

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.10/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2018-19)

The Eluru Cooperative House
Mortgage Society Limited,
Eluru.

PAN: AACAT0060G

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Eluru.

(प्रत्यार्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Satyasai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 23/07/2024

: 26/07/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal is filed by the assessee is against the order of the Learned Principal Commissioner of Income Tax-1, Visakhapatnam ["Ld. Pr. CIT"] vide F.No. 263/Pr. CIT-1/2023-24, dated 01/12/2023 arising out of the order passed U/s. 143(3) r.w.s 143(3A) & 143(3B) of the Act, dated 08/04/2021 for the AY 2018-19.

2. Briefly stated the facts of the case are that the assessee, a society, is engaged in giving loans / credit services to its members. The assessee filed its return of income for the AY 2018-19 on 04/10/2018 declaring a total income at Rs. NIL by claiming exemption U/s. 80P of the Act to the tune of Rs. 31,71,473/-. The case was selected for complete scrutiny under e-assessment proceedings scheme, 2019 on the issues viz., (i) investments / advances / loans and (ii) deduction from total income under Chapter-VI-A. On this issue, after considering the material available before him and also on perusal of the submissions made by the assessee, the Ld. AO completed the assessment U/s. 143(3) r.w.s 143(3A) and 143(3B) of the Act on 08/04/2021 accepting the income returned by the assessee. Thereafter, by virtue of the power vested with the Ld. Pr. CIT as per the provisions of section 263 of the Act, the Ld. Pr. CIT called for the assessment record for the AY 2018-19 and same were examined by the Ld. Pr. CIT. On perusal of the assessment record, the Ld. Pr. CIT observed that the interest of Rs. 65,29,869/-earned from the District Central Cooperative Bank allowed by the Ld. AO in the assessment is not an allowable deduction U/s. 80P of the Act. Thus, the Ld. Pr. CIT was of the view that the assessment order passed for the AY 2018-19 U/s.

143(3) r.w.s 144B of the Act is erroneous and prejudicial to the interest of the Revenue and accordingly proposed to revise the assessment U/s. 263 of the Act. Accordingly, the Ld. Pr. CIT issued a show cause notice dated 08/11/2023 and the same was served on the assessee through ITBA portal and also by speed post wherein the assessee was asked to show cause as to why the assessment order U/s. 143(3) r.w.s 143(3A) & 143(3B), dated 8/4/2021 for the AY 2018-19 should not be revised? In response, the assessee submitted the information vide his letter dated 10/11/2023. On examining the assessee's submissions and on perusal of the financials attached with the Audit Report and ITR, the Ld. Pr. CIT observed that the assessee has made investment in District Central Cooperative Bank (DCCB) registered with Reserve Bank of India and an interest of Rs. 65,29,869/- was earned on investment made in the form of fixed deposits during the FY 2017-18. The Ld. Pr. CIT also observed that the provisions of section 80P(2)(d) of the Act states that in respect of any income by way of interest or dividends derived by the Cooperative Society from its investments with any other cooperative society, the whole of such income is exempt. Therefore, the deduction cannot be extended to the interest income earned from the investment in any cooperative bank. In support of his view, the Ld. Pr. CIT

relied on the decision of the Hon'ble Supreme Court in the case of M/s. Totgars Cooperative Sale Society Ltd vs. ITO reported in 322 ITR 283. In conclusion, the Ld. Pr. CIT vide para 11 and 12 of his order has observed as under:

"11. In view of section 80P(2)(d), the interest was not earned from other cooperative societies but earned from the FDs made in DCCB deduction U/s. 80P(2)(d) cannot be extended to the assessee in respect of the interest earned from cooperative bank.

12. For the foregoing reasons, the assessment completed for the AY 2018-19 order U/s. 143(3) r.w.s 143(3A) & 143(3B) dated 08/04/2021 is held erroneous and prejudicial to the interest of the Revenue. Consequently, the Assessing Officer is hereby directed to recomputed the assessee's income for the AY 2018-19 by disallowing the interest income earned from FDs made in District Central Cooperative Bank of Rs. 65,29,869/-."

3. Thus, the Ld. Pr. CIT revised the assessment order dated 8/4/2021 for the AY 2018-19 and passed the order U/s. 263 of the Act dated 01/12/2023. Aggrieved by the order of the Ld. Pr. CIT, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. That under the facts and circumstances of the case the order passed U/s. 263 of the act is contrary to the facts of the case and provisions of law.*
- 2. The Ld. Pr. CIT ought to have known that the orders passed by the Assessing Officer NFAC U/s. 143(3) r.w.s 143(3A) & 143(3B) of the Act is neither erroneous or prejudicial to the interest of the revenue hence the impugned order is liable to be set aside.*
- 3. The Ld. Pr. CIT ought to have known that the AO has rightly allowed deduction U/s. 80P(2) of the Act, pertaining to interest earned from DCC Bank of Rs. 65,29,869/- and it is a settled law that such interest is*

eligible for deduction, therefore any adverse view on this cannot stand the test of judicial scrutiny.

4. *The Ld. Pr. CIT ought to have known that when the AO after considering the relevant facts and provisions of law has allowed deduction U/s. 80P(2) of the Act, hence it was not within the purview of section 263 of the Act to reopen the issue under the guise of alleged prejudice caused to the interest of the Revenue.*
5. *The Ld. Pr. CIT while negating the claim U/s. 80P(2) of the Act as above, drawn support of the Hon'ble Supreme Court in the case of "Totgars Cooperative Society Limited, 322 ITR 283" wherein the facts of the case are entirely different from that of the facts of the case.*
6. *For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that orders passed U/s. 263 of the Act are contrary to the facts of the case and provisions of law therefore the same needs to be quashed in the interest of justice."*

4. The only issue involved in this appeal relates to disallowance of deduction claimed u/s 80P of the Act. At the outset, the Ld.AR submitted that the assessee society, being a cooperative society, makes deposits in its regular course of business and accordingly the deposits were made in District Cooperative Central Bank [in short DCCB] in compliance with the statutory regulation of AP Cooperative Societies Act. The assessee is not having any intention to gain any benefit from other sources. The Ld.AR further submitted that the facts relied on by the Ld. Revenue Authorities in the case of M/s. Totgars Cooperative Sale Society Ltd reported in 322 ITR 283 are entirely different from that of the instant case. The Ld. AR also submitted that as per Para-11 of the judgment in the case of M/s. Totgars Cooperative Sale Society

Ltd (supra) it is clearly mentioned that “*this judgment is confined to the facts of the present case*” and therefore it cannot be applied in the assessee’s case, hence, eligible for deduction u/s 80P of the Act. He, therefore, pleaded to quash the order passed by the Ld. Pr. CIT and allow deduction u/s 80P of the Act.

5. Per contra, the Ld. Departmental Representative submitted that as per the provisions of section 80P(2)(d) of the Act, *any income by way of interest or dividends derived the Co-operative Society from its investments with any other cooperative society is eligible for deduction*. The Ld. DR further submitted that in the present case, assessee derived interest from the funds parked with District Cooperative Central Bank and not from a Cooperative Society and therefore the deduction claimed by the assessee is rightly disallowed by the Ld. Pr. CIT. The Ld. DR further argued that as observed by the Hon’ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd vs. ITO [2010] 322 ITR 283 (SC) the income in respect of which deduction is sought must constitute the operational income and not the other which accrues to the society. Therefore, considering the facts and circumstances of the case, the Ld. Pr. CIT has rightly held that the assessee is not eligible for deduction U/s. 80P of the Act.

The Ld. DR therefore pleaded to uphold the order of the Ld. Pr. CIT.

6. I have heard both the sides and perused the material placed on record as well as the orders of the Ld. Revenue Authorities. Now the question before me is to decide whether the assessee is eligible for deduction u/s 80P with respect to the interest income earned on deposits parked with District Cooperative Central Bank, or not? It is an admitted fact that the assessee has claimed deduction u/s 80P of the Act. The contention of the Ld. Pr. CIT and the Ld. DR is that *any income by way of interest or dividends derived the Co-operative Society from its investments with any other cooperative society is eligible for deduction.*The Ld. Revenue Authorities have also placed relied on the decision of Hon'ble Supreme Court of India in Civil Appeal No.1622 of 2010 in the case of M/s Totgars Cooperative Sale Society Ltd., wherein it was held that "*investment of surplus on hand not immediately required in Short Term deposits and securities by a co-operative society providing credit facilities to members or marketing agriculture produce to member*". However, in the instant case, the facts are distinguishable and hence, in my view, the ratio laid down in the case of M/s Totgars Cooperative Sale Society Ltd.(supra) shall not be applied to the instant case. On similar set of facts, coordinate Bench of this Tribunal in the case of Kakateeya

Mutually Aided Thrift and Credit Co-op Society held in favour of the assessee vide I.T.A.No.107/Viz/2022, CO No.07/Viz/2022 dated 30.08.2023. For the sake of reference, relevant paragraphs of the order are extracted as under:

“8. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. It is an admitted fact that the assessee has claimed deduction U/s. 80P(2)(a)(i) of the Act on the interest accrued and received by the assessee U/s. 80P(2)(a)(i) of the Act. The contention of the Ld. AO is that as per section 80P(2)(d), the assessee is eligible to claim deduction U/s. 80P(2)(a)(i) of the Act only when it is invested with any other cooperative society. The Ld. AO also placed heavy reliance in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) while disallowing the claim made by the assessee U/s. 80P(2)(a)(i) of the Act. We have perused the ratio laid down by the Hon’ble Apex Court in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) and found that in that case the society is engaged in marketing of the agricultural produce by its members as per section 80P(2)(a)(iii) while carrying on the business of banking or providing credit facilities to its members U/s. 80P(2)(a)(i) of the Act. In that case, the Society retained the sale proceeds which was otherwise payable to its members from whom the produce was bought which was invested in short term deposits / securities. It is also found that the amount payable to its members realized from sale proceeds of the agricultural produce of its members was retained by the society and was shown as liability on the balance sheet. Therefore, the Hon’ble Apex Court has held that interest earned from retaining the amount payable to its members shall not be considered as income from other sources. However, in the instant case the facts are distinguishable and hence in our view the ratio laid down in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) shall not be applied. Section 80P(1) of the Act entitles the Cooperative Societies to deduct the sums specified in sub-section (2) from its gross total income while computing the total income. Sub-section (2) of section 80P, in the sub-clause (a) allows deduction to cooperative society which is engaged in the following activities:

- “(a) in the case of a co-operative society engaged in—*
- (i) carrying on the business of banking or providing credit facilities to its members, or*
 - (ii) a cottage industry, or*
 - [(iii) the marketing of agricultural produce grown by its*

- members, or]
- (iv) *the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or*
- (v) *the processing, without the aid of power, of the agricultural produce of its members, [or*
the collective disposal of the labour of its members, or
- [(vi)
- (vii) *fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,]*
the whole of the amount of profits and gains of business attributable to any one or more of such activities:”

9. Further, we also extract below the provisions of section 80P2(d) and (e) of the Act for reference:

- “(d) *in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;*
- (e) *in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;”*

10. From the plain reading of section 80P(2)(a)(i) of the Act, the whole of amount of profits and gains of the business attributable to one or more of such activities shall be allowed as a deduction. Further, section 80P(2)(d) and 80P(2)(e) of the Act also allows similar deductions. It is clear that the deductions available under clauses (a) to (e) of section 80P(2) are activity based whereas clauses (d) and (e) are investment based. The distinction between clauses (a) and clauses (d) & (e) on the other hand is that the benefit under clause (a) is restricted to only into those activities of a cooperative society enlisted in sub-clause (a) whereas the benefit of clauses (d) & (e) are available to all cooperative societies without any restriction on the activities carried on by them. In simple terms, the benefit under clause (a) will be limited only to the profits & gains of the business attributable to any one or more of such activities. But in case, if the cooperative society has an income not attributable to any one or more of such activities listed in sub-clauses (i) to (vii) of clause-(a), the same may go out of the purview of clause (a) but still the cooperative society may claim the benefit of clause (d) or (e) as per the conditions laid down therein. In the instant case, the original source of investments made by the assessee in

Nationalized Banks is admittedly the income of the assessee derived from the activities listed in sub-clauses (i) to (vii) of clause (a). The character of such income must be last, especially when the statute uses the expression "attributable to" and not any one of the expressions viz., "derived from" or "directly attributable to". The Hon'ble jurisdictional High Court of Andhra Pradesh and Telangana in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another [2017] 396 ITR 0371 (AP) in para 34 has discussed about the decision of the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd (supra) and distinguished the facts while deciding the case. For the sake of brevity, we extract the relevant para 34 of the judgment of the Hon'ble Andhra Pradesh and Telangana High Court herein below:

“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.”*

11. *Further, the Hon'ble jurisdictional High Court of Andhra Pradesh and Telangana in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another (supra) held that the cooperative society is eligible for deduction U/s. 80P(2)(a)(i) of the Act on the interest income received from investment in banks. The Hon'ble High Court in paras 35 to 37 of its judgment held as under:*

35. *But, as rightly contended by the learned senior counsel for the petitioners, the investment made by the petitioners in fixed deposits in nationalized 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."*

12. *Further, the Coordinate Bench of Hyderabad in Tirumala Tirupati Devasthanams Employees Coop. Credit Society vs. ITO also affirmed the same view by following the decision of the Hon'ble AP High Court in the case of Vavveru Cooperative Rural Bank Ltd (supra). In the instant case also, the assessee has invested surplus funds out of the activities carried out as per the provisions of section 80P(2)(a) of the Act. We therefore by respectfully following the jurisdictional High Court are of the view that interest income should be allowed as deduction U/s. 80P(2)(a)(i) of the Act and thereby the Ld. CIT(A)-NFAC has rightly held by deleting the addition made by the Ld. AO and hence we find no infirmity in the order of the Ld. CIT(A)-NFAC.*

13. *In the result, appeal of the Revenue is dismissed."*

7. Respectfully following the decision of the Hon'ble High Court of Andhra Pradesh in the case of Vavveru Cooperative Rural Bank Ltd.(supra) and the ratio laid down by the Coordinate Bench of the Tribunal in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society Limited (supra), I am inclined to quash the order passed by the Ld. Pr. CIT and allow the appeal of the assessee.

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

Pronounced in the open Court on 26th July, 2024.

Sd/-
(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Dated :26/07/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee-
2. राजस्व/The Revenue -
3. The Principal Commissioner of Income Tax,
- 4.आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam