

**।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCHES "A" :: PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND**  
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.463/PUN/2024**  
**निर्धारण वर्ष / Assessment Year: 2020-21**

The Income Tax Officer, Pandharpur.	V s	Dhanshri Multi State Cooperative Society Ltd., Damaji Road, Murlidhar Chow, Mangalwedha, Maharashtra – 413304. PAN: AABAD1879N
Appellant/ Revenue		Respondent /Assessee

Assessee by	None
Revenue by	Shri Arvind Desai – DR
Date of hearing	12/06/2024
Date of pronouncement	13/06/2024

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Revenue against the order of  
ld.Commissioner of Income-tax(Appeals)[NFAC] dated  
14.12.2023 for the A.Y.2020-21. The Revenue has raised  
following grounds of appeal :

*“1. CIT(A) failed to appreciate that even otherwise the assessee society is not eligible for deduction u/s.80P(2)(d) of Act. Sec 80P(2)(d)of Act is applicable to interest and dividends earned from investments in a Co-operative Society, which is wholly deductible in the hands of a Co-operative Society. 2. CIT(A) failed to appreciate provisions of section 80P(4). 3.CIT(A) NFAC failed to appreciate*

that in landmark judgment pronounced by the Hon'ble Karnataka High Court, in the case of *The Pr.CIT, Hubli Vs. The Totagar's Co-Operative Sale Society*, wherein Hon'ble Court has clearly distinguished Co-operative Bank from Cooperative Societies. 4. CIT(A) failed to appreciate that in judgment pronounced by the Supreme Court's decision in case of *Mavilayi Service Cooperative Bank Ltd V. CIT, Calicut*, wherein the cooperative banks are excluded from ambit of section 80P.

2. (b) On the facts and circumstances of the case and in law, the Hon'ble CIT(A) NFAC failed to appreciate the provisions of section 80P(4) which are quoted hereunder: "(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. Even the definition, as contained in section 2(19) of the Income tax Act, 1961, speaks only of "Co-operative Society" and not a "Co-operative Bank." Further, as per Banking Regulation Act, 1949. Co-operative Bank means a State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank, in case of which: i. The primary object or principal business of which is the transaction of banking business

3. The Appellant craves leave to add, amend, vary and/or alter any of the above ground as and when deemed necessary.

4. (d) On the facts and circumstances of the case and in law, the Hon'ble CIT(A) NFAC failed to appreciate that in the judgment pronounced by the Supreme Court's decision in the case of *Mavilayi Service Co-operative Bank Ltd V. CIT, Calicut in Civil Appeal No.7343-7350 & 8315 of 2019 Dated-12.01.2021*, wherein the co-operative banks are excluded from the ambit of the section 80P. The relevant extract at para 21 is as under: "That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are co-operative societies who must possess a licence from the RBI to do banking business." Therefore, the assessee is neither eligible for deduction u/s. 80P(2)(a)(i) nor 80P(2)(d) of the IT Act.

5. The Appellant craves leave to add, amend, vary and/or alter any of the above ground as and when deemed necessary."

2. At the outset of hearing, no one appeared on behalf of the assessee. No adjournment application was filed.

**Findings & Analysis :**

3. We have heard Id.Departmental Representative(Id.DR) for the Revenue and perused the records. It is mentioned in the assessment order that the assessee is a Credit Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002. The prime function of the society is accepting deposits and advancing loans to the members. During the A.Y.2020-21, the assessee has earned an interest income of Rs.4,35,07,808/- from investments with various co-operative banks and has claimed the entire interest income as deduction u/sec.80P of the Income-tax Act, 1961.

4. The Assessing Officer(AO) in the assessment order denied assessee deduction u/sec.80P(2) of the Act relying on the decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140(KAR). The AO in the Assessment Order observed that the Co-Operative Banks in which the assessee has deposited / invested funds such as Solapur DCC etc are not Co-Operative Societies, but Banks doing the banking business. Therefore, the AO held that assessee is not eligible for deduction u/sec.80P(2)(d) of the

Act. Aggrieved by the assessment order, assessee filed appeal before the Id.CIT(A)[NFAC]. Ld.CIT(A) partly allowed appeal of the assessee. Aggrieved by the order of the Ld.CIT(A), assessee has filed appeal before the ITAT.

5. The assessee had claimed deduction u/sec.80P(2) for the interest earned from various Co-operative Banks & Bandhan Bank, ICICI Bank. In this case, the AO has ignored most important submission of the assessee that the Assessee is a Co-Operative Society registered under Maharashtra State Co-Operative Society Act and it is under the control of Registrar of Co-Operative Society Maharashtra State. The Assessee also submitted that surplus funds were invested to earn interest and such interest income is linked to business of the assessee and hence it is part of the Profit which is eligible for deduction u/sec.80P(2)(a)(i) of the Act. Thus, it is clear from the submission of the assessee that the assessee had claimed deduction u/sec.80P(2)(a)(i) of the Act. However, the assessee without prejudice had also claimed deduction u/s 80P(2)(d) of the Act. In these facts, we have to understand the case of the assessee. Thus, the issue before us is whether the impugned

interest earned by the Assessee is eligible for deduction u/s 80P(2)(a)(i) of the Act or u/s 80P(2)(d) of the Act!.

6. It is important to mention here that in Assessee's own case in ITAT Pune in I.T.A.Nos.266 & 267/PUN/2024 Assessment Years 2016-2017 & 2018-2019 has held that Assessee is eligible to claim deduction u/sec.80P(2) of the Act for the Interest earned by the assessee from the Co-operative Societies and Banks. Similarly, in assessee's own case ITAT Pune in ITA No.431/PUN/2022 for A.Y.2017-18 has allowed deduction claimed on Interest Income. Thus, for three AYs ITAT has allowed assessee's claim.

7. The Hon'ble ITAT Pune Bench in the case of Yashwant Nagari Sahakari Patsanstha Maryadit Vs. ITO in ITA No.644/PUN/2024 dated 04.06.2024 held as under:

*“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.*

*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 Sahakari Patsanstha, 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 Sahakari Patsanstha 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”*

*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 Bigar Sheti Sahakari 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.”*

7.1 Respectfully following the decision of the Hon'ble High Court (supra) and ITAT Pune (supra), it is held that the Interest earned by the assessee is eligible for deduction u/sec.80P(2)(a) of the Act. Accordingly, Ground No.1 of the Revenue is dismissed.

**Ground Numbers 2 & 4 :**

8. Nowhere in the Assessment Order or in the Order of the Ld.CIT(A) it has been claimed that the Assessee has received a Banking License from RBI. It means the assessee do not have any Banking License issued by RBI under section 22(1)(b) of the Banking Regulation Act, 1949.

8.1 The Hon’ble Supreme Court of India in the case of Mavilayi Service Co-operative Bank Ltd. vs CIT [2021] 431 ITR 1, has observed vide order dated 12<sup>th</sup> January, 2021 as under :

Quote, *“Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and **holds a licence issued in that behalf by the RBI.**”*

.....  
.....

*45. To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into section 80P(2)(a)(i) when it is not there. 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.** Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.”(emphasis supplied) Unquote.*

9. In these facts and circumstances of the case, respectfully following the Hon’ble Supreme Court (supra), the ground numbers 2 and 4 of the Revenue are dismissed.

10. Ground numbers 3 and 5 are general in nature, no additional ground was raised. Hence, Ground Nos.3 & 5 are dismissed.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 13<sup>th</sup> June, 2024.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

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

पुणे / Pune; दिनांक / Dated : 13<sup>th</sup> 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, “ए” बेंच, पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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