

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 89/Mum/2024 (A.Y. 2020-21)

NPC Employees Cooperative Credit Society Limited Vikram Sarabhai Bhavan, South Wing 6 th Floor, Trombay Mumbai-400 094.	Vs.	ITO Ward 27(2)(1) Vashi Railway Station, 4 th floor Vashi, Navi Mumbai-400 703.
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PAN : AABAN0550E
(Appellant)

(Respondent)

Assessee by	Shri Sushant N. Alme
Department by	Shri R.R. Makwana
Date of Hearing	05.06.2024
Date of Pronouncement	27.06.2024

ORDER

1. This appeal is filed by NPC employees cooperative credit society Ltd Mumbai (the assessee/appellant) for assessment year 2020 – 2021 against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) dated 29/11/2023 wherein the appeal filed by the assessee against the assessment order passed by the faceless appeal Centre on 19/9/2022 under section 143 (3) of the income tax act, 1961 was dismissed.
2. The only dispute in this appeal is that assessee has invested surplus amount in fixed deposits with state bank of India and earned interest of ₹ 1,176,084/-. The assessee claimed deduction under section 80 (P) (2) of the act which was denied to the assessee and is contested in this appeal.
3. The brief facts of the case shows that assessee is a co-operative society registered under the Maharashtra State cooperative societies act, 1961

collecting deposits from members under various scheme and major source of income is on account of interest on loan to its members and interest from fixed deposits. The assessee filed its return of income on 12/2/2021 wherein the gross total income of assessee was computed at ₹ 13,854,411/- and entire amount has been claimed as a deduction under section 80 P (2) (a) (i) of the act. The case of the assessee was picked up for scrutiny and several opportunities were granted, no response was received from the assessee and therefore the learned assessing officer passed an assessment order under section 143 (3) read with section 144B of the income tax act on 19/9/2022 computing the total income of the assessee at ₹ 1,176,084/- against the returned income of rupees nil.

4. The reasons for disallowance of deduction under section 80 P the act is that the interest income is received from the bank, therefore assessee is not eligible for deduction of interest income under section 80 P (2) (a) of the act.
5. Assessee aggrieved with the same referred in appeal before the learned CIT – A. Assessee contested that in view of the decision of honourable Supreme Court in case of PCIT V Annasaheb Patil mathadi Kamgar Sahkari Pathpedi Limited in civil appeal number 8719/2022 assessee is eligible for the deduction. The learned CIT – A contention stating that assessee is salary earners employees cooperative credit society of the employees of nuclear Power Corporation of India. It has received interest from bank, which is not eligible for deduction under section 80 P (2) of the act. Accordingly appeal of the assessee was dismissed
6. Before us assessee is contesting the above appellate order raising several ground of appeal. Assessee is contested that for assessment year 2013 – 14 under section 143 (3) disallowance was made and assessee was found by the learned CIT – A as eligible for deduction under section 80 P (2) (a) of the act. Similar is the case for assessment year 2014 – 15 wherein the claim of the assessee was held to be

allowable by the learned CIT – A. He further relied upon the decision of the coordinate bench in ITA number 643/PU/2024 dated 14/05/2024 for assessment year 2018 – 19 wherein the deduction under section 80 P (2) (d) such deduction is allowable. Therefore the claim of the assessee is that deduction is allowable to the assessee even in the otherwise under section 80 P (2) (d) of the act.

7. The learned departmental representative vehemently supported the orders of the lower authority and stated that the provisions of section 80 P(2)(a) does not provide for such deduction wherein members credit cooperative society on is income from fixed deposit placed with a scheduled bank like state bank of India and others.
8. We have carefully considered the rival contention and perused the orders of the lower authorities. The brief facts of the case shows that assessee is an employee's cooperative society of the nuclear Power Corporation Ltd and on the fixed deposits placed by it with the state bank of India has on interest income. Whether such interest income earned by the assessee is eligible for deduction under section 80 P (2) (a) (i) of the act. Even if the same is not allowable as deduction under that section whether it is allowable as deduction under another section 80 P (2) (d) of the act.
9. On plain reading of the provisions of section 80 P (2) (a) (i) the assessee is eligible for deduction of the whole of the sum attributable to carrying on business of credit to its members. Therefore only such income which has been attributable to business from its member is eligible for deduction under this section.
10. Identical issue has been decided by the honourable Karnataka High Court in case of Tumkur Merchants Souharda Credit Cooperative Ltd. [2015] 55 taxmann.com 447 (Karnataka) wherein the interest accrued in a sum of Rs. 1,77,305/- is from the deposits made by the assessee in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members considering the

decision of the honourable Supreme Court in case of Toatagarh , it has been held as under:

"6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs. 1,77,305/- represents the interest earned from short-term deposits and from savings bank account. The assessee is a Cooperative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard, it is necessary to notice the relevant provision of law i.e., Section 80P(2)(a)(i):

"Deduction in respect of income of co-operative societies:

80P (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:

a)		in the case of co-operative society engaged in—
	(i)	carrying on the business of banking or providing credit facilities to its members, or

(ii) to
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the whole of the amount of profits and gains of business attributable to any one or more of such activities."

7. The word 'attributable' used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of *Cambay Electric Supply Industrial Co. Ltd. v. CIT* [\[1978\] 113 ITR 84 \(SC\)](#) as under:

'As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature, has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this

connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section-80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.'

8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. 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 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable

to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of *CIT v. Andhra Pradesh State co-operative Bank Ltd.*, [2011] 200 Taxman 220/12 taxmann.com 66. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:"

11. Thus the issue is squarely covered in favour of the assessee by the above decision and therefore respectfully following the same we hold that assessee is entitled to deduction under section 80 P (2) (a)(i) of the act on interest income received by the assessee from state bank of India of funds which are not immediately required for its utilisation in case of assessee being a members credit cooperative society.
12. In the result the solitary ground of appeal of the assessee is allowed.

Order pronounced in the open court on 27th June , 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai :27.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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