

।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "SMC" :: PUNE

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

आयकर अपील सं. / ITA No.904/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2016-17

Junnar Taluka Audyogic Sahakari Vasahat Ltd., A.P.Kandali Narayangaon, NashikRoad, Tal: Junnar Kandali, Pune- 410504. PAN: AABAJ1277E	V s	The Income Tax Officer, Ward-10(5), Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	None.
Revenue by	Shri Rajesh Gawali – Addl.CIT(DR)
Date of hearing	20/06/2024
Date of pronouncement	24/06/2024

**आदेश/ ORDER**

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

This is an appeal filed by the Assessee against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], u/sec.250 of the Act dated 13.03.2024. The Assessee has raised following grounds of appeal :

***“ON ISSUE OF ADDITION OF RS.29,96,106/- U/S 80P(2)(d) OF INCOME TAX ACT :***

*1. On the facts and in the circumstances of the case and in law the learned Commissioner of Appeals erred in sustaining addition of*

*Rs.29,96,106/- u/s.80P(2)(d) of the Income Tax Act being interest received from Pune District co-operative Bank 6s Sharad Sahakari Bank Ltd. contrary to the multiple decisions of the ITAT Pune Bench on the said issue allowing the deduction u/s 80P(2)(d) and the very recent decision in ITA No.1365/PUN/2023 in the case Kolhapur District Central Co-op. Bank Kanista Sevakanchi Sahakar Pat Sanstha Ltd.*

*2. On the facts and in the circumstances of the case and in law the learned Commissioner of Appeals erred in sustaining addition of Rs.29,96,106/- u/s 80P(2)(d) of the Income Tax Act being interest received from Pune District co-operative Bank & Sharad Sahakari Bank Ltd. contrary to its own decision passed in favour of the appellants own case for A.Y.2017- 18 allowing the deduction u/s 80P(2)(d) vide DIN & Order No : ITBA/NFAC/S/250/2022-23/1043503201(1) dated 21/06/2022 in Appeal No. CIT (A), Pune-6/10557/2019-20.*

*Appellant craves leave to add, amend, delete or alter all or any of the grounds of appeal at any time during the appellate proceedings.”*

**Submission of ld.AR:**

2. Appealed called twice. At the time of hearing, no one appeared on behalf of the assessee. The hearing notice was issued on 01.05.2024.

**Submission of ld.DR :**

3. The ld.Departmental Revenue for the Revenue relied on the order of Assessing Officer and ld.CIT(A).

**Findings &Analysis :**

4. We have heard ld.DR and perused the records. As per the assessment order, assessee had e-filed Return of Income for

A.Y.2016-17 and claimed deduction u/sec.80P of Rs.18,11,657/-.

It is mentioned in the assessment order, assessee is registered under Co-operative Societies Act, vide Registration No.PNA/ANR/RSI/SR/3518/1987-88dated 19.05.1987. It was observed by the Assessing Officer(AO) that the assessee has earned following interest income :

- |     |                             |                |
|-----|-----------------------------|----------------|
| i)  | PDCC Bank, Manchar          | Rs.19,83,606/- |
| ii) | Sahakari Bank Ltd., Manchar | Rs.10,12,500/- |

4.1 The AO disallowed assessee's claim of deduction u/sec.80P for the above referred interest income of Rs.29,96,106/- and made addition of Rs.29,96,106/-. Aggrieved by the same, assessee filed appeal before the Id.CIT(A). The Id.CIT(A) upheld the addition made by the AO.

4.2 Aggrieved by the same, assessee filed appeal before this Tribunal.

4.3 The Hon'ble High Court of Andhra Pradesh and Telangana in the case of **Vavveru Co-operative Rural Bank Ltd. [2017] 396 ITR 371** analysed 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.*

4.4 Thus, Hon’ble High Court of AP &TS held that Interest Income earned by investing Income derived from Business and Profession by a Co-Operative Society was eligible for deduction u/s 80P(2)(a) of the Act.

5. 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.

6. The ITAT Pune in ITA No.1365/PUN/2023 in the case of Kolhapur District Central Co.op Bank Kanista Sevakanchi Sahakar Pat Sanstha Ltd., has allowed the interest income as under :

*“Quote.7.....I am of the considered opinion that even the interest income earned by cooperative society on deposits made out of surplus funds with cooperative banks as*

*well as schedule bank qualifies for deduction both under the provisions of section 80P(2)(a)(i) and section 80P(2)(d) of the Act, therefore, the reasoning given by the lower authorities on this issue cannot be accepted. Therefore, I direct the Assessing Officer to allow deduction u/s 80P(2)(a)(i) and 80P(2)(d) in respect of interest income earned from cooperative bank/scheduled bank. Thus, the ground of appeal filed by the assessee stands allowed.”*  
Unquote.

7. No direct decision on Hon’ble Jurisdictional High Court has been brought to our notice. In these facts and circumstances of the case, respectfully following the Hon’ble Andhra Pradesh & Telangana High Court, Madras High Court and ITAT Pune Bench(supra), we direct the Assessing Officer to delete the addition on interest income. Accordingly, grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open Court on 24<sup>th</sup> June, 2024.

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

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

पुणे / Pune; दिनांक / Dated : 24<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, "एस एम सी" बेंच,  
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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