

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.81/Nag./2024

(Assessment Year : 2020-21)

Amravati Jilha Vima Karmachari Sahakari
Pat Sanstha Maryadit, Shramshilpa Building
Lane no.2, Near Vitthal Mandir
Nawate Plot, Amravati 444 607
PAN – AAAAA7883L

..... Appellant

v/s

Income Tax Officer
Ward-3, Amravati

..... Respondent

Assessee by : Shri Bhavesh Moryani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 10/09/2024

Date of Order – 18/09/2024

ORDER

The assessee has filed this appeal challenging the impugned order dated 18/12/2023, 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 assessee has raised following grounds:-

"1. The order passed u/s 143(3) r.w.s. 144B of the Income Tax Act, 1961 is illegal and bad in law;

2. The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) erred in confirmed addition made by the assessing officer at Rs.12,25,000/-, therefore addition made is unjustified, unwarranted and excessive;

3. *The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) erred in not accepting condonation of delay and decided appeal on merits, therefore order passed is illegal, invalid and bad in law;*

4. *The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) erred in confirming the addition of Rs.12,25,000/- as interest income on investments of Rs.1,75,00,000/- though the same were not received during the previous year relevant to Asstt. Year 2020-2021, therefore order passed is unjustified, unwarranted and excessive;*

5. *The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) erred in disallowing interest received on investment to the tune of Rs.12,25,000/ which is 7% of its investment of Rs.1,75,00,000/-, therefore, order passed is unjustified, unwarranted and excessive;*

6. *The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) erred in not allowing entire deduction u/s. 80P to the assessee, when the assessee society running activity for their members only, therefore addition made is unjustified, unwarranted and excessive;*

7. *The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) in confirming addition on notional interest @ 7% of the investment kept with financial institutes other than cooperative societies, therefore, addition made are unjustified, unwarranted and excessive;*

8. *The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) erred in not considering deduction u/s. 80P on interest income at Rs.12,25,000/- and treated the same as income from other sources, therefore order passed is unjustified, unwarranted and excessive;*

9. *The learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) erred in treating the exemption income as inform from other sources u/s. 56 of the Income Tax Act, therefore, addition made is unjustified, unwarranted and excessive;*

10. *The assessee denies the liability of interest charged U/s. 234A, 234B and 234C of the Income Tax Act. Without the prejudice, levy of interest U/s. 234A, 234B and 234C of the Income Tax Act is unjustified, unwarranted and excessive;*

11. *The assessee craves leave to amend, add or take a new ground or grounds at the time of hearing."*

3. Facts in Brief:- The assessee is a society registered under The Maharashtra Co-Operative Societies Act, 1960, and is engaged in the activity of providing credit facilities to its members. The assessee filed its return of income on 06/02/2021, declaring gross total income at ₹ 59,42,986, and total

income at NIL after claiming deduction of ₹ 59,42,986, under section 80P of the Income Tax Act, 1961 ("*the Act*"). The assessee has made investment of ₹ 60,00,000 with IDBI Bank and ₹ 1,15,00,000 with The Khamgaon Urban Co-operative Bank and earned interest therefrom which was claimed as deduction under section 80P of the Act. As per scrutiny selection reasons, the assessee has shown high liabilities in Balance Sheet as compared to low income/receipts declared in the income tax return of income. The assessee has shown '*Deposits*' of ₹ 15,27,84,875, during the year under consideration. It was submitted that the assessee has been registered under the Maharashtra State Co-operative Society Act, 1960 and is running Salary Earner's Society carrying on the business of providing credit facilities to its member only. The assessee has claimed deduction u/s 80P(2)(a)(i) of the Act as they are providing credit facilities to its members. As per proviso of section (4) of 80P become applicable to only first part of Section 80P(2)(a)(i) of the Act, which applies to societies carrying on business of banking. The Co-operative Society the "*PAT Sanstha*" do not carry any business of banking. Therefore, considering the intention of sub-section (4) whereby only co-operative banks brought under the purview of taxation under the Income Tax Act, 1961. The Co-operative Society will continue to enjoy the exemption/deduction as provided in the later part of section 80P(2)(a)(i) of the Act, as they are providing credit facilities to its members. The Assessing Officer, however, held that the interest income earned by the assessee-society on deposits / investments made in a co-operative bank and other banks, is not eligible for deduction either under section 80P(2)(a)(i) or under section 80P(2)(d) of the

Act and, therefore, the deduction claimed by the assessee under section 80P of the Act was disallowed and accordingly, the interest income of ₹ 12,25,500, earned by the assessee-society from co-operative bank and other banks was proposed to be assessed as "*income from other sources*" under section 56 of the Act. The assessee being not satisfied with the order passed by the Assessing Officer, filed appeal before the first appellate authority.

4. The learned CIT(A) confirmed the order so passed by the Assessing Officer. Aggrieved, the assessee is in further appeal before the Tribunal.

5. The learned Authorised Representative ("*the learned A.R.*") submitted that the interest income earned by the assessee is eligible for deduction under section 80P(2)(a)(i) / 80P2(d) of the Act. For the year under consideration, without there being any reason, the claim of the assessee is denied.

6. The learned Departmental Representative supported the order of the learned CIT(A).

7. We 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 a Credit Co-operative Society and the assessee has deposited certain funds with IDBI Bank and The Khamgaon Urban Co-operative Bank and has received interest income which was claimed the as deduction under section 80P(2)(a)(i) / 80P2(d) of the Act. The case of the Assessing Officer is that, interest income received by the assessee

is from income from other sources not eligible for deduction under section 80P(2)(a)(i) / 80P2(d) of the Act. The Assessing Officer has come to the conclusion by following various judgment pronouncements including that of the Hon'ble Supreme Court in The Totgars' Co-operative Sale Society Ltd. v. ITO, [2010] 188 taxman 282 (SC). We 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) / 80P2(d) 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.

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:-

"11. Upon careful consideration, we note 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:

"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 assessee(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 assessee(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 Id. 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 Id. 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."

8. 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. We, 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, we 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, grounds no.1 to 9, are allowed.

9. The issue raised in ground no.10, relates to levy of interest chargeable under section 234A, 234B and 234C of the Act.

10. Since the core issue has been allowed by us as aforesaid, the levy of interest being consequential became infructuous hence dismissed.

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

Order pronounced in the open Court on 18/09/2024

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

NAGPUR, DATED: 18/09/2024

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.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur