

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
HEARING THROUGH: HYBRID MODE
श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 433/CHD/2022
निर्धारण वर्ष / Assessment Year : 2017-18

The Rampur Rural Coop. Bank Ltd. Village Rampur Tehsil Payal, Dist: Ludhiana141418	बनाम	The Pr. CIT-1 Ludhiana
स्थायी लेखा सं. / PAN NO: AAAAT3580D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Kusum, CIT, DR

सुनवाई की तारीख/Date of Hearing : 14/03/2024
उद्घोषणा की तारीख/Date of Pronouncement : 10/06/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. PCIT, Ludhiana-1 dt. 30/03/2022 pertaining to Assessment Year 2017-18.

2. In the present appeal, the assessee has raised the following grounds of appeal:

"1. That the Ld. PCIT (Central), Ludhiana has erred in assuming the jurisdiction to issue notice u/s 263 of the Income Tax Act, 1961 and, thereby, cancelling the assessment already framed by the AO vide order dated 26.11.2019 and holding the order passed by the Ld. Assessing Officer as erroneous and prejudicial to the interest of revenue and-setting-aside the assessment already framed to the file of the Assessing Officer, with the direction to pass the assessment order, afresh in accordance with law, after granting sufficient opportunity to the assessee.

2. That the Ld. PCIT has failed to appreciate the fact that the assessment as framed by the Assessing Officer vide order dated 26.11.2019, was after considering various replies as filed during the course of assessment proceedings and after complete application of mind by the AO on the issues, raised by the Ld. PCIT in the notice u/s 263,

3. That the Ld. PCIT has failed to appreciate that the interest income from the FDR and from other sources and the rental income is also liable to be considered for the purpose of deduction u/s 80P of the Income Tax Act 1964

and on that, the Assessing Officer having taken possible view and, thus, the same could not have been revised u/s 263.

4. The Ld. PCIT have erred in assuming the jurisdiction of the assessee on the basis of the audit objection, which is void-ab-initio, as per the binding judgment of Jurisdictional High Court in the case of Sohana Woollen Mills and followed in the case of Sh. Surinder Pal Singh in ITA No. 57/Chd/2021 and in the case of Ganga Acrowool in ITA NO.196/CHD/2021.

5. That the Ld. PCIT has relied upon some judgments while passing the order which all not applicable to the facts & circumstances of the case and the replies as filed during the course of proceedings before PCIT have not been considered properly.

6. That the appellant craves leave to add, amend, alter any of the above grounds during the appellate proceedings have been considered."

3. Briefly the facts of the case are that the assessee is a cooperative society and it filed its return of income under section 139(1) declaring income of Rs 1,22,980/- after claiming deduction under Section 80P amounting to Rs. 71,91,654/-. The case of the assessee was selected for limited scrutiny through CASS and one of the reasons for selection was to verify claim of large deduction under Chapter VIA. During the course of assessment proceedings, the notices were issued calling for the necessary information and documentation and taking into account the submissions of the assessee, the assessment was completed under section 143(3) vide order dt. 26/11/2019 accepting the claim of deduction under Section 80P and the returned income was thus accepted.

4. The assessment records were subsequently, called for and examined by the Ld. Pr. CIT and it was held that the assessment order was erroneous in so far as prejudicial to the interest of the Revenue and a show cause u/s 263 was issued to the assessee as to why the assessment order so passed should not be set-aside. In response, the assessee society filed its submissions which were considered by the Ld PCIT but not found acceptable and the assessment order was set aside to the file of the AO with a direction to pass a fresh assessment order in accordance with law in respect of matters discussed in the impugned order after giving due opportunity to the assessee.

5. Against the said findings and the directions of the Ld. Pr. CIT, the assessee is in appeal before us.

6. During the course of hearing, the Id AR submitted that the assessee is engaged in the business of trading of goods. The goods are sold to the members of the co-operative society on credit. The assessee is engaged in the said business since long and has been filing the return of income for the said business since many years. The case of the assessee was selected for limited scrutiny on the issues of "deductions under chapter VIA" and "Investment/advances/loans". During the assessment proceedings, multiple questionnaires were issued wherein, relevant details were asked. In this regard, it was submitted that a questionnaire u/s 142(1) of the Act dated 25.02.2019 was issued to the assessee. In response to the said notice, the assessee filed a detailed reply dated 19.03.2019. Thereafter, the assessee filed another reply to the said notice vide its letter dated 16.04.2019. In the said reply, in point 4, the assessee has duly justified its claim of deduction u/s 80P of the Act. Thereafter, another detailed questionnaire u/s 142(1) of the Act dated 29.03.2019 has been issued to the assessee, wherein, a specific inquiry w.r.t. the deduction under Chapter VI-A was raised. The assessee has filed a specific detailed reply dated 14.11.2019 for its justification for claiming deduction u/s 80P of the Act. In the said reply, the assessee has duly explained the justification for claiming deduction u/s 80P of the Act. It was submitted that the assessee thus filed detailed replies against the said questionnaires and the Ld. AO after considering all the replies of the assessee and after due verification of facts and circumstances of the case of the assessee passed the assessment order u/s 143(3) of the Act dated 26.11.2019. It was accordingly submitted that the AO has applied his independent mind while concluding the assessment and only then, the claim of deduction under Section 80P and the returned income of the assessee has been accepted.

7. It was submitted that the proceedings u/s 263 of the Act have therefore been initiated merely on the basis of difference of opinion and a mere difference of opinion cannot be taken as a ground to hold the order passed by the AO as erroneous and prejudicial to the revenue. Reliance in this regard has been placed on various authorities wherein, it has been held that the action of Id PCIT u/s 263 of the Act is bad in law where the Ld. AO has applied his mind during the course of assessment proceedings and has taken a possible view in the matter.

8. It was further submitted that there is a proper and due application of mind by the AO and the same is evident from the assessment order itself where at para 3, the AO has recorded his findings as under:

"The assessee society filed copy of audit report in form no. 3CA. Necessary details, evidences and explanations as called for were filed by the assessee from time to time. The assessee society has claimed deduction u/s 80P of the I.T. Act, 1961. On the basis of the documents submitted by the assessee society during the course of assessment proceedings, the deduction claimed by the assessee u/s 80P of the Income Tax Act, 1961 has been verified. Likewise, details of investment and loans, copy of share certificates and copy of term/ fixed deposits receipts filed by the assessee have been test checked. After necessary verification of the reply filed income of the assessee is assessed at Rs. 1,22,980/-."

9. It was further submitted that clause (b) of explanation 1 to section 263 of the Act duly explains the meaning of "Record", wherein, it has been clearly mentioned that all records relating to any proceeding under this Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. In this regard, it was submitted that the assessee society has duly filed a detailed reply to the audit objection vide letter dated 25.05.2021. The copy of the same is placed in the paper book at page no. 53-56. Consequently, the said reply of the assessee dated 25.05.2021 forms part of the record. It was submitted that the issue as mentioned in the Show Cause Notice dated 09.02.2022 has been already answered by the assessee in the said reply dated 25.05.2021 as against the audit

objection. In the said reply the assessee has distinguished the facts of the case of the assessee as against the judgment of Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society vs. ITO (2010) 188 taxman 282 and has duly explained as to how the case of the assessee is different from that of the above said judgment.

10. On the merits of the case, it was further submitted that the assessee is a cooperative society which is registered under The Co-operative Societies Act. The main business of the assessee is to provide facility of selling goods on credit to its members. It was submitted that the nature of business of assessee is not of providing credit facilities in the nature of banking. The assessee has deposited these funds to meet any emergent needs of the members of the society. In other words, this amount has been parked in banks to provide loan/ goods on credit to members only. It is pertinent to mention here that the assessee is a cooperative society and not a cooperative bank. The same is evident from the copy of the registration certificate issued by the Registrar as placed in the paper book at page no. 18. Furthermore, the copy of the bye-laws of the assessee society is also attached in the paper book at page no. 19-38. And, in the bye laws, it is duly mentioned that the assessee society can accept deposits as well as lend monies to its members. And, to meet any eventuality and urgent requirements of funds, the assessee is required to maintain certain liquid funds. The funds have been parked in the bank to meet any unforeseen contingency like members withdrawing their fixed deposits and claiming immediate maturity of their deposits. It was further submitted that the assessee is also governed u/s 63 of the Multi State Cooperative Societies Act, 2002, which obliges every Multi-State Cooperative Society to transfer annually an amount of not less than 36% (aggregate) of its profits to the reserve fund. The obligation on part of the assessee is statutorily imposed has to be performed by the assessee, in the absence of which it is not possible to carry on its business. Thus, the income arising out of such investment is also attributable to the activities of the society.

Moreover, the income earned by the society on such deposits has been applied for the activities as per the aims and objectives of the society and the Ld. AO has looked into the application of interest income.

11. It was further submitted that the Ld. PCIT has relied upon the judgment of Hon'ble Supreme Court in the case of *M/s Totgars Coop Sales / Society Ltd*, which is not applicable in the case of the Assessee. In the case of *Totgars*, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds in the hands of pure Co-operative Credit Societies and the ratio was applicable to co-operative sale societies only. The assessee in *Totgars* case carried on activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and (iii) that the surplus had arisen emphatically from marketing of agricultural produces. Moreover, the Hon'ble Supreme Court has not made the full disallowance of whole interest income earned from the deposits made by the appellant with nationalized banks but the disallowance was restricted only to the extent of interest income earned by the appellant from deposits with nationalized banks against the availability of surplus funds in the shape of *Asami A/c* and *Purchase A/c* meaning thereby that the Hon'ble Supreme Court has apparently held that income earned by the assessee from any asset represented by availability of funds against Capital, reserve fund, other funds, profits, deposits, loans, interest payable, other liabilities and expenditure is a business income. Thus to that extent the findings of the Hon'ble Supreme Court in the *Totgar's* case (*supra*) are in the favor of the assessee whereas, in the case of assessee, there are no surplus funds as such.

12. Further, reliance was placed on the judgment of Hon'ble ITAT Ahmadabad Bench in *Jafari Momin Vikas Co-op Credit Society Ltd., vs. ITO* [ITA No.1491/Ahd/2012 for A.Y. 2009-10], wherein it has been rightly held that ratio laid down by the Hon'ble Supreme Court in the case of *Totgars Co-op Sale*

Society Ltd (supra) cannot be applied to the facts of the appellant credit society and accordingly deduction u/s 80P was allowed against interest income from deposits with nationalized banks. In the said case, it has been held that the Appellant which is not a co-operative bank but its nature of activity is of accepting deposits from the members and lending to its members and to meet eventuality which was required to maintain the liquidity funds and these liquidity funds used to be invested in short term deposits and interest income earned on such short term deposits were held to be income from activities of co-op. society and not to be taxed u/s 56 of the Act. It was submitted that in the case of assessee, the assessee has deposited the funds only to meet any eventuality and urgent requirements of funds. The funds have been parked in the bank to meet any unforeseen contingency like members withdrawing their fixed deposits and claiming immediate maturity of their deposits. Moreover, the assessee was not carrying on any separate business for earning such interest income. Income so derived was amount of profits and gains of business attributable to activity of providing credit facilities to its members by a co-operative society and liable to be deducted from gross total income u/s 80P of the Act. It was accordingly submitted that the action of Ld. PCIT by invoking section 263 of the Act by setting aside the original assessment order is uncalled for and in view of the same, the order of the AO should be sustained and the appeal of the assessee be allowed.

13. Per contra, the Id CIT/DR drawn our reference to the show-cause dated 07.02.2022 issued by the Id PCIT and the contents thereof read as under:

"2.1 From perusal of assessment record, it is noted that during the assessment proceedings the funds/amounts not required immediately for business purposes have been invested by the assessee with Andhra Bank in the shape of FDRs/Time Deposits and had earned interest regularly on the investments. As per Certificate issued by the Andhra Bank which is placed on record, during the period 01.04.2016 to-31.03.2017, the assessee has received interest on FDR accounts to the extent of Rs. 20,52,165/- as per details given below:-

Sr. No.	Term deposits account No.	Amount of interest
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		received
1.	18420100013001 (KTDGQ)	751983
2.	18420100013889(KTDGQ)	630467
3.	184720100013913(KTDGQ)	628317
4.	174720100016257(KTDGO)	37258
5.	184720100016266 (KTDGO)	4140
		20,52,165/-

2.2 Thus, the interest of Rs. 20,52,165/- received by the assessee from Andhra bank on FDRs/Term Deposits is assessable under the head "Income from other sources" under section 56 of the Income Tax Act, 1961 whereas the assessee has accounted for this interest income under the head income from business/profession and claimed wrong deduction u/s 80P of the Income Tax Act, 1961. The Hon'ble Supreme Court in the case of Totgars Co-operative sale Society Vs. ITO(2010) 188 Taxman 282 held that interest regularly earned on the funds which are not required immediately for business purposes, such interest income is taxable under section 56 under the head "income from other sources" and is not eligible for deduction under section 80P of the Income Tax Act, 1961.

2.3 Further, a perusal of interest certificate issued by the Andhra Bank reveals that the assessee has received interest of Rs. 3,03,013/- from saving bank account No. 184710100009716. This amount of interest is also not eligible for deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 and the AO has allowed the deduction without making / necessary enquiries in the matter.

2.4 Apart from above, it is noticed from the Profit and Loss account for the financial year 2016-17 relevant to assessment year 2017-18:-

Sr. No.	Head of Income	Amount of income credited
1.	Interest loan against FDRs	127923
2.	Interest	12537
3.	Misc. Income	3634
4.	Interest Loan Emp.	44346
5.	Rent from Atta Chakki	192600
6.	Rent from Agri. Implements	34500
	Total	4,15,540/-

The income earned by the assessee society from above said sources, is not eligible from deduction u/s 80P(2)(a)(i) to vii) of the Income Tax Act, 1961 but the same are eligible for deduction 80P(2)(c)(ii) of the Income Tax Act, 1961 to the extent of Rs. 50,000/- in total. No enquiries regarding the allowability of deduction of Rs. 4,15,540/- have been made by the AO but allowed the deduction in routine manner."

14. Further, our reference was drawn to the findings of the Id PCIT and the contents thereof read as under:

"4. I have carefully considered the submissions made by the assessee. The order dated 26.11.2019 vide which the returned income was accepted by the AO is not tenable and further the arguments given by the assessee counsel are also not acceptable. The Hon'ble Supreme Court in the case of M/s Totgars Co-operative Sales Society Ltd. has clearly laid down that the interest on such deposits would come in the category of income from other sources and such interest income would be taxable u/s 56 of the Act, 1961. The assessee has stated that this decision is not applicable to the fact of this case. However, this contention is factually and legally incorrect. The bare fact is that the assessee has earned interests in FDRs and saving bank account and from commercial banks and Hon'ble Supreme Court has clearly held that this is to be taxed u/s 56 of I.T.Act 1961. Since, this is not business income but income from other sources, deduction u/s 80P of this is not allowable. The AO failed to look into this aspect of the case and reduced the deduction accordingly. Nothing specific has been stated by the assessee in respect of deduction allowable on other income of Rs. 4155407-as per details given in Para 2.4 of Notice u/s 263 of I.T.Act, 1961. It has only been stated that no disallowance is called for. The incomes do not fall into the regular business of provide banking and credit facilities to its members and by the assessee society and accordingly the deduction out of this is allowable u/s 80P(2)(c)(ii) of the Act to the extent of Rs. 50,000/-. The AO failed to look into the aspect of the case also.

From the above, it is evident that the assessment order was passed without making inquiries or verification. The A.O. did not enquire/verify about the complete details and documentary evidences of allowability of deduction under section 80P (2)(d) in respect of interest earned from surplus funds deposited in banks

5. Under the aforesaid circumstances, the order of the A.O. is erroneous as the AO did not enquire/verify about the complete details and documentary evidences of allowability of deduction under section 80P also is prejudicial to the interest of the revenue being escaped for taxation.

5.1 Detailed and deep enquiries were required to be made on the issue discussed above before accepting claim of the assessee. In this regard, it is worthwhile to refer to provisions of Explanation 2 to Section 263(1) of the Income Tax Act, 1961 according to which an order passed by the A.O. shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue for various reasons including the fact that if in the opinion of Principal Commissioner or Commissioner the order is passed without making any enquiry or verification which should have been done and also includes the order which is passed allowing any relief without enquired into the claim.

5.2 Reliance is placed on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd. Vs. CIT dated 10.02.2000 which upheld order u/s 263 of the Income Tax Act, 1961 in a case where the A.O. passed assessment order without application of mind.

5.3 It has been held in the case of *Jai Commercial Co. Ltd. v. Joint CIT (2000) 66 TTJ (Del-Trib) 731*, that section 263 is to be invoked for the purpose of setting right distortions and prejudice to the interest of the revenue. Under section 263 the Commissioner does have the power to set aside the assessment order and restore the matter for a fresh assessment if he is satisfied that further enquiry is necessary. In the case of *Express Newspapers (P) Ltd. v. CIT (2002) 255 ITR 137*

(Mad), it was held that the Commissioner's power under section 263 is not to be regarded arbitrary if substantial prejudice to the revenue is involved in view of detection of concealed income in respect of capital gain. The ITAT held in the case of *Desai Brothers Ltd. v. Dy. CIT (1998) 66 ITD 203 (Pune- Trib.)* that it is well established that where the A.O. fails to make the necessary enquiries which he is legally required to make and decide the issue without making such inquiries, then the order of the A.O. would be erroneous in law.

5.4 Further it has also been held in the case of *Gee Vee Enterprises v. Addl. CIT & Ors. (1975) 99 ITR 375 (Del.)* that an order can be regarded as erroneous when either it does not decide a point and record a finding on an issue which ought to have been done or decides it wrongly. The word 'erroneous' in the section includes cases, where there has been a failure to make necessary inquiries. The Patna HC in *CIT v. Pushpa Devi (1987) 164 ITR 639 (Pat)*, held that if the procedure adopted by the A.O. brings in lesser revenue than some other procedure, the order would be prejudicial to the revenue. It has been held in the case of *Lajja Wati Singhal, Smt. V. CIT (1997) 226 ITR 527 (All)* that on failure of Assessing Officer to make enquiry as expected, Commissioner was justified in invoking provisions of section 263 because order passed as such by Assessing Officer was erroneous as well as prejudicial to the interest of the revenue. Similar view has been taken by the Hon'ble Madras High Court in the case of *K.A. Ramswamy Chettiar & Anr Vs. CIT 220 ITR 657 (Mad.)*.

Moreover, the facts of the case are squarely covered by Explanation 2 of Sec.263, which is inserted w.e.f. 01.06.2015. It is as under: -

1. The order is passed without making inquiries or verification which should have been made.
2. The order is passed allowing any relief without inquiring into the claim.
3. The order has not been made in accordance with any order, direction or instruction issued by the board u/s 119 or
4. The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional high court or Supreme Court in the case of the assessee or any other person.

6. Hence, keeping in view the above discussed facts, figures of the case and lapses on the part of the A.O., I hold the assessment order dated 26.11.2019 for the A.Y. 2017-18 in the case of the assessee is erroneous as well as prejudicial to the interest of the revenue and therefore set aside the order to the file of the A.O. for passing a fresh order in accordance with law in respect of the issue discussed above and also raised in show cause notice u/s 263(1) of the Act, after giving sufficient opportunity of hearing to the assessee."

15. We have heard the rival submissions and perused the material available on record. The limited dispute relates to claim of deduction under Section 80P(2)(a)(i) of the Act in respect of interest income accrued/received on fixed deposits and saving bank account maintained with Andhra Bank, which is a scheduled commercial bank. The Id PCIT has relied upon the decision of the

Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd (*Supra*) while setting aside the assessment order. During the course of hearing, the Id AR has submitted that the said decision doesn't apply in the facts of the present case. Further, during the course of hearing, it was brought to the notice of both the parties that the decision of the Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd has since been considered by the Hon'ble Punjab and Haryana High Court in case of CIT Vs. Punjab State Cooperative Federation of Housing Building Societies Ltd [2011] 11 taxmann.com 448 and CIT vs Punjab State Cooperative Agricultural Development bank Limited [2016] 76 taxmann.com 307 and both the parties were heard in this regard.

16. In case of **CIT Vs. Punjab State Cooperative Federation of Housing Building Societies Ltd** (*Supra*), the question for consideration before the Hon'ble High Court was whether the Tribunal was right in holding that interest income from commercial banks, being attributable to business activity of the assessee qualifies for deduction u/s 80P(2)(a)(i) of the Act ignoring the fact that direct source of income is not the loans advanced to members of the society and it is only the interest income from commercial banks in form of fixed deposits and saving bank accounts. Referring to the decision of the Hon'ble Supreme Court in case of case of Totgars Co-operative Sale Society Ltd (*Supra*), it was held that since the judgment of the Tribunal was prior to the judgment of the Hon'ble Supreme Court, the Tribunal did not have the advantage of the said judgment and the matter was decided in favour of the Revenue. We therefore find that the Hon'ble Punjab and Haryana High Court following the decision of the Hon'ble Supreme Court which was also rendered in the context of section 80P(2)(a)(i) held that interest income from commercial banks was not eligible for claim of deduction under section 80P(2)(a)(i) of the Act.

17. Following the aforesaid decision, in the subsequent decision in case of **CIT vs Punjab State Cooperative Agricultural Development bank Limited** (*Supra*), the

Hon'ble Punjab and Haryana High Court has reiterated the same position and has held that the assessee society engaged in the business of providing credit facilities to its members would not be eligible for deduction u/s 80(P)(2)(a)(i) of the Act an interest earned on reserve funds and call deposits placed with banks and the relevant findings read as under:

23. *The assessee earned interest income of about Rs.3.99 crores on the investment of its reserve funds. The AO disallowed the claim on the basis that the interest was not earned on account of providing credit facilities to the assessee's members but was earned on surplus funds kept by the assessee in banks to earn income. The CIT(A) allowed the claim on the ground that interest invested out of reserve funds is to be treated as arising on account of the activity attributable to the assessee's business of providing credit facilities to its members. The Tribunal dealt with the term "attributable" in Section 80P(2)(a)(7) and held that the income may be said to be incidental and in proximity to the business of the assessee of providing credit facilities to its members. The Tribunal relied upon its earlier judgment including the judgment of the Special Bench of the Tribunal. The Tribunal rejected the department's contention that the surplus funds had been invested not for providing further credit to their members but to maximize profits for utilization in other areas.*

24. *The assessee also earned interest income of about Rs.5.84 crores from call deposits made with various banks. This income was also earned by the assessee placing its surplus funds as deposit with banks for short terms with a view to ensure that the funds did not remain idle. The AO declined this claim also on the ground that interest was not earned from the business of providing credit facilities to the assessee's members. The CIT(A), however, allowed the claim. The Tribunal upheld the decision holding that such interest was attributable to the business of providing credit facilities to the assessee's members.*

25. *MRS. Dhugga submitted that after the decision of the Tribunal dated 25.03.2009. the Supreme Court delivered the judgment in Totgar's Co-operative Sale Society Ltd. v. ITO [2010J 3 SCC 223. She submitted that the judgment covers the case in favour of the Revenue. In that case, the assessee was also a Cooperative Credit Society which provided credit facilities to its members and also marketed the agricultural produce of its members. The society had surplus funds which it invested in short term deposits with banks and in Government securities on interest. The question before the Supreme Court was whether such interest income would qualify for deduction as business income under section 80P(2)(a)(7) of the Act. The Court was only concerned with interest income on short term bank deposits and securities. Paragraphs 15, 16, 17, 18, 20 and 21 of the judgment read as under:—*

15. At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80-P(2)(a)(7) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. The assessee(s) markets the produce of its members and

wholesale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question before us is—whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under Section 28 of the Act? In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under Section 56 of the Act, as rightly held by the assessing officer.

16. In this connection, we may analyse Section 80-P of the Act. This section comes in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain incomes". The headnote to Section 80-P indicates that the said section deals with deductions in respect of income of cooperative societies. Section 80-P(1), inter alia, states that where the gross total income of a cooperative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee Society. An income, which is attributable to any of the specified activities in Section 80-P(2) of the Act, would be eligible for deduction. The word "income" has been defined under Section 2(24)(z) of the Act to include profits and gains. This sub-section is an inclusive provision. Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in Section 80-P(2) of the Act.

17. In the present case, as stated above, the assessee Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the Society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80-P(2)(a) (1) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment".

18. Further, as stated above, the assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits /securities. Such an amount, which was retained by the assessee Society, was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80-P(2)(a)(iii) of the Act or in Section 80-P(2) (a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the assessing officer was right in taxing the interest income, indicated above, under Section 56 of the Act.

20. A number of judgments were cited on behalf of the assessee(s) in support of its contention that the source was irrelevant while construing the provisions of Section 80-P of the Act. We find no merit because all the judgments cited were cases relating to cooperative banks and the assessee Society is not carrying on banking business. We are confining this judgment to the facts of the present case. To say that the source of income is not relevant for deciding the applicability of Section 80-P of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80-P(2)(a) of the Act.

21. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. In this particular case, the evidence shows that the assessee Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other income" which has been rightly taxed by the Department under Section 56 of the Act.'

26. The judgment cannot be restricted to cases where the amount invested was the sale proceeds of the produce of an assessee's members marketed by the assessee. The judgment applies to funds not immediately required for business purposes. Funds not immediately required for business purpose include the amounts received towards the sale price of the produce. However, it is not such funds alone that can be said to be not immediately required for business purposes. An assessee such as the respondent may have funds from other sources which are not immediately required for business purpose as well. They would include advances from other entities for the purpose of the assessee in turn using the same for its business of providing credit facilities to its members. If such funds instead of being advanced to the assessee's members are invested with banks the income from such investments equally cannot be said to be attributable to the assessee's business of providing credit facilities to its members. Thus, the income in the present case is not from providing credit facilities to the assessee's members but from the investment with non-members including commercial banks.

27. The judgment of a Division Bench of this Court dated 10.05.2011 in *CIT v. Punjab State Co-operative Federation of Housing Building Societies Ltd.*, (ITA-643-2010) supports this view. In that case also, the assessee was a Cooperative Federation and claimed a deduction under the same section. The Tribunal held that the interest income was incidental to the business of the assessee of providing credit facilities to its members. In that appeal, the following question of law were raised and the Division Bench answered the same as follows:—

"Whether on the facts and in the circumstances of the case and in law the order of the Hon'ble Tribunal is perverse in holding that interest income from commercial banks being attributable to the business activity of the assessee, qualifies for deduction u/s 80P(2) (a)(i) of the Act, ignoring the facts that direct source of income is not the loans advanced to the members of the society and it is only the interest income from commercial banks in the form of fixed deposits and saving banks accounts?"

"4. Plea on behalf of the revenue is that interest received by the assessee from commercial banks was not covered by Section 80P(2)(a)(i). It has nothing to do with the interest income on the loan advanced to the members. Reliance has been placed on the judgment of the Hon'ble Supreme Court in *The Totgars Cooperative Sale Society Ltd. v. I.T.O.*, 2010 (35) DTR 25 holding that interest on bank deposits or Government securities derived by a Cooperative Society could not be attributed to the activities of the Society of providing various facilities to its members and was taxable under Section 56 being income from other sources. It appears that since the judgment of the Tribunal is prior to the judgment of the Hon'ble Supreme Court relied upon on behalf of the revenue, the Tribunal did not have advantage of the law laid down therein. The matter is, thus, covered in favour of revenue by the judgment of Hon'ble Supreme Court. Contrary view of the Tribunal cannot be sustained.

5. In view of above, following the judgment of the Hon'ble Supreme Court in *The Totgars Cooperative Sale Society Ltd.* case {supra}, we decide the question in favour of the revenue. The appeal is allowed."

28. By an order dated 03.09.2012, the Supreme Court granted leave to appeal against this judgment in *Petition(s) for Special Leave to Appeal (Civil) No(s). 22745/2011* but declined to grant any stay. We are bound by this judgment. It is not open to us to refuse to follow it on the ground that it has not considered the judgment of the Supreme Court in its correct perspective. We are, in any event, in respectful agreement with the interpretation of the Division Bench of *Totgar's* case.

29. Our view is also supported by a judgment of the Gujarat High Court in the case of *State Bank of India (SBI)*. CIT [2016] 142 DTR (Guj.). (The name of the appellant in the reported case is incorrectly shown as *State Bank of India (SBI)*. Even the website of the Gujarat High Court indicates the wrong name in the title. Through the Gujarat High Court, we verified that in the original proceedings the name of the appellant is correctly shown as "*State bank of India Employees Co-op. Credit & Supply Soc. Ltd., Main Branch, Bhadra, Ahmedabad.*")

One of the questions in that case was "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that interest income of Rs. 16,14,579/- on deposits placed with SBI was exempt under s. 80P(2)(a)(i) of the IT Act?" In that case, the appellant was a Cooperative Society registered under the Gujarat Cooperative Societies Act, 1961 and had as its object the acceptance of deposits from salaried persons of the State Bank of India with a view to encourage thrift of providing credit facilities. The appellant earned interest income from the State Bank of India. It contended that interest income was business income and was exempt under Section 80P(2)(a)(z). The CIT in proceedings under Section 263 rejected the contention. The Tribunal was of the view that both the deposits were made in banks so that the funds are not kept idle. The motive for making the deposit cannot change the character of the interest income earned on deposits made to one arising from the business of providing credit facilities to the assessee's members. The Division Bench of the Gujarat High Court referred inter alia to the judgments referred to by Mr. Bansal before us. The Division Bench dealt with Section 80P(2)(a)(i) and the judgment of the Supreme Court in *Totgar's Sale Co-operative Sale Society Ltd.* case (supra) and held as follows:—

'12. ...Thus, in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members, what is deductible under section 80P of the Act is the whole of the amount of profits and gains of business attributable to any one or more such activities. The Supreme Court in Totgars Co-operative Sale Society (supra) has, while giving a precise meaning to the words "profits and gains of business" mentioned in section 80P (2) of the Act, observed that the assessee in that case regularly invested funds not immediately required for business purposes and was of the view that interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". It was held that such interest income cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce to its members. The court further held that the words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. The court observed that in that particular case, the evidence showed that the assessee-society earned interest on funds which were not required for business purpose at the given point of time. Therefore, in the facts and circumstances of the case, the court was of the view that, such interest income falls in the category of "Other income" which had rightly been taxed by the t under section 56 of the Act.

13. In the opinion of this court, in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall in any of the categories mentioned under section 80P(2)(a) of the Act. In the case of Totgars Co-operative Sale Society (supra), as rightly submitted by the learned counsel for the respondent, the court was dealing with two kinds of activities: interest income earned from the amount retained from the amount payable to the members from whom produce was bought and which was invested in short-term deposits/securities; and the interest derived from the surplus funds that the assessee therein invested in short-term deposits with the Government securities. This is further clear when one peruses the decision of the Karnataka High Court from which the matter travelled to the Supreme Court wherein it was the case of the assessee that it was carrying on the business of providing credit facilities to its members and therefore, the appellant-society being an assessee engaged in providing credit facilities to its members, the interest received on deposits in business and securities is attributable to the business of the assessee as its job is to provide credit facilities to its members and marketing the agricultural products of its members. This court is, therefore, of the view that the above decision is not restricted only to the investments made by the assessee therein from the retained amount which was payable to its members but also in respect of funds not immediately required for business purposes. The Supreme Court has held that interest on such investments, cannot fall within the meaning of the expression "profits and gains of business" and that such interest income cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. The court has held that when the assessee society provides credit facilities to its members, it earns interest income. The interest which accrues on funds not immediately required by the assessee for its business purposes

and which has been invested in specified securities as "investment" are ineligible for deduction under section 80P(2)(a)(i) of the Act. For the above reasons, this court respectfully does not agree with the view taken by the Karnataka High Court in *Tumkur Merchants Souharda Credit Cooperative Ltd. v. Income Tax Officer Ward-V, Tumkur* {supra} that the decision of the Supreme Court in *Totgars Co-operative Sale Society* {supra} is restricted to the sale consideration received from marketing agricultural produce of its members which was retained in many cases and invested in short term deposit/security and that the said decision was confined to the facts of the said case and did not lay down any law.

14. Thus, in the light of the principles enunciated by the Supreme Court in *Totgars Co-operative Sale Society* (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act

15. On behalf of the appellant, reliance has been placed upon bye- law 7 of its Bye-laws, which as translated into English reads thus:

"When the funds of the society are not in use, the same shall be invested or kept in deposit in accordance with the provisions of section 71 of the Co-operative Societies Act." The objects of the society as stated in the Bye-laws are:

(1) to encourage thrift, self-sufficiency and co-operation amongst members of the society;

(2) to inculcate the concept of savings amongst the members;

(3) to give credit to the members at reasonable rates when the occasion arises; and

(4) to carry out all activities for achieving the objects of the society. Thus, the objects of the appellant society do not contemplate investment of surplus funds received from its members. Insofar as Bye-law 7 is concerned, it may be noted that the same falls under the heading "fund" and not under the objects of the society. Thus, the object of the society is to provide credit facilities to its members and it is the income earned out of the credit advanced to the members that is allowable as a deduction under section 80P(2)(a)(i) of the Act. The learned counsel for the appellant has relied upon various decisions wherein the assessee was a banking company. In the opinion of this court, since the appellant admittedly does not carry on any banking business, the said decisions would not be applicable in the facts of the present case.' (Emphasis supplied)

30. We are entirely in agreement with the judgment of the Gujarat High Court especially the observation that the judgment of the Supreme Court is not restricted only to the investments made by the assessee from the amounts retained by it which were payable to its members and that the judgment also applies in respect of other funds not immediately required for business purposes.

18. We therefore find that the matter is covered by the decision of the Hon'ble Supreme Court as well as the decision of the Hon'ble Jurisdictional High Court and where the proposition so laid down is not followed by the AO, the assessment order so passed is clearly erroneous in so far as prejudicial to the interest of the Revenue. In view of the same, we uphold the order of the Id PCIT u/s 263 and the grounds of appeal no. 1, 2, 3 & 5 of the assessee's appeal are dismissed.

19. Ground no. 4 was not pressed during the course of hearing and the same is dismissed as not pressed.

20. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 10/06/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date:

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar