



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL
MEMBER AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.450 & 451/PUN/2024
निर्धारण वर्ष / Assessment Years:2017-18 &2018-19

The Income Tax Officer, Pune.	V s	Vishwakarma Sarkshan Kamgar Sahakari Patsanstha Maryadit, 185, Vishwakarma Bhuwan, Shaniwar Peth, Pune – 411030 PAN: AAAJV0492M
Appellant/ Revenue		Respondent / Assessee

Cross Objection Nos.23 & 24/PUN/2024
(arising out of ITA Nos.450 & 451/PUN/2024)

निर्धारणवर्ष / Assessment Years: 2017-18 & 2018-19

Vishwakarma Sarkshan Kamgar Sahakari Patsanstha Maryadit, 185, Vishwakarma Bhuwan, Shaniwar Peth, Pune – 411030 PAN: AAAJV0492M	V s	The Income Tax Officer, Pune.
Appellant/ Revenue		Respondent / Assessee

Assessee by	Shri S.N.Puranikh – AR
Revenue by	Shri Sourabh Nayak – Addl.CIT(DR)
Date of hearing	07/08/2024
Date of pronouncement	09/08/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

The Revenue has filed two appeals for two separate Assessment
Years i.e.2017-18 and 2018-19 against two separate orders of



ITA Nos.450 & 451/PUN/2024 and C.O.Nos.23 & 24/PUN/2024
Vishwakarma Sarkshan Kamgar Sahakari Patsanstha Maryadit

Id.Commissioner of Income-tax(Appeals)[NFAC], both dated 06.12.2023 passed under section 250 of the Income Tax Act, 1961. The assessee has filed two cross objection in C.O.No.23/PUN/2024 and C.O.No.24/PUN/2024 to support order of the Id.CIT(A)[NFAC]. The Revenue in ITA No.450/PUN/2024 for A.Y.2017-18 has raised the following grounds of appeal :

“A. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction on income earned by the assessee from investment in banks and other financial institutions has rendered the provisions of Section 80P(2)(a)(i) nugatory as the said section of the Act allows deduction to a cooperative Society engaged in carrying on business of banking or providing credit facilities to its members ?

B. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in holding that the interest income of Rs.1,47,38,052/- earned by the assessee Cooperative society from fixed deposits kept with various cooperative banks was allowable as deduction u/s 80P(2)(a)(i) of the IT Act, ignoring the decision of Honble High Court of Gujarat in case of State Bank of India vs CIT 389 ITR 578 (Guj) dated 25.04.2016?

C. On the facts and circumstances of the case and in law Ld. CIT (A) erred in holding that the interest income of Rs.1,47,38,052/- earned by the assessee Cooperative Society from fixed deposits kept with various cooperative banks was allowable as deduction u/s 80P(2)(d) of the IT Act, ignoring the decision of Honble High Court of Karnataka in case of PCIT Vs. The Totgars Co-operative Sale Society (2017) 395 ITR 611 dated 16.06.2017?

D. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in relying upon the decision of the. Co-ordinate Bench of the Tribunal in the case of Jankalyan Nagri Sahakari Pat Sanshta Ltd. and ignoring the decision of the Hon'ble Gujarat High Court in the case of State Bank of India Vs CIT 389 ITR 578 (GUJ), Wherein it has been held that interest income on deposits kept with banks was not eligible for deduction u/s 80P(2)(a)(i) of the Act?”



1.1 The Revenue in ITA No.451/PUN/2024 for A.Y.2018-19 has raised the following grounds of appeal :

“A. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing deduction on income earned by the assessee from investment in banks and other financial institutions has rendered the provisions of Section 80P(2)(a)(i) nugatory as the said section of the Act allows deduction to a cooperative Society engaged in carrying on business of banking or providing credit facilities to its members ?

B. On the facts and circumstances of the case and in law, Ld.CIT(A) erred in holding that the interest income of Rs.1,61,20,972/- earned by the assessee Cooperative society from fixed deposits kept with various cooperative banks was allowable as deduction u/s 80P(2)(a)(i) of the IT Act, ignoring the decision of Hon’ble High Court of Gujarat in case of State Bank of India vs CIT 389 ITR 578 (Guj) dated 25.04.2016?

C. On the facts and circumstances of the case and in law Ld.CIT (A) erred in holding that the interest income of Rs.1,61,20,972/- earned by the assessee Cooperative Society from fixed deposits kept with various cooperative banks was allowable as deduction u/s 80P(2)(d) of the IT Act, ignoring the decision of Hon’ble High Court of Karnataka in case of PCIT Vs. The Totgars Co-operative Sale Society (2017) 395 ITR 611 dated 16.06.2017?

D. On the facts and circumstances of the case and in law, Ld.CIT(A) erred in relying upon the decision of the Co-ordinate Bench of the Tribunal in the case of Jankalyan Nagri Sahakari Pat Sanshta Ltd. and ignoring the decision of the Hon’ble Gujarat High Court in the case of State Bank of India Vs CIT 389 ITR 578 (GUJ), Wherein it has been held that interest income on deposits kept with banks was not eligible for deduction u/s 80P(2)(a)(i) of the Act?”

1.2 The assessee in Cross Objection Appeal No.23/PUN/2024 has raised the following grounds of appeal :

“1. Cross Objector Objects Grounds No.3 &4 raised by Department in respect of allowability of deduction u/s. 80P(2)(d) in respect of Interest of Rs.24,08,264/- on Deposits with Co-operative Bank. & Dividend of Rs.50,050/-Cross Objector prays to Confirm the Claim of Deduction u/s. 80P(2)(d) following Consistent Pune ITAT Decision.



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2. *Cross Objector Objects CIT(A) decision on refusing to grant deduction u/s. 80P(2)(l)(a) in respect of Interest of Rs.40,483/- on Deposits/Accounts with non- Cooperative Banks.*
3. *Cross Objector prays for Confirmation of CIT(A) Order in respect of Allowing deduction u/s. 80P(2)(l)(a) of Rs.1,47,38,050/-*
4. *Cross Objector prays to add, alter, amend any ground of Cross Objection and/or to withdraw the ground of Cross Objection.”*

Submission of Id.AR :

2. The Id.Authorised Representative(Id.AR) of the assessee filed a paper book. The Id.AR submitted that assessee is registered under Maharashtra Co-op Societies Act, 1960 on 09/11/1995. The area of operation of the society is confined to employees of Defense Institute located in Pune district, who are eligible to become member of the society. This is Employee Credit Co-operative Society. The other class of members is Nominal Member. The Nominal Members as per sanctioned bylaws is the person retired from defense organizations and spouse of such person. The nominal member is not eligible for any loan. The nominal member is also not eligible for any benefit including voting rights. They are not shareholders of the society. Nominal Members are not eligible for any type of loan from the society. The main objective of the society is to give loan to its regular members at reasonable rate. The society earns its profit by



providing credit facilities to its regular members. No loan has been provided to Nominal Members. During the year, assessee had filed e-return of income on 06.10.2017 declaring total income at Rs.Nil. Assessee claimed deduction u/sec.80P(2)(a) of the Act. The Assessing Officer(AO) in the assessment order has denied assessee's claim of deduction u/sec.80P(2)(a) of the Act on the ground that assessee has nominal members and assessee has accepted deposits from nominal members. Assessee has given interest on the deposits to nominal members. Therefore, the AO held that assessee has violated provisions of Maharashtra Co-operative Societies Act. However, ld.AO has erred as assessee has not violated any provision of the Maharashtra Co-operative Societies Act. The Maharashtra Co-operative Societies Act does not prohibit accepting deposits from nominal members, therefore, AO has erred. Ld.CIT(A) has discussed the Maharashtra Co-operative Societies Act and applicable case laws and allowed assessee's appeal. Therefore, ld.CIT(A)'s order may kindly be sustained.

2.1 The ld.AR for the Assessee relied on the following case laws:

- *Nashik Road Nagari Sahakari Patsanstha Ltd. (B Bench) Pune 93 ITR (Trib.) 44 Pune*



*ITA Nos.450 & 451/PUN/2024 and C.O.Nos.23 & 24/PUN/2024
Vishwakarma Sarkshan Kamgar Sahakari Patsanstha Maryadit*

- *Mavilaavi Service Co-operative Bank Ltd. 431 ITR 161 (SC)*
- *Sarvodav Gramin Bigarsheti Sahakari Patsanstha Maryadit ITA No.1606/PUN/2018 & Others*
- *Jalgaon District Central Co-operative Bank Ltd.*
- *Jankalyan Nagari Sahakari Patsanstha Maryadit 24 Taxmann.com 127 Pune*
- *Nivrutiseth Gramin Bigarsheti Sahakari Patsanstha Maryadit ITA No.1562/PUN/2018 dated 15/03/2022.*
- *Nirmiti Nagari Sahakari Patsanstha Maryadit ITA No. 442/PUN/2022 dated 26/10/2022*
- *Ratnadeep Sahakari Nagari Patsanstha Maryadit ITA 388/PUN/2022 dated 26/10/2022.*

Submission of Id.DR :

3. The Id.Departmental Representative(Id.DR) for the Revenue vehemently supported the assessment order. Ld.DR submitted that assessee was having 125 nominal members. Assessee has accepted deposits from these nominal members. Therefore, assessee is not eligible for deduction u/sec.80P(2)(a) of the Act.

ITA No.450/PUN/2024 for A.Y.2017-18

Findings & Analysis:

4. We have heard both the parties and perused the record. Assessee had filed Return of Income on 06.10.2017. In the Return of Income assessee had claimed deduction u/sec.80P(2)(a) of the Act. Assessee is registered under Maharashtra Co-operative



Societies Act, 1960 vide Certificate dated 09.11.1995 which is at page no.22 and 23 of the paper book. Admittedly, assessee is a Co-operative Credit Society, its members are mainly members of defense institutes located in Pune District. On perusal of the assessment order, it is observed that Assessing Officer has denied assessee's claim of deduction u/sec.80P(2)(a) of the Act, only on one ground that assessee was having nominal members and assessee has accepted fixed deposits from nominal members. Therefore, AO held that as per section 80P(2)(a), profits and gains of business attributable to the activity of providing credit facility to members only is allowed, whereas in this case, assessee has obtained deposits from nominal members.

5. In this case, it is an admitted fact that there are nominal members. However, assessee has not provided any loan facility to these nominal members. Section 19 of the Maharashtra Co-operative Societies Act is reproduced as under :

“(19) (a) “member” means a person joining in an application for the registration of a Co-operative society which is subsequently registered, or a person duly admitted to membership of a society after registration and includes a nominal, associate or sympathizer member;”



5.1 Thus, as per Maharashtra Co-operative Societies Act, the members include nominal members. We have perused the by-laws of the assessee's society which have been filed in the paper book and observe that there is provision of nominal members in the by-laws. Therefore, combined reading of Maharashtra Co-operative Societies Act, read with by-laws of the assessee society, the assessee society is entitled for admission of nominal members. Therefore, there is no violation of Maharashtra Co-operative Societies Act as held by Assessing Officer.

5.2 Section 43 of Maharashtra Co-operative Societies Act is reproduced as under :

“43. Restrictions on borrowings.— (1) A society shall receive deposits and loans from members and other persons, only to such extent and under such conditions, as may be prescribed, or specified by the by-laws of the society.”

5.3 Thus, Maharashtra Co-operative Societies Act permits society to receive deposits from members and other persons. It means there is no bar to receive deposits from nominal members. Hence, assessee has not violated Maharashtra Co-operative Societies Act by accepting deposits from nominal members. We are aware that there has been an amendment in 2019, however, said



amendment does not affect the deposits from nominal members.

The amended section is as under :

“24. (1) Notwithstanding anything contained in section 22, a society may admit any person as a 4[nominal or associate member]. (2) A nominal member 5 * shall not be entitled to any share in any form whatsoever in the profits or assets of the society as such member. A nominal 5* * member shall ordinarily not have any of the privileges and rights of a member, but such a member, or an associate member, may, subject to the provisions of sub-section (8) of section 27, have such privileges and rights and be subject to such liabilities, of a member, as may be specified in the bylaws of the society.”*

5.4 Thus, assessee has not violated provisions of Maharashtra Co-operative Societies Act by admitting nominal members, therefore, AO has erred in rejecting assessee's claim of deduction u/sec.80P(2)(a) of the Act on the ground that assessee has violated provisions of Maharashtra Co-operative Societies Act and hence assessee's income is not attributable to the activity of providing credit facility to its members. It is observed that assessee provided credit facility exclusively to its members. Also, as per Maharashtra Co-operative Societies Act, members include nominal members.



5.5 The Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd.Vs. Commissioner of Income Tax, Calicut 431 ITR 1 (SC) dated 12.01.2021 held as under :

“21. An analysis of this judgment would show that the question of law that was reflected in paragraph 5 of the judgment was answered in favour of the assessee. The following propositions may be culled out from the judgment:(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4).

.....

“We now turn to the proper interpretation of section 80P of the Income-tax Act. Firstly, the marginal note to section 80P which reads "Deduction in respect of income of co-operative societies" is important, in that it indicates the general "drift" of the provision. This was so held by this Court in K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 as follows:

"9. This interpretation of sub-section (2) is strongly supported by the marginal note to Section 52 which reads "Consideration for transfer in cases of understatement". It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the



section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins, M.R. in Bushel v. Hammond [1904] 2 KB 563 to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it prima facie furnishes some clue as to the meaning and purpose of the section (vide Bengal Immunity Company Limited v. State of Bihar [1955] 2 SCR 603)."

28. Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.

29. Thirdly, the gross total income must include income that is referred to in sub-section (2).

30. Fourthly, sub-clause (2)(a)(i) with which we are directly concerned, then speaks of a co-operative society being "engaged in" carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be "engaged in" the providing credit facilities to its members.

.....
"Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one."

5.6 Thus, applying the law laid down by the Hon'ble Supreme Court (supra) to the present case, it is observed that assessee is a Co-operative Credit Society, registered under Maharashtra Co-operative Societies Act, 1960. The assessee has provided credit

facilities to its members. Assessee has claimed profit earned from providing credit facility to its members, exempt u/sec.80P(2)(a)(i) of the Act. Thus, all the conditions are fulfilled by assessee. Therefore, respectfully the Hon'ble Supreme Court(supra), we hold that assessee is eligible for deduction u/sec.80P(2)(a)(i) of the Act.

6. Revenue has raised Ground No.2 that Id.CIT(A) erred in allowing interest income earned from fixed deposits kept with various co-operative banks ignoring the decision of Hon'ble Gujarat High Court in the case of State Bank of India Vs. CIT 389 ITR 578 (Guj) dated 25.04.2016.

6.1 The Ground No.2 raised by Revenue is not emanating from the assessment order. Revenue cannot improve the assessment order at this stage. Be it as it may be, it is observed that assessee has earned interest income from fixed deposits kept with Pune District Central Co-operative Bank Ltd, (PDCCBL), the said details are available at page 55 of the paper book filed by the assessee. We have already mentioned that the AO in the assessment order has not discussed this issue and has not analysed these facts. However, the decision of Hon'ble Gujarat High Court



in the case State Bank of India(supra) is distinguishable on facts as the issue in that case was pertaining to Section 263 of the Act.

6.2 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.

6.3 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/sec.80P(2)(a) of the Act. The ld.DR for the Revenue has not brought to our notice any contrary decision of Hon'ble Jurisdictional High Court. Therefore, as per rule of precedence, we are duty bound to follow the decision of Hon'ble Andhra Pradesh and Telangana High Court. The Hon'ble Bombay High Court in



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Vishwakarma Sarkshan Kamgar Sahakari Patsanstha Maryadit

the case of Smt.Godavaridevi Saraf Vs. CIT, 113 ITR 589(Bom) has held that in the absence of any contrary decision of Hon'ble Jurisdictional High Court, decision of Non-Jurisdictional High Court is binding on the Tribunal.

6.4 Therefore, respectfully following the Hon'ble Supreme Court and Hon'ble Andhra Pradesh and Telangana High Court(supra), we hold that assessee is eligible for deduction u/sec.80P(2)(a)(i) of the Act. Accordingly, Ground No.1 to 4 raised by the Revenue are dismissed.

ITA No.451/PUN/2024 for A.Y.2018-19

7. Since we have already discussed the issue at length and the facts of ITA No.450/PUN/2024 are absolutely similar to the facts of ITA No.451/PUN/2024, therefore, our decision in ITA No.450/PUN/2024 shall apply *mutatis mutandis* to this appeal also, accordingly, grounds of appeal raised by the Revenue are dismissed.

8. In the result, appeal of the Revenue in ITA No.451/PUN/2024 is dismissed.

C.O.Nos.23 & 24/PUN/2024 (Assessee)



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9. Since we have already decided the appeals of Revenue in ITA Nos.450 & 451/PUN/2024, consequently, these two cross objection appeals raised by the assessee are allowed for elaborate reasons discussed in ITA No.450/PUN/2024 above.

10. In the result, two Cross Objections appeals in C.O.Nos.23 & 24/PUN/2024 are allowed.

11. To sum up, two appeals of the Revenue are dismissed and two cross appeals of the assessee are allowed.

Order pronounced in the open Court on 9th August, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 9th August, 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, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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