



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'A' BENCH, PUNE



BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.0301/PUN/2024

निर्धारण वर्ष / Assessment Year : 2020-21

Asstt. Commissioner of Income Tax,
Kolhapur

..... अपीलार्थी / Appellant

बनाम / V/s.

Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd.
B-1 MIDC, Gokul Shirgaon,
Kolhapur-416234
PAN: AAAAK0230D

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Pranjali Phadnis ['Ld. AR']

Revenue by : Mr Keyur Patel & Ramnath Murkude ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 30/05/2024

घोषणा की तारीख / Date of Pronouncement : 10/06/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

This appeal filed u/s 253(2) of the Income Tax Act ['the Act'] by the Revenue challenges the order of National Faceless Appeal Centre, Delhi ['NFAC/CIT(A)'] in DIN & Order ITBA/NFAC/S/250/2023-24/1058957688(1) dt. 21/12/2023 passed u/s 250 of the Act which in turn arisen out of respective orders of assessment passed u/s 143(3) r.w.s. 144B of the Act.

2. Briefly stated common facts anent to the dispute are that;

2.1 The assessee is a Co-op. society engaged in carrying on the business of collection, processing of milk and manufacturing of milk & milk products for their sale in various forms. The assessee filed its return of income declaring total



income of ₹2,50,73,250/- after claiming total deduction u/c VI-A for ₹21,54,05,771/- o which ₹31,25,000/- was claimed u/s 80G and balance of ₹21,22,80,771/- was claimed deduction u/s 80P(2)(d) of the Act.

2.2 The return of income filed by the assessee was selected for complete scrutiny by service of notice u/s 143(2) of the Act. In the event of assessee's failure to substantiate its eligibility & entitlement for deduction the Ld. AO culminated the proceedings making certain additions which *inter-alia* includes (a) excess payment representing rate difference paid to milk supplier members (b) expenses incurred for Mahila Netrutva Vikas Gokul Gram and (c) denial of deduction claimed u/s 80P(2)(d) of the Act relating to interest income of ₹21,03,83,652/- received/earned from Co-operative banks.

2.3 When aforesaid disallowances & denial of deduction were assailed in appeal, the Ld. NFAC following judicial precedents laid by Hon'ble Apex Court & High Courts, allowed the appeal on merits. Solitarily aggrieved by allowability of 80P(2)(d) deduction the Revenue is in appeal before us.

3. Heard the rival contentions of both the parties; and subject to rule 18 of ITAT-Rules 1963 perused the material placed on record and considered facts of the case in the light of settled legal position. We note that, during the year under consideration the assessee earned certain interest income from investment held with co-operative societies; (1) Kolhapur Zilla Gramin Gokul Pat Sanstha Maryadit ₹12,64,000, (2) Kolhapur Zilla Sahakari Dudh Sangh Karmachari Pat



Sanstha ₹4,21,369 (3) Shetkari Sahakari Sangh Ltd. ₹2,11,750, and ₹21,03,83,652/- from Co-op. Bank Kolhapur District Central Co-op. Bank [‘KDCC’]. In the return of income filed by the assessee, these interest were claimed as deductible u/s 80P(2)(d) of the Act of which the interest received from ‘KDCC’ was denied by the Ld. AO on the twofold premise that, (a) the deduction u/s 80P(2)(d) of the Act is restricted to only interest income earned from ‘Co-op. Society’ and since the word ‘bank’ is missing therefrom, hence deduction is impermissible (b) the business of bank is entirely different from co-operative society as former is regulated by Reserve Bank of India [RBI’]. *Per contra*, the Ld. NFAC following catena of judicial precedents overturned the denial of deduction vide para 12 as under;

12. Though, the cooperative banks, pursuant to the insertion of subsection (4) to Sec. 80P, would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a cooperative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co- operative societies, therefore, the interest income derived by a cooperative society from its investments held with a cooperative bank would be entitled for claim of deduction under Sec.80P(2) (d) of the Act.

12.1 Similar view has been taken by Hon’ble High Court of Karnataka in case of Pr. CIT & Anr. Vs. Totgar’s Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon’ble Gujarat High Court in case of State Bank of India vs. CIT (2016) 389 ITR 578 (Guj.) wherein it is held that interest income earned by a co-operative society on its investment held with cooperative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act.



12.2. In a more recent judgment dated 10-10-2023 Hon'ble Madras High Court Thorapadi Urban Co-op Credit Society Limited Vs ITO (Madras High Court) in [2023] 156 taxmann.com 419 (Madras)[10-10-2023] held that where assessee-cooperative society made investments with co-operative bank which was registered under Tamil Nadu Co-operative Societies Act, 1983, assessee-society would be entitled to claim benefit under section 80P(2)(d) with respect to interest income received from said investments.

12.3 So respectfully following the decisions rendered by Hon'ble Karnataka High Court (supra) Hon'ble Gujarat High Court (supra) and Hon'ble Madras High Court (Supra), this appellate authority is of the considered view that appellant society who has earned an amount of Rs. Rs. 21,22,80,771/-- from its investment of surplus fund with cooperative banks/societies is entitled for deduction under section 80P(2)(d) of the Act. This ground of appeal is therefore allowed.

4. The solitary issue in this appeal hinges around allowability of deduction u/s 80P(2)(d) of the Act in relation of interest income earned by the assessee co-operative society from its investment held with Co-op bank. This issue is no longer *res integra* in view of the Co-ordinate Bench decision in favour of the assessee in 'Konkan Education Society Sevak Sahakari Patpedhi Ltd' [ITA No. 46/Pun/2024 dt. 02/02/2024]' Respectfully following Co-ordinate Bench's decision (supra) and judicial precedents relied by the first appellate authority, we see no reason to deviate from the impugned adjudication by Ld. NFAC which overturned the denial of deduction to the assessee. The relevant paragraphs of the said order of Co-ordinate Bench of the Tribunal (supra) is reproduced as;

'7. In the present case, the reasoning given by the lower tax authorities in denying the claim for deduction u/s 80P(2)(d) of the Act is that interest and dividend was received from RDCC a cooperative bank, however this reasoning has no legs to



stand as a cooperative bank is principally a cooperative society and holds a banking license to operate on a larger scale under the guidelines of RBI. This issue was came to consider by Hon'ble Karnataka High Court in 'CIT Vs Totagars Cooperative Sale Society', finds reported in 392 ITR 74 wherein their lordships referring to the decision of Hon'ble Apex Court in the case of Totgar's 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 applied in respect of interest income on investment as same falls u/s 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act. We further note that, the co-ordinate bench in 'Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. vs. ITO', reported in 120 taxmann.com 10, after making reference to the decisions of the Hon'ble Supreme Court in the case of Totgar's Cooperative 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 decision of Hon'ble Delhi High Court in 'Mantola Cooperative Thrift Credit Society Ltd. Vs CIT', reported at 50 taxmann.com 278, the decision rendered in 'Mantola Cooperative Thrift Credit Society Ltd. (supra) had not been preferred to ratio laid in 'Tumkur Merchants Souharda Credit Co-op. Ltd. (supra), the relevant observation of the co-ordinate bench are placed 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 cooperative 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.” (Emphasis supplied)

8. Without multiplying judicial precedents on the aforesaid issue, maintaining same parity we adopt equi reasoning and hold that, the interest and dividend earned by the appellant society from its investment held with co-operative banks namely RDCC, being a registered co-operative society under respective state laws, qualifies for deductions u/s 80P(2)(d) of the Act. Consequently the views adopted by the tax authorities below are not in conformity with legal position and binding judicial precedents, hence deserves to be vacated. Resultantly, we set-aside the impugned order and reverse the denial of deduction.’ (Emphasis supplied)

5. The appeal of the Revenue in result is stands DISMISSED.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Monday, 10th day of June, 2024

S/d-

S. S. GODARA
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 10th day of June, 2024

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The Concerned CIT (MH-India)
5. DR, ITAT, Bench 'A', Pune

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The CIT(A)-NFAC, Delhi (India)
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.