

**।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.196/PUN/2024**  
**निर्धारण वर्ष / Assessment Year:2017-18**

Shri Ganesh Urban Cooperative Credit Society Limited, Main Market, Sarafa Galli, Sillod, Aurangabad – 431112. PAN: AAGAS6006D	V s	The Income Tax Officer, Ward-1(1), Aurangabad.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None
Revenue by	Shri Arvind Desai – DR
Date of hearing	13/06/2024
Date of pronouncement	21/06/2024

**आदेश/ ORDER**

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

This appeal filed by the assessee against the order of  
ld.Commissioner of Income Tax(Appeals)[NFAC] under section  
250 of the Act, dated 05.12.2023 for the A.Y.2017-18. The  
assessee has raised the following grounds of appeal :

*“Being aggrieved by the Order of Ld. CIT (A), Income Tax Department,  
NFAC u/s. 250 of the IT Act, 1961 vide Order  
No.ITBA/NFAC/S/250/2023-24/1058480083(1), dated 05/12/2023. The  
said Order is passed by dismissing appeal filed by the appellant society  
against the order passed by the Assessing Officer Ward 1(4),  
Aurangabad, [now Ward 1(1), Aurangabad] hence the Appellant society*

*has filed this appeal on the following grounds:*

- 1) *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred by confirming the disallowance of the deduction u/s.80(P)(2)(a)(i) of the IT Act, amounting to Rs. 63,24,489/- by the Ld. AO on the ground that Interest earned on Investment made in other Cooperative societies/scheduled bank by the appellant society is liable to be taxed directly under the Head Income from Profits and Gains from Business/Profession.*
- 2) *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the unreasonable addition made by Ld. AO of Rs. 98,69,221/- u/s. 69A of the IT Act, 1961 on account of cash deposited by appellant society during the demonetization period and has ignored the submission made by appellant.*
- 3) *The Ld. CIT (A) has erred on facts and in law in ignoring the application for Production of Additional Evidence before CIT (A) under Rule 46A of the Income Tax Rules, 1962 filed by the appellant society dated 04/12/2023.*
- 4) *The Ld. CIT (A) erred in confirming the interest charged u/s 234B and 234C of the IT Act, 1961 as charged by the A.O.*
- 5) *The Appellant Society craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”*

**Brief facts of the case :**

2. Assessee is a Co-operative Credit Society engaged in the business of providing credit facilities to the members by accepting deposits from members. Assessee is registered under the Maharashtra Co-operatives Act, 1960. Assessee e-filed Return of Income on 25.10.2017 claiming deduction u/sec.80P(2)(a)(i) of Rs.63,24,489/-. The assessee's case was selected for scrutiny. Assessing Officer(AO) passed assessment order u/sec.143(3) on 29.12.2019. In the assessment order, assessee's claim for

deduction u/sec.80P(2)(a) was rejected following decision of the Hon'ble Karnataka High Court in Totagars Co-operative Sales Society 395 ITR 611. During the assessment proceedings, AO observed that assessee had made cash deposits during the demonetization period. AO added the amount of Rs.98,69,221/- u/sec.69A of the Act. Aggrieved by the assessment order, assessee filed appeal before the Id.CIT(A). Ld.CIT(A) upheld the assessment order.

**Submission of Id.AR :**

3. At the outset of hearing, no one appeared on behalf of the assessee. An Adjournment Letter was filed requesting for adjournment of hearing. However, it is observed that on earlier i.e.29.04.2024 also no one had appeared on behalf of assessee.

3.1 However, Assessee has filed written submission. In the written submission the Assessee stated as under :

*“2] During the course of hearing, it was brought to the notice of A.O that appellant 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 providing credit facilities to its members by a co-operative society and hence, it is certainly eligible for deduction from the gross total income under Section 80P(2)(a)(i) of the Act.*

*Further, appellant society has received interest bearing funds/deposits from the members and out of which amounts were kept as FD in the Aurangabad Dist. Central Co-Op. Bank, Chikhali urban Co-Op. Bank;*

*Malkapur Urban Co-Op. Bank and Bank of Maharashtra, as can be seen from the Balance sheet, It is significant to note here that we had utilized OD facilities to provide the loans to our members from these banks, as per requirements.*

*Further, it is an admitted position that, “Appellant society engaged In the business of providing credit facilities to its members and hence, entire income attributable and derived from this activities are entitled for deduction under section 80F(2)(a)(i) of the I T Act. However, the A.O is of the opinion that deduction is only applicable on the income from the business of providing credit facilities from members only and not to the interest received from Co-op Banks and nationalized bank on the said deposit, which were kept from the interest bearing borrowed funds accepted from members.*

*Sir, we were uploaded cash depositors details twice. In our first response sheet we gave details of source of deposit such as name, address, PAN (if any) of members from whom cash is received and same is uploaded on incometaxindiaefiling.gov.in site in the format given by income tax department.....*

*Apart from above during assessment proceedings once again above details are uploaded on income tax portal under e-proceedings on 29.12.2019 on 12.02 noon and same is submitted through hard copy along with bank statements to Ld.AO.*

**Submission of ld.DR :**

4. The ld.Departmental Representative of the Revenue(ld.DR) relied on the order of AO & ld.CIT(A).

**Findings & Analysis :**

5. We have heard ld.DR for the Revenue and perused the records.

**Ground No.1 :**

6. This ground is regarding deduction u/sec.80P(2)(a) of the Act. It is an admitted fact by both the parties that assessee had

earned interest on fixed deposits with Co-operative Banks and a very minimum amount of Rs.42,295/- from Nationalized Banks. Assessee had submitted that as per the by-laws of Maharashtra Co-operative Department, each Co-operative Society has to invest/deposit atleast 30% of total deposits taken from members into other Co-operative Banks. As per Rule 52 of the by-laws, assessee has to maintain cash reserve with Co-operative Bank. The deposits kept with Co-operative Banks was out of the surplus funds available with the assessee. Therefore, assessee submitted that interest earned was part of the business of the assessee.

6.1 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.”*

6.2 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 Assessee is allowed.

**Ground No.2 :**

7. This ground is related to addition of Rs.98,69,221/- u/sec.69A of the Act. The AO observed that this was the amount deposited in bank during the demonetization period. AO alleged that no details were filed by the assessee. However, from the submission of the assessee which is reproduced by the Id.CIT(A)

in his order, it is observed that assessee had uploaded details of the Depositors i.e.name, address and PAN. Assessee had submitted that assessee had received these impugned amounts from members. Once the assessee had submitted details of impugned depositors, the assessee has discharged its onus. Then, the onus shifts to the Revenue. Revenue has not disputed or has not commented about the details of the impugned depositors. The assessee is a cooperative credit society. The impugned money was duly reflected in its books of account.

7.1 Hon'ble Bombay High Court has observed in the case of R.B.N.J. Naidu Vs. CIT (1956) 29 ITR 194 as under :

*Quote, "The broad fact, however, is that the assessee has prima facie made out a case which the taxing authorities have no material or information to rebut. In these circumstances, the source of the receipt should be deemed to be established, and consequently the money was not liable to be treated as the assessee's income merely because he could not explain satisfactorily how his wife made the saving and why she did not deposit it in the bank at any earlier date. In Narayandas Kedarnath v. Commissioner of Income-tax, Central [1952] 22 ITR 18, the assessee firm was held to have discharged its burden when it proved the source of the moneys even though it was unable to explain how the partners got them in their native place. The same reasoning is applicable to the instant case. Our answer to the question is, therefore, in the negative."* Unquote.

In the case under consideration the assessee has prima facia explained the source of the deposits and revenue has not rebutted the same.

7.2 ITAT Pune in the case of Bhagur Urban Credit Co Operative Society Ltd Vs. ITO in ITA No.561/PUN/2022 vide order dated 03/01/2023 has deleted the similar addition.

7.3 In these facts and circumstances of the case, respectfully following the decision of ITAT Pune(supra), we direct the AO delete the addition. Accordingly, Ground No.2 raised by the assessee is allowed.

**Ground No.3, 4 and 5 :**

8. Since we have decided the Ground No.1 and 2 in favour of the assessee, Ground No.3 & 4 become academic in nature. Accordingly, Ground No.3 & 4 are dismissed.

8.1 Ground No.5 is general in nature, does not need any adjudication, accordingly, dismissed.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 21<sup>st</sup> June, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 21<sup>st</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. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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