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.166/Viz/2024
(निर्धारण वर्ष / Assessment Year: 2018-19)

The Farmers Service Co-operative Limited, Srikakulam. PAN: AABTT4377L	Vs.	Income Tax Officer, Ward-1, Srikakulam.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri I. Kama Sastry, AR
प्रत्यार्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	24/06/2024
घोषणा की तारीख/Date of Pronouncement	:	14/08/2024

O R D E R

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax, National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1057250448(1), dated 20/10/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2018-19.

2. At the outset, it is noticed that there is a delay of 122 days in filing this appeal before the Tribunal. With respect to belated filing of the appeal, the assessee filed petition for condonation of delay along with the affidavit and the relevant paras of the affidavit is extracted herein below for reference:

> *"1.....*
> *2.....*
> 3. *The in the computation sheet accompanying the order the business income of the assessee is taken at Rs. 48,34,258/- as against the income from business before deduction under 80P returned by the assessee of Rs. 48,16,187/-.*
> 4. *That we are not able to file a rectification petition online due to non-availability of the option.*
> 5. *That we have filed an appeal before the Ld. CIT(A), NFAC . in the appeal filed in addition to the ground with respect to disallowance of deduction U/s. 80P(2)(a()(i) we have also raised the ground with respect to the calculation mistake in the income computation.*
> 6. *The Ld. CIT(A), NFAC vide his order dated 20/10/2023 disallowed the claim for deduction under section 80P but remanded the matter back to the jurisdictional Assessing Officer to allow proportionate expenses incurred for earning the income after affording the assessee an opportunity of hearing and after verifying the same with documentary evidence. The Ld. CIT(a) has not decided the issue of mistake of business income in the computation sheet.*
> 7. *The ITO, Ward-1, Srikakulam has not yet passed consequential order giving effect to the directions of the Ld CIT(A), NFAC and we have been waiting for the same to take further course of action.*
> 8. *That when we approached the consultant, we were advised that an appeal shall be filed only against the order of the CIT(A) before the Tribunal.*
> 9. *That in view of our inadvertent belief that appeal has to be filed after receipt of the order of the ITO there is a delay of 122 days in filing the appeal."*

3. On perusal of the explanation given by the assessee with respect to filing of the appeal before the Tribunal beyond the

prescribed time limit, we find that the assessee was prevented by a reasonable and sufficient cause to file the appeal within the stipulated time. Therefore, I hereby condone the delay of 122 days in filing the appeal of the assessee before the Tribunal and proceed to adjudicate the appeal on merits.

4. Briefly stated the facts of the case are that the assessee, The Farmers Service Cooperative Limited, is a primary agricultural Credit Cooperative Society established with the object of providing loans for agricultural purpose to the farmers who are members of the assessee-society as per their needs. For the AY 2018-19 the assessee had filed the return of income U/s. 139(1) of the act declaring an income of Rs. 8,40,080/- after claiming deduction U/s. 80P of the Act of Rs. 48,16,817/-. Subsequently, the case was selected for scrutiny under CASS by the Ld. Income Tax Officer, National e-Assessment Centre, Delhi by issuance of notice U/s. 143(2) dated 23/09/2019 & 29/09/2019. During the assessment proceedings, the assessee was asked to furnish the documentary evidence along with explanations on deductions claimed by the assessee U/s. 80P of the Act vide notices issued U/s. 142(1) from time to time. In response, the assessee has furnished the information as well as the documentary evidence as

called for by the Ld. AO. Thereafter, the Ld. AO issued a show cause notice dated 09/12/2020 wherein the assessee was directed to show cause as to why the deduction claimed by the assessee on interest income earned from Nationalized Bank U/s. 80P should not be disallowed. In response, the assessee had filed a reply refuting Ld. AO's proposal for making addition which is mentioned in the show cause notice and relied on the decision of the Ld. CIT(A) in the appellant's own case for the AY 2014-15. However, the Ld. AO did not consider the submissions of the assessee and passed the assessment order U/s. 143(3) of the Act on 15/02/2021 wherein the Ld. AO disallowed the assessee's claim of deduction U/s. 80P of the Act amounting to Rs. 22,64,026/- against the interest income received on deposits made with Andhra Bank and assessed the total income at Rs. 31,04,866/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A)-NFAC, the assessee submitted that on identical issue, the Ld. CIT(A)-9, Hyderabad vide his order in Order No. 10220/CIT(A)-9, Hyd/2017-18 allowed the assessee's claim of deduction U/s. 80P(2)(a)(i) of the Act for the AY 2014-15. Before the Ld. CIT(A)-NFAC, the assessee also made various submissions along with bye-laws of the society, certification of registration, computation

of income etc. However, the Ld. CIT (A)-NFAC did not consider the submissions and explanations of the assessee and confirmed the disallowance made by the Ld. AO. Further, the Ld. CIT(A)-NFAC also held that the assessee is neither eligible to get benefit of deduction U/s. 80P(2)(a)(i) of the Act nor U/s. 80P(2)(d) except in respect of proportionate cost, administrative and other expenses which are incurred in order to earn such interest income and the accordingly directed the Ld. AO. Thereafter, the Ld. AO, giving effect to the directions of the Ld. CIT(A)-NFAC as well as to rectify the mistake in computation sheet, has not passed the rectification order till the date of filing of the appeal by the assessee before the Tribunal. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

> *"1. The Ld. CIT(A)-NFAC is not justified in confirming the disallowance of Rs. 22,64,026/- made by the AO U/s. 80P(2)(a)(i)".*
>
> *2. The Assessment unit National Faceless Assessment Centre is not justified in taking Rs. 48,34,258/- as business income of the assessee and determining the taxable income of Rs. 56,75,098/-.*
>
> *3. The assessee craves leave to add to, alter modify, delete any of the above grounds of appeal."*

5. 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, make deposits in its regular course of business and accordingly the deposits were made in the sponsor bank viz., Andhra Bank 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.CIT(A)-NFAC and allow deduction u/s 80P of the Act. The Ld. AR also heavily relied on the decision of this Bench in the assessee's own case in ITA No. 310/Viz/2023 (AY: 2020-21), dated 29/02/2024 wherein the Hon'ble Tribunal, under similar set of facts and circumstances, granted relief to the assessee. Therefore, the Ld. AR pleaded the Hon'ble Tribunal may take the same view in the assessee's case for the AY 2018-19 also, which is under consideration.

6. Per contra, the Ld. DR argued that the Ld.CIT(A)-NFAC has rightly upheld the addition made by the Ld. AO as the assessee is not eligible to claim deduction u/s 80P of the Act. The Ld. DR, therefore, pleaded to uphold the order passed by the Ld. CIT(A) -NFAC and dismiss the appeal of the assessee.

7. I have heard both the parties and perused the material placed on record. Now the question before me is to decide whether the assessee is eligible for deduction u/s 80P with respect to the interest earned on deposits with sponsor Bank ie., Andhra Bank, or not? On this very same issue, I have perused the Tribunal's order dated 29/02/2024 (supra) relied on by the Ld. AR in the assessee's own case for the AY 2020-21 in ITA No. 310/Viz/2023 (supra). For the sake of reference, the relevant paras-7 & 8 from the said Tribunal's order (supra) are extracted herein below for immediate reference:

> *"7. I have heard both the parties and perused the material placed on record. Now the question before me is to decide whether the assessee is eligible for deduction u/s 80P with respect to the interest earned on deposits pertaining to reserve fund with sponsor Bank ie., Andhra 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. AO is that interest accrued on Reserve Fund Deposits is not eligible for deduction U/s 80P of the Act. The Ld. Revenue Authorities relied on various case laws to state that income from interest on securities ear marked to reserve fund has been held not eligible for deduction u/s 80P. 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."

8. 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.CIT(A) and allow the appeal of the assessee."

8. From the above, it is evident that the Tribunal has elaborately discussed the identical issue under the similar set of facts and circumstances of the case and concluded that, the assessee is eligible for deduction u/s 80P of the Act. Therefore, respectfully following the

decision of this Bench in the assessee's own case for the AY 2020-21 (supra) as well as based on the principle of consistency, I have no hesitation to come to a conclusion that the orders passed by the Ld. Revenue Authorities are unsustainable in law and hence I am inclined to quash the order passed by the Ld. CIT(A)-NFAC. Accordingly the Grounds raised by the assessee are allowed.

9. In the result, appeal filed by the assessee is allowed.

Pronounced in the open Court of 14th August, 2024.

Sd/-	Sd/-
(एस बालाकृष्णन)	(दुव्वूरु आर.एल रेड्डी)
(S.BALAKRISHNAN)	(DUVVURU RL REDDY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिकसदस्य/JUDICIAL MEMBER

Dated :14/08/2024
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