits and gains of business attributable to any one of the activities indicated in sub-clauses (i) to (vii) of clause (a) of sub-section (2) of section 80P or not.

9. While the petitioners place strong reliance upon a decision of the Division Bench of this court in *CIT v. Andhra Pradesh State Co-operative Bank Ltd.* [2011] 12 taxmann.com 66/200 Taxman 200/336 ITR 516, the Revenue places strong reliance upon the decision of the Supreme Court in *Totgar's Co-operative Sale Society Ltd. v. ITO* [2010] 188 Taxman 282/322 ITR 283.

.....

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.



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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." Unquote.

5.6.1 Thus, Hon'ble High Courts of AP & TS (supra) held that Interest Income earned by investing Income derived from Business of providing credit facility by a Co-Operative Society was eligible for deduction u/sec.80P(2)(a) of the Act.

5.7 The ITAT Pune Bench in the decision of Ajayshree Gramin Bigar Sheti Sahakari Patasanstha Maryadit in ITA No.1427/PUN/2023 order dated 08.03.2024 held as under :

“3.1 We observed that the issue is covered by ITAT Pune Bench's order in the case of Sumitra Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit Mahaveer Path for A.Y.2008-09 which has decided the same issue in favour of assessee in ITA No.2476/PUN/2016. In that case



assessee had received interest income from fixed deposits kept with Nationalized Banks. The ITAT Pune Bench in para 5 has held as under :

“5. With regard to this issue, the Ld. AR of the assessee at the time of hearing submitted that ground No.1 is already decided in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal, Pune in ITA No.589/PUN/2016 for the assessment year 2012-13 in the case of ITO Vs. Sureshdada Jain Nagri SahakariPatsanstha, therein, in Para 2 of the order, the issue is as under:

“2. The only grievance projected by the Revenue in its appeal is against the allowing of deduction u/s.80P of the Income Tax Act, 1961 (hereinafter also called as ‘the Act’) in respect of interest earned by the assessee society from State Bank of India which was denied by the Assessing Officer.”

Thereafter, the Tribunal has held as follows:

“4. We have heard both the sides and perused the relevant material on record. It is observed that the ld. CIT(A) allowed the claim of deduction u/s.80P by following the order passed by the Tribunal in the case of Shivneri Nagari SahakariPatsanstha Ltd. (supra). The ld. AR placed on record a copy of the another order of the Pune Bench dated 19-08-2015 in the case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO (ITA No.604/PN/2014) (to which one of us, namely, the ld. JM is party) in which similar deduction has been allowed. The Pune Bench of the Tribunal in the case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit (supra) has discussed the contrary views expressed by the Hon’ble Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 taxmann 309 (Kar.) allowing the deduction u/s. 80P on interest income and 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 under similar circumstances. Both the Hon’ble High Courts have taken into consideration the ratio laid down in the case of Totgar’s Cooperative Sale Society Ltd. 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 taken in favour of the assessee by the Hon’ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra). In the absence of their being any change in the legal position prevailing on this issue after the passing of the order by the Pune Bench of the Tribunal in Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit (supra) and host of other orders reiterating the similar view, respectfully following the precedent, we uphold the impugned order in allowing deduction u/s.80P on the interest income”



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Respectfully, following the aforesaid decision of the Co-ordinate Bench of the Tribunal, Pune, we set aside the order of the Ld. CIT(Appeals) and allow ground No.1 of the grounds of appeal of the assessee.”

4. *The issue before us is identical to the issue decided by ITAT Pune Bench in Sumitra Gramin BigarShetiSahakari Pat Sanstha Maryadit Mahaveer Path(supra) in ITA No.2476/PUN/2016 for A.Y. 2008-09(supra) i.e. interest income earned on fixed deposits. The Hon'ble Madras High Court in the case of Thorapadi Urban Co-operative Credit Society Ltd., Vs. ITO 296 Taxman 250 (Madras) vide order dated 10.10.2023 held that the assessee was eligible for deduction under section 80P(2)(d) of the Act on the Interest Received from Co-operative Banks. No direct decision of the Hon'ble Jurisdictional High Court has been brought to our notice. Therefore, respectfully following the above precedent and adopting the detailed reasoning above, we direct the Assessing Officer to allow deduction under section 80P(2) of the Act for the impugned income discussed in earlier para. Accordingly, grounds of appeal raised by the assessee are allowed.”*

6. Ld.DR has not brought to our notice any direct decision of the Hon'ble Jurisdictional High Court. Therefore, respectfully applying the proposition of law laid down by Hon'ble High Court of Andhra Pradesh and Telangana (supra) and ITAT Pune (supra) to the facts of the present case, we are of the considered view that the Interest earned by the assessee is eligible for deduction u/s 80P(2) of the Act. Accordingly, the AO is directed to delete the addition made by AO of the Interest Income.



7. The assessee has also earned Dividend. The assessee has claimed deduction u/sec.80P(2)(d) of the Act. For all the reasons discussed in earlier paras, we hold that the assessee is eligible for deduction u/s 80P(2)(d) of the Act for the dividend earned from investments made in PDCC Bank.

7.1 Accordingly Ground number 1-5 of the Assessee are allowed for the elaborate reasons discussed.

8. The ld.DR raised the issue that from the assessment orders, it is not clear whether the loan is given to members only! However, at this stage, this argument cannot be entertained as neither the AO, nor ld.CIT(A) has given any findings on this issue. It is observed from the submission of the Assessee which is reproduced in the Assessment Order that the Loans were provided only to the members by the assessee. It means, the loans were given to members only. The ld.DR cannot improve assessment order. Hence, this pleading of the Ld.DR is rejected.

9 Ground number 6, 7 are general in nature and needs no adjudication. Accordingly dismissed.



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

Order pronounced in the open Court on 4th June, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 4th June, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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