



।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 No.206/PUN/2024
निर्धारण वर्ष / Assessment Year:2018-19

Shree Ganesh Nagari Sahakari Patsanstha Maryadit, Block No.672/673/888/889, Fruit Section, Gultekadi Market yard, Pune – 411037. PAN: AAAAS5493C	Vs	The Income Tax Officer, Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Pramod Shingte – 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:

This is an appeal filed by Assessee against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], passed under section 250 r.w.s 154 of the Income tax Act, dated 05.02.2024 for the A.Y.2018-19. The assessee has raised the following grounds of appeal :

“1. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in rejecting deduction under section



80P(2)(a)(i) for a sum of Rs.55,21,056/- being entire book profit of appellant society without appreciating the fact that earning of interest is an integral part of society's business and appellant prays for allowing such deduction.

2. Without prejudice to above ground, learned Assessing Officer erred in not allowing consequential deduction of current year loss, which would have arisen after taking out the interest figure of Rs.55,21,056/- from the Profit and loss Account, which has resulted into excess tax liability.

3. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in treating the interest received from investment as income from other sources by rejecting appellant's contention that said interest income is integral part of business activity and your appellant prays for cancellation of Assessing officer's action.

4. Without prejudice to above ground on the facts and circumstances of the case and in the law Learned Assessing Officer erred in not allowing the deduction under section 80P(2)(d) on interest income received from other co-operative society. Your appellants pray for allowing of the same.

5. Without prejudice to above ground, On the facts and circumstances of the case and in the law Learned Assessing Officer erred in treating entire interest income as interest income received from other co-operative society or bank without allowing deduction on account of interest/administrative expenses. Your appellant prays for such deduction.

Your appellant craves for to add, alter, amend, modify, delete all above or any grounds of appeal before or during the course of hearing in the



interest of natural justice.”

Submission of Id.AR :

2. The Id.Authorised Representative(Id.AR) of the assessee filed a paper book and filed written submissions as under:

“Appellant is a credit co-operative society engaged in the business of providing credit facilities to its members. For Assessment Year 2018-19 appellant has filed its return of income on 04/10/2018 by disclosing the Gross total Income of Rs. 55,21,056/- and claimed deduction u/s 80P and filed the return of income as NIL, case was taken up for scrutiny. Learned Assessing Officer has passed order u/s 143(3), dated 15/04/2021 wherein he denied the claim of deduction u/s 80P by relying of amended provision of section 80P (4) of IT Act and treated the appellant credit society as bank, without appreciating the fact that appellant society is not entitled to get registration under Banking Regulation act and its affairs are under the direct control of Registrar of Co-operative Societies, Maharashtra state.

Matter was adjudicated before the first appellate authority in faceless manner, and initially Learned CIT(A) passed an order u/s 250, dated 06/09/2023 (Copy enclosed at page no. 07 to 12 of paper book). In this order apparent error was observed as the facts of different assesses were narrated and case was decided accordingly, this being apparent error a rectification application u/s 154, was filed online, (copy enclosed at page no.19 of paper book), in response to such rectification application, Learned CIT(A) passed order u/s 154 r.w.s 250, dated 06/09/2023 and dismissed the appeal, against this order your appellant has preferred the current appeal.



*In this appeal order, Learned CIT(A) in principle has allowed the appellant society's appeal on the issue of non-applicability of section 80P (4) by relying on judgement of **Honorable Supreme Court in case of Pr. CIT Vs. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Limited, (2023) 150taxmann.com 173 (SC)/(2023) 454 ITR 1 (SC).***

Learned CIT(A) further proceeded to disallowed the claim of 80P by relying on the judgement of Hon'ble Supreme Court in the case of M/s Totgar's Co-operative Sale Society Limited Vs. ITO, Karnataka, during the rectification proceeding detailed submission was made by representatives of appellant society which is reproduced in the impugned order on page no. 13 to 25. In the submission it was elaborately explained that jurisdictional tribunal as well as various tribunals in the country has distinguished the ratio of apex court judgement in the case of Totgar's Co-operative Society (supra) and allowed the appeals of credit co-operative societies.

However, Learned CIT(A) has not appreciated the contention of the appellant and dismissed the appellant societies appeal (the relevant discussion is in para 9,10 and 11 on page no. 34 of CIT(A) order), At this stage we also point out that from page 34 from para 02 to page no. 67, is a reproduction of same order which may be ignored.

The issue involved in the appeal, regarding disallowance of deduction u/s.80P, stand covered by various judgement of Hon'ble tribunal including assessee's own case for AY 2020-21, involving the same issue, wherein for the reasons specified in the said order Hon'ble ITAT has allowed appellants appeal, and these reasoning applies mutatis mutandis to the facts of current appeal. The copy of the ITAT order is enclosed at page no 01 to 06 of paper book.



In view of this prayer is made to allow the appeal and oblige.”

Submission of Id.DR :

3. The Id.DR relied on the order of the Assessing Officer(AO).

Findings and Analysis :

4. We have heard both the parties and perused the records.

4.1 We have perused the Return of Income filed by the assessee and it is observed that the Assessee had claimed deduction of Rs.55,21,056/-u/sec.80P(2)(a)(i) of the Act. In the Assessment Order the Assessing Officer held that the Assessee is a Co-operative Bank and hence not eligible for deduction u/sec.80P(4) of the Act. Accordingly, the AO denied the deduction claimed by the assessee. Aggrieved by the Assessment Order, the Assessee filed appeal before the Commissioner of Income Tax(Appeal). The Id.CIT(A) has erroneously reproduced the Assessment Order and submission of another assessee namely ‘Taluk Gopalpur Samabay Krishi Unnayan Samity Limited’ and then held that assessee is not eligible for deduction u/sec.80P(2)(a)(i) of Rs.26,45,981/-. The facts mentioned by the Id.CIT(A) in his orders do not match with the facts mentioned in the Assessment



Order or the facts mentioned in the submission of the assessee. Then the Assessee filed an application for rectification before the CIT(A). The ld.CIT(A) vide his order dated 05/02/2024 passed u/sec.154 r.w.s. 250 of the Act held in paragraph 9.4 that the Assessee is not a Co-Operative Bank but it is a Co-Operative Credit Society. In paragraph 9.4, the ld.CIT(A) held that provisions of Section 80P(4) are not applicable in the case of the assessee. However, then the CIT(A) in his order u/sec.154 r.w.s. 250 in paragraph 9.7 raised the issue whether the Interest earned by the assessee from Co-Operative Banks of Rs.55,21,056/- was eligible for deduction u/sec.80P(2)(a)(i) or 80P(2)(d) of the Act. Then the ld.CIT(A) in the order u/sec.154 r.w.s. 250 held that assessee is not eligible for deduction u/s 80P(2)(d) of the Act.

4.2 Admittedly, the assessee is a Co-Operative Credit Society registered under the Maharashtra Co-Operative Society Act, 1960.

4.3 In this case, the ld.CIT(A) vide order dated 05.02.2024 passed u/sec.154 r.w.s. 250 of the Act has disallowed the Interest earned by the assessee by invoking provision of Section 80P(2)(d) of the Act. In the rectification proceedings, the ld.CIT(A) was



supposed to rectify the mistake apparent from the records. The Mistake in the Order dated 06/09/2023 of Id.CIT(A) was that the submission and Assessment details of another assessee was mentioned in the order dated 06/09/2023. The rectification proceedings were initiated to rectify that mistake. In the Assessment Order dated 15/04/2021 the AO had disallowed assessee's claim only on one ground treating the assessee as Co-Operative Bank. The Id.CIT(A) in the order held that Assessee is not a Co-Operative Bank and hence provisions of Section 80P(4) are not applicable in the case of the Assessee. However, subsequently, the Id.CIT(A) suo-moto invoked the provisions of Section 80P(2)(d) of the Act, which were not invoked in the Assessment Order. In the Rectification proceedings only mistake apparent from records can be rectified. The CIT(A) cannot suo-moto invoke Section 80P(2)(d) of the Act which was not invoked by the AO or in the original Id.CIT(A)'s order. Therefore, the disallowance made by the CIT(A) in the Rectification Order is not sustainable.



4.4 Be it as it may be, in this case the Assessee has earned interest Income from the Fixed Deposits kept with following Co-Operative Banks :

Vishweshwar Sahakari Bank
Pune District Central Co-operative Bank
SuvarnyugSahakari Bank
Sant SopankakaSahakari Bank
Pune Sahakari Bank Ltd
Udyam Vikas Sahakari Bank Ltd

4.5 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.

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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.

4.6 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 said decision of the Hon’ble AP and TS High Court is squarely applicable in the case of the Assessee.

4.7 The issue is covered in favour of the assessee in Assessee’s own case for A.Y.2020-21. In assessee’s own case in ITA No.1269/PUN/2023 for A.Y.2020-21 the ITAT Pune vide order dated 18/03/2024 has held that assessee is eligible for deduction u/sec.80P(2) of the Act for the interest earned from the Co-Operative Banks. The facts are identical for both these years hence it is our duty to follow the earlier decision of the Hon’ble ITAT in



ITA No.621/PUN/2024

Shree Ganesh Nagari Sahakari Patsanstha Maryadit [A]

assessee's own case.No contrary decision has been brought to our notice of the Hon'ble Jurisdictional High Court.

4.8 Therefore, respectfully following the judicial precedents, we hold that income of Rs.55,21,056/- is eligible for deduction u/sec.80P(2)(a)(i) of the Act. Accordingly, grounds of appeal raised by the assessee are allowed.

5. In the result, appeal of the assessee is 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.