IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.305/Nag./2023
(Assessment Year : 2020–21)

The Vainganga Nagari Sahakari Pat Sanstha Ltd., Wainganga, Tilak Road Bhandara 441 904 PAN–AABAT0078K	…………… Appellant
v/s	
Income Tax Officer Ward–2, Bhandara	……………. Respondent

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 02/09/2024	Date of Order – 09/09/2024

O R D E R

The assessee has filed this appeal challenging the impugned order dated 10/07/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2020–21.

2. The core issue that I need to adjudicate in this appeal relates to disallowance of deduction of ₹ 31,83,509, made by the Assessing Officer under section 80P of the Income Tax Act, 1961 (*"the Act"*).

3. When the case was called for hearing, none appeared on behalf of the assessee appellant.

4. Brief facts of the case are, the assessee is a Credit Co–operative Society registered under the Maharashtra State Co–operative Societies Act, 1960. It is engaged in area of providing various credit facilities and related services to its members. The assessee filed its return of income on 16/11/2020, declaring nil income. The Assessing Officer noticed that the deposits / investments in Co–operative Banks/Commercial banks are out of the surplus funds of the Society and any interest income arising from deposit /investment of funds in Banks is in the nature of income from other sources are taxable and cannot be categorized as the income from the *"profits and gains of business"* of the assessee Society. Since the deduction under section 80P of the Act is available only for the profits and gains of the business of assessee (providing credit facilities to the members), the said deduction was not available to the interest income which is in the nature of *"other income"* or *"income from other sources"* of the assessee Society.

5. When the matter came up hearing before the first appellate authority, the learned CIT(A), following the judgment of the Hon'ble Supreme Court in The Totgars' Co–operative Sale Society Ltd. v/s ITO**,** [2010] 188 taxman 282 (SC). The relevant operative part of the order is reproduced below:–

> *"6.13 I have perused the matter the various provisions of Section 80P indicates that the provisions are meant for deductions in respect of income of the co-operative societies. It is noted that various words/terms used in the section have not been defined in the Act except the definitions of co-operative society, co-operative bank and primary co- operative agricultural and rural development bank. Therefore, other terms used in the section will have to be interpreted by using the common meaning of those words and the interpretations made by various judicial forums such as ITAT, High Courts and the Hon'ble Supreme Court. In order to have a clear and easy understanding of various provisions of the section, the provisions are being discussed in the order it appears in the section.*

> *6.14 In view of the above facts and circumstances, and the legal precedents in the assessment order, the income obtained by the appellant only from providing credit facility to its members can be treated as an activity covered u /s 80 P (2) (a) (i) of the Act. The remaining income is to be treated from other sources and is not eligible for deduction u/s 80 P of the Act.*
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> *6.15 In view of the above discussion, I have come to the conclusion that the AO has rightly assessed the income of Rs. 31,83,509/- earned by the appellant in the year under consideration. The AO has disallowed the deduction u/s 80 P in respect of the income from the interest amounting to Rs. 31,83,509/- which is treated as income from other sources. The solitary ground of appeal taken against the disallowance of deduction u/s 80 P (2) by the AO is accordingly dismissed.*

6. I have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. It is an admitted fact that the assessee is Employee's Co–operative Credit Society and has received interest income of ₹ 31,83,509, which was claimed the as deduction under section 80P(2)(a)(i) of the Act. The case of the Assessing Officer is that, interest income received by the assessee is not eligible for deduction under section 80P(2)(a)(i) of the Act by treating it to be income from other sources. The Assessing Officer has come to the conclusion by following the judgment of the Hon'ble Supreme Court in The Totgars' Co–operative Sale Society Ltd. v. ITO**,** [2010] 188 taxman 282 (SC). I find that similar issue came up for adjudication before the Tribunal, Nagpur Bench, wherein the very same Bench was a party to that order rendered in The Ismailia Urban Co–operative Society v/s ITO, ITA no.122/ Nag./2023, order dated 18/06/2024, wherein the Tribunal has considered this issue in detail and held that interest income earned by the assessee trust is eligible for deduction under section 80P(2)(a)(i) of the Act. The relevant portion of the order reproduced below:–

"9. Upon hearing both the counsel and perusing the record, we find that the issue involved is covered in favour of the assessee by a catena of decisions from ITAT as well as a decision of jurisdictional High Court. In this regard we may gainfully refer the Hon'ble Jurisdictional High Court decision in the case of CIT vs. Solapur Nagri Audyogik Sahakari Bank Ltd. 182 Taxman 231 wherein the following question was raised.

> *"Whether the interest income received by a Co-operative Bank from investments made in Kisan Vikas Patra ('KVP' for short) and Indira Vikas Patra ('IVP' for short) out of voluntary reserves is income from banking business exempt under Section 80P(2)(a)(i) of the Income Tax Act, 1961?"*

After considering the issue, the Hon'ble Jurisdictional High Court has concluded as under :

> *"12. Therefore, in all these cases, where the surplus funds not immediately required for day-to-day banking were kept in voluntary reserves and invested in KVP/IVP, the interest income received from KVP/IVP would be income from banking business eligible for deduction under section 80P(2)(i) of the Act.*
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> *13. In the result, there being no dispute that the funds in the voluntary reserves which were utilized for investment in KVP/IVP by the co-operative banks were the funds generated from the banking business, we hold that in all these cases the Tribunal was justified in holding that the interest income received by the co-operative banks from the investments in KVP/IVP made out of the funds in the voluntary reserves were eligible for deduction under section 80P(2)(a)(i) of the Act."*

The above case law fully supports the assessee's case. Here also surplus funds not immediately required for day to day banking were kept in Bank deposits. The income earned there from thus would be income from banking business eligible for deduction u/s 80P(2)(a)(i).

10. Similarly we find that similar issue was considered by this Tribunal on similar grounds raised by the Revenue in the case of MSEB Engineers Co-Op. Credit Society Ltd., wherein the ITAT, Nagpur Bench, vide order dated 05/05/2016 held as under :

> *"Upon hearing both the counsel and perusing the records, we find that the above issue is covered in favour of the assessee by the decision of this ITA, referred by the Ld. CIT(A) in his appellate order. The distinction mentioned in the grounds of appeal is not at all sustainable. We further find that this Tribunal again in the case of Chattisgarh Urban Sahakari Sanstha Maryadit Vs. ITO in ITA No. 371/Nag/2012 vide order dated 27.05.2015 has adjudicated similar issue as under:-*
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> > *"11. Upon careful consideration, we not that identical issue was the subject matter of consideration by ITAT, Ahmedabad Bench decision in the case of Dhanlaxmi Credit Cooperative Society Ltd (supra), in which one of us, learned Judicial Member, was a party. The concluding portion of the Tribunal's decision is as under:*
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> > > *"4. With this brief background, we have heard both the sides. It was explained that the Co-operative Society is maintaining "operations funds" and to meet any eventuality towards*

repayment of deposit, the Co-operative society is maintaining some liquidated funds as a short term deposit with the banks. This issue was thoroughly discussed by the ITAT "B" Bench Ahmedabad in the case of The Income Tax Officer vs. M/s.Jafari Momin Vikas Co-op Credit Society Ltd., bearing ITA No. 1491/Ahd/2012 (for A.Y. 2009-10) and CO No. 138/Ahd/2012 (by Assessee) order dated 31/10/2012. The relevant portion is reproduced below :-

"19. The issue dealt with by the Hon'ble Supreme Court in the case of Totgars (supra) is extracted, for appreciation of facts as under :

What is sought to be taxed under section 56 of the Act is interest income arising on the surplus invested in short term deposits and securities, which surplus was not required for business purposes? The assesse(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question before us, is whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? In our view, such interest income would come in the category of 'income from other sources' hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer….."

19.1 However, in the present case, on verification of the balance sheet of the assessee as on 31.3.2009, it was observed that the fixed deposits made were to maintain liquidity and that there was no surplus funds with the assessee as attributed by the Revenue. However, in regard to the case before the Hon'ble Supreme Court –

"(on page 286) 7 …….. Before the assessing officer, it was argued by the assesse(s) that it had invested the funds on short term basis as the funds were not required immediately for business purposes and consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under section 28 and not under section 56 of the Act and, consequently, the assessee(s) was entitled to deduction under section 80P(2)(a)(i) of the Act. The argument was rejected by the assessing officer as also by the Tribunal and the High Court, hence these civil appeals have been filed by the assessee(s).

19.2 From the above, it emerges that

(a) that assessee (issue before the Supreme Court) had admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

(c) that assessee carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii)marketing the agricultural produce; and

(d) that the surplus had arisen emphatically from marketing of agricultural produces.

19.3 In the present case under consideration, the entire funds were utilized for the purposes of business and there were no surplus funds.

19.4 While comparing the state of affairs of the present assessee with that assessee (before the Supreme Court), the following clinching dissimilarities emerge, namely:

(1) in the case of assessee, the entire funds were utilized for the purposes of business and that there were no surplus funds:-

- in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present assessee, it had not carry out any activity except in providing credit facilities to its members and that the funds were of operational funds. The only fund available with the assessee was deposits from its members and, thus, there was no surplus funds as such;

- in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds;

19.5 Considering the above facts, we find that there is force in the argument of the assessee that the assessee not a co-operative bank, but its nature of business was coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in short-term deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs.13,69,955/- [source : Balance Sheet of the assessee available on record].

19.6 In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot in any way come to the rescue of either the Ld. CIT (A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT (A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s 56 of the Act. It is ordered accordingly."

5. Respectfully following the above decision of the Co-ordinate Bench, we hereby hold that the benefit of deduction u/s 80P(2)(a)(i) was rightly granted by ld. CIT(A), however, he has wrongly held that the interest income is taxable u/s 56 of the Act so do not fall under the category of exempted income u/s 80P of the Act. The adverse portion of the view, which is against the assessee, of ld. CIT(A) is hereby reversed

following the decision of the Tribunal cited supra, resultantly ground is allowed.

8. We find that the ratio of above case also applies to the present case. As observed in the above case law, in this case also the submissions of the assessee's counsel is that the assessee society is maintaining operational funds and to meet any eventuality towards repayment of deposit the cooperative society is maintaining some liquidated funds as short term deposits with banks. Hence adhering to the doctrine stair desises, we hold that the assessee should be granted benefit of deduction under section 80P(2)(a)(i). Accordingly, the interest on deposits would qualify for deduction under the said section. Accordingly, we set aside the order of authorities below and decide the issue in favour of assessee. "

4. We further find that batch of similar appeals decided by the ITAT in favour of the assessee has also been considered by the Jurisdictional High Court. The Hon'ble Jurisdictional High Court has duly affirmed of this Tribunal. Accordingly, in the background aforesaid discussion, we do not find infirmity in the order of Ld. CIT(A)."

11. In the background of aforesaid discussion and decisions, we find that CIT (A) has erred in upholding the assessment order. The Appellant Co-operative society is entitled for deduction u/s 80P as claimed in the return."

7. In the above decision, the Co–ordinate Bench has already considered the judgment of the Hon'ble Supreme Court in The Totgars' Co–operative Sale Society Ltd. (supra) and held that the facts of this case is distinguishable and not applicable to the facts of the present case. I, therefore, respectfully following the decision of the Co–ordinate Bench in The Ismailia Urban Co–operative Society v/s ITO, ITA no.122/ Nag./2023, order dated 18/06/2024, I set aside the impugned order passed by the learned CIT(A) and hold that the assessee is eligible to claim deduction under section 80P(2)(a)(i) of the Act. Thus, ground raised by the assessee is allowed.

8. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 09/09/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 09/09/2024

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Nagpur; and

(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur