



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

BEFORE MS.ASTHA CHANDRA, JUDICIAL
MEMBER, AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1067/PUN/2024

निर्धारण वर्ष / Assessment Year: 2020-21

The Income Tax Officer, Pandharpur.	V s	Dhanshree Mahila Gramin BigarshetiSahakari Pat Sanstha Ltd., Indraprasth Building, Station Road, Pandharpur , Tal- Pandharpur, dist-Solapur – 413304. PAN: AAAJD0435E
Appellant/ Revenue		Respondent /Assessee

Assessee by	Shri Pramod S Shingte - AR
Revenue by	Shri Ramnath P Murkude – DR
Date of hearing	11/09/2024
Date of pronouncement	12/09/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Revenue is against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], under section 250 of the Income Tax Act, 1961 dated 23.02.2024 for the Assessment Year 2020-21. The Revenue in Form No.36 has raised the following grounds of appeal :



“1. On the facts & circumstances of the case and in law, the Ld. CIT(A) erred in holding that Interest income earned by the assessee cooperative society from fixed deposits with co-operative banks, was allowable as deduction u/s 80P(2)(a)(i) in view of the Karnataka High Court decision in *Tumkur Merchants Sauhard Credit Co-op Ltd.* (230 Taxman 309), ignoring the decision of the Supreme Court in the case of *Totgars Co-operative Sale Society* (2010, 322 ITR 283) wherein it was categorically held that Interest income earned from fixed deposits was assessable under the head “Income from other sources” and not “Business Income”, and hence such Interest income did not qualify for deduction u/s 80P(2)(a)(i).

2. On the facts & circumstances of the case and in law, the Ld. CIT(A) erred in ignoring the subsequent decision of Karnataka High Court in the case of *PCIT Vs. Totgars Co-operative Sale Society* (2017, 395 ITR 611 dated 16.06.2017) which effectively overruled the earlier decision of the Karnataka High Court in *Tumkur Merchants Case* (2015, 230 Taxman 309).

3. On the facts & circumstances of the case and in law, the Ld. CIT(A) erred in ignoring the overwhelming majority of decisions of other High Courts, namely (i) Delhi High Court in *Mantola Coop Thrift & Credit Society Ltd* (2015, 229 Taxman 68) (ii) Karnataka High Court in *Totgars Cooperative Sale Society* (2017, 395 ITR 611) (iii) Gujarat High Court in *State Bank of India* (2016, 389 ITR 578) (iv) Punjab & Haryana High Court in *Punjab State Co-op Development Bank* (2016, 389 ITR 607) all of which have held that Interest income from Fixed Deposits was to be assessed as “Income from Other Sources” and such Interest Income was not eligible for deduction u/s 80P(2)(a)(i) following the Supreme Court’s decision in the case of *Totgars Co-operative Sale Society* (322 ITR 283).

4. On the facts & circumstances of the case and in law, the CIT(A) erred in holding that Interest income earned by the assessee cooperative society from fixed deposits of co-operative banks, was eligible for deduction u/s 80P(2)(d) ignoring Karnataka High Court’s subsequent decision in *PCIT Vs. The Totgars Co-operative Sale Society* (2017, 395 ITR 611 dated 16.06.2017), where after taking into consideration their earlier decision dated 05.01.2017, the High Court had squarely held that interest income on Fixed deposits of cooperative banks was not eligible for deduction u/s 80P(2)(d) of the Act.

5. The appellant craves leave to add, alter or amend any or all the grounds of appeal.”



Submission of ld.AR :

2. The ld.AR for the assessee submitted that Assessing Officer(AO) has disallowed assessee's claim for deduction u/sec.80P of the Act on the interest income of Rs.5,09,80,226/-. Ld.AR submitted that identical issue has been decided by ITAT Pune in assessee's own case in ITA Nos.1567 & 1568/PN/2016 for A.Y.2010-11 & A.Y.2012-13 order dated 26.08.2016. The Ld.AR filed copy of the order. Ld.AR also submitted that even for A.Y.2017-18 issue has been decided in favour of assessee by ITAT.

Submission of ld.DR :

3. The ld.DR for the Revenue relied on the order of the Assessing Officer. Ld.DR has submitted that Department has filed appeal against the ITAT's order.

Findings & Analysis :

4. We have heard both the parties and perused the records. It is observed that Assessee is a Co-operative Credit Society and providing credit facility to its members. In the Return of Income filed by the assessee, assessee claimed deduction u/sec.80P of the



Act. The AO disallowed assessee's claim of deduction u/sec.80P of the Act. Aggrieved by the assessment order, assessee filed appeal before the Id.CIT(A). Ld.CIT(A) vide order dated 23.02.2024 held as under:

“6.4 In view of the above discussed judicial pronouncement by the Hon'ble jurisdictional ITAT in appellant's own case, which was passed after discussing contrary judgments of the various high courts on the issue as well as the judgment of Hon'ble Supreme Court in Totgars case (supra) relied upon by the AO in the impugned assessment order, the appellant is found to be eligible for deduction u/s 80P(2)(a)(i) in respect of interest income earned on deposits with banks. Further, it is also noted that almost the entire bank interest in question has been earned from Co- operative banks and thus the appellant is also entitled to alternative deduction u/s 80P(2)(d) as held by many High Courts & ITAT benches, including the jurisdictional bench in its decision dated 20.12.2022 quoted in supra paras. Thus, respectfully following the aforesaid judgments of the jurisdictional bench of ITAT, the disallowance of deduction u/s 80P amounting to Rs.5,09,80,226 made by the A.O. in the impugned assessment order is hereby deleted.”

4.1 Thus, Id.CIT(A) has allowed the assessee's appeal following the decision of ITAT Pune in assessee's own case. Therefore, we do not find any infirmity in the order of the Id.CIT(A), the Id.CIT(A) has followed judicial precedence. It is observed that ITAT for A.Y.2010-11, held that assessee is eligible for deduction



u/sec.80P(2)(a)(i) of the Act on the interest income earned from surplus funds deposited with Bank of India. Respectfully following the ITAT's order for earlier years, appeal of the Revenue is dismissed. The ITAT in its order for AY 2010-11 has discussed the relevant case laws in detail.

4.2 The Revenue has raised the ground that Id.CIT(A) has not followed the binding decision of The Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society (2010, 322 ITR 283).

4.3 However, 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.

4.4 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/s 80P(2)(a) of the Act.

4.5 Thus, the Ground Number 1 of the revenue is dismissed.

4.6 In Ground number 2, revenue has pleaded that the Ld.CIT(A) has not followed the binding decision of Hon’ble Karnataka High Court in the case of *PCIT Vs. Totgars Co-operative Sale Society* (2017, 395 ITR 611 dated 16.06.2017. However, the said decision of Hon’ble Karnataka High Court is distinguishable on facts as in the case of Totagars Co-Oerative Society, the Totagar Co-operative Society was engaged mainly in the activity of marketing of agricultural produces grown by its members. The Totagar co-operative society also accepts deposits from its members and provides credit facility to its members, runs Kirana Stores, rice mills, live stocks, van section, medical shops, Areca-nut trading



section, lodging, plying and hiring of goods carriage, etc. Thus the Income earned by Totagar Co-Operative society was mainly from Sale of Agricultural produce .and not from giving credit facility to members. Thus character of Income depends upon the nature of activities for earning that income. In the case of the Totagar Co-Operative Society(supra) the Income was mainly from sale.

5. In the case of the assessee the Income is from providing Credit facility to its members. Thus, accepting deposits and providing loan to members is business activity of the assessee. Hence the Interest earned from Deposits kept with Co-Operative Banks part takes the character of business income. Hence the case law of Totagar Co-Operative Society (supra) is not applicable in the case of the assessee.

5.1 Also, whenever contradicting decisions of two non-jurisdictional the Hon'ble High Court's are available and no direct decision of Hon'ble Jurisdictional High Court is available then the decision favourable to the assessee needs to be followed. In this case, therefore, the decision of the Hon'ble AP & TS High Court (supra) needs to be followed.



6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 12th September, 2024.

Sd/-
(MS.ASTHA CHANDRA)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 12th Sep, 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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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