

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.765 & 766/PUN/2024  
निर्धारण वर्ष / Assessment Years: 2018-19 to 2020-21

ITO, Ward-2, Ahmednagar.	Vs.	Kanhur Pathar Multi State Co-operative Credit Society Maryadit Kanhur, Kanhur Tal. Parner Dist. Ahmednagar- 414303. PAN : AAAJK0578K
Appellant		Respondent

Revenue by : Shri Ramnath P. Murkunde  
Assessee by : Shri Prasad S. Bhandari

Date of hearing : 22.07.2024  
Date of pronouncement : 27.09.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

Both the above captioned appeals filed by the Revenue are directed against the separate orders dated 24.02.2024 passed by Id. CIT(A)/NFAC for the assessment years 2018-19 & 2020-21 respectively.

2. Since identical facts and common issues are involved in both the appeals of the Revenue, therefore, we proceed to dispose of the same by this common order.

3. First, we shall take up the appeal of the Revenue in ITA No.765/PUN/2024 for A.Y. 2018-19.

**ITA No.765/PUN/2024, A.Y. 2018-19 :**

4. The appellant has raised the following grounds of appeal :-

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the deduction u/s 80P of the Income Tax Act of Rs.1,61,47,520/- without considering the decision of Hon’ble High Court of Karnataka in the case of Principal Commissioner of Income-tax, Hubballi Vs Totagars Co-operative Sale Society [ 395 ITR 611] dated 16/06/2017.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the deduction u/s 80P of the Act, as the assessee claimed deduction u/s 80P in respect of the interest income from investment, which is not the operational income.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in allowing the deduction u/s 80P of the Act, without proper verification of the facts as to how the investments made by the assessee with other cooperative banks generated the operational income of the assessee, considering the facts that the business operations of the assessee is to provide credit facilities to its members and accepts deposits from them.*
4. *The appellant craves leave to add, alter, amend and modify any of the above or all grounds raised at time of proceedings before the Hon’ble Tribunal which may please be granted.”*

5. The facts, in brief, are that the assessee is a multi state Co-operative Credit Society, registered under Maharashtra Co-operative Societies Act. The main objective of this credit society is to collect deposits from its members and lend the amounts to the needy members on interest. The return of income was filed on 03.10.2018 declaring Rs.Nil income after claiming deduction of

Rs.1,61,47,520/- u/s 80P(2)(a)(i) of the IT Act. The case was selected for scrutiny. During the course of assessment proceedings, it was found by the Assessing Officer that the assessee has earned interest income of Rs.6,28,12,514/- against the investments in the form of fixed deposits, savings accounts balances etc with various co-operative banks/commercial banks and the same has been claimed as a deduction u/s 80P(2)(a)(i)/80P(2)(d) of the IT Act. After relying on the judgement of the Hon'ble High Court of Karnataka in the case of PCIT, Hubballi vs. Totagars Co-operative Sale Society, 395 ITR 611 order dated 16.06.2017, the Assessing Officer was of the opinion that the assessee is not entitled to claim the deduction either u/s 80P(2)(a)(i) or u/s 80P(2)(d) of the IT Act. After considering the submissions of the assessee in this regard, the Assessing Officer completed the assessment vide order dated 29.04.2021 passed u/s 143(3) r.w.s. 144B of the IT Act determining the total income of the assessee under the head "Income from other sources" at Rs.1,61,47,520/- after set-off of the losses of Rs 4,66,64,995.

6. Being aggrieved with the above assessment order, the assessee preferred first appeal before the ld. CIT(A)/NFAC. After

considering the reply of the assessee, the Id. CIT(A)/NFAC allowed the appeal of the assessee by observing as under :-

*“5. Determination and Decision*

*As observed from the grounds of appeal raised by the appellant, all the grounds are primarily related to the appellant’s disagreement with the AO’s action of denying the deduction under section 80P on the interest income earned from its investments/deposits in the form of fixed deposits/saving account balances with various co-operative banks/ commercial banks and other financial institutions banks. The appellant in its submissions dated 21.02.2024 has submitted bifurcation of the total bank interest in question and has stated that total disputed amount of interest is Rs. 62812514/- as per audited profit and loss account. This interest amount comprises of a) Interest received from Co- operative Banks/societies is Rs.61570983/- b) Interest received from Nationalised/Private Bank is Rs 1241531/-.* However, it is noted that the AO has disallowed deduction on this interest income under both the relevant sections viz. 80P(2)(a)(i) as well as 80P(2)(d). Thus, the only issue arising for determination in these grounds of appeal is whether the deduction u/s 80P (u/s 80P(2)(a)(i) as Business income or u/s 80P(2)(d) on interest from co-operative banks/societies) is allowable to the appellant or not in respect of such interest income of Rs. 6,28,12,514. I have carefully considered the facts of the case, assessment order, submissions of the appellant and the relevant case laws referred. Having so considered, the grounds of appeal raised by the appellant are decided as under:

*5.1 From careful perusal of the impugned assessment order, it is noted that the A.O. has found the appellant to be ineligible for deduction u/s 80P(2)(a)(i) stating the following reasons:*

- (i) The interest income has been earned from the banks who are not the members of the society, hence it does not qualify for deduction u/s 80P(2)(a)(i) which is allowable only in respect of business activity of providing credit facilities to members only.*
- (ii) The income earned on investments made with banks is out of surplus funds and not operational funds and, hence, is not ‘attributable to’ the business activity of providing credit facilities to members and hence not eligible for deduction u/s 80P(2)(a)(i). The AO has emphasized that the concerned bank deposits have been existing for a pretty long time from year to year which itself makes it clear that the funds were not required for business and were surplus in nature.*
- (iii) In holding so, the AO has heavily placed reliance upon the judgment of Hon’ble Supreme Court in the case of Totgars Co-*

*operative Sale Society Ltd. V. ITO [2010] 322 ITR 283 dated 08.02.2010 holding that the scope of special deduction must relate to the operational income of the Co-op society providing credit facility to its members and that the interest earned on investments in short term deposits and securities out of surplus funds, not immediately required for business activity, is not business income but Income from Other Sources u/s 56 and not entitled to deduction u/s 80P thereon.*

- (iv) *The AO has also placed reliance upon the following judgments in his support:*
- *Hon'ble Gujarat High Court in the case of State Bank of India (2016) 72 taxmann.com 64 (Gujarat)*
  - *ITAT Bangalore in Sri Basaveshwara Credit Co-operative Society Limited v. CIT (2014) 47 taxmann.com 189 (Bangalore-Trib.*
  - *ITAT Kolkata in National Coal Development Corporation staff co-operative credit Society Limited vs. DCIT (ITA No. 1564/Kol/2011)*
- (v) *The intention of the appellant of earning interest from investment of surplus funds brings in element of commerciality which violates 'principle of mutuality' and hence not eligible for the exemption.*

5.2 *Further, it is noted that the AO has also held the appellant ineligible for deduction u/s 80P(2)(d) on the bank interest income earned from co-operative banks stating the following reasons:*

- (i) *that the interest income earned by the Co-operative societies on the deposits placed with the Co-operative banks is not eligible for deduction u/s 80P(2)(d) as Sec. 80P(2)(d) does not contain the word "Co-operative Bank", Its scope is limited to only the "Co-operative Societies".*
- (ii) *Co-operative banks are entirely different species than Co-operative societies. Reliance is heavily placed by the A.O. upon decision of Hon'ble Karnataka High Court in case of PCIT vs. Totagars Co-operative Sale Society (2017) 83 Taxman.com 140 also reported in 395 ITR 611 dated 16/06/2017 in support of this proposition.*
- (iii) *that vide Finance Act 2006, co-operative banks are excluded from the ambit of Section 80P by way of insertion of section 80P(4) w.e.f. 1.4.2007. The AO relied upon judgment, dated 12.01.2021, of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank & Ors. Vs. CIT in Civil Appeal no.7343-7350 of 2019 in this regard.*

(iv) *Vide Finance Act 2015, the amendment to section 194A(3)(v) have excluded Co- Operative Bank from Co-operative society to deduct TDS u/s194A on interest paid to member thereof. Thus, the legislative intent is to distinguish co-operative banks from co-operative societies for the purpose of benefits u/s 80P as held by Hon'ble Karnataka High Court in case of PCIT vs. Totagars Co-operative Sale Society (2017) 83 Taxman.com 140 (supra).*

5.3 *Further, the AO has also denied deduction of any expenditure against the bank interest income in question u/s 57(iii) as the appellant failed to show that it had incurred any expenditure 'wholly & exclusively' to earn the bank interest income in question. The AO placed reliance on the judgment of Hon'ble Supreme Court in the case of Smt. Padmavati Jaikrishna vs. Addl. CIT (1987) 32 Taxman 321 (SC) in this regard.*

5.4 *On the other hand, the appellant has objected to the AO's action in disallowing its claim of deduction u/s. 80P by emphasizing that it does not have any 'surplus funds' in the sense that all of its funds were 'operational funds' only. Operational funds mean the funds generated out of operational activities. In the case of the present assessee, it did not carry out any activity except in providing credit facilities to its members and hence all of its funds were of an operational nature only. The appellant has also submitted that that as per the RBI notifications/ Circulars of Co-op Act & Rules, the appellant society cannot lend its entire deposits received from members as it is mandatorily required to invest in liquid securities, with prior sanction from the co-op deptt, to maintain prescribed SLR/CRR requirements to meet any situation of financial crunch. It is collecting deposits from members and lending to members. Full amount of deposits collected cannot be lent due to above statutory requirements. Hence, the appellant has contended that the activity of investing in bank deposits cannot be isolated from its business of providing credit facilities to members and that the interest income earned on such investments with banks is very much part of the operational activity of the appellant attributable to its business of providing credit facilities to members and hence the interest income is part of business income itself and hence eligible for deduction u/s 80P(2)(a)(i). The appellant has distinguished its case from the Supreme Court's case law of Totgars Co-op Sale Society Ltd (supra) on the ground that the Totgars society was engaged in other activities too, eg. Marketing of agricultural produce of the members, in addition to the activity of providing credit facilities, and hence claimed the same to be not applicable to the appellant's case. The appellant has also cited several case laws in its support, including the judgments of Hon'ble jurisdictional ITAT Pune in various cases including a consolidated order of 'A' bench, dated 20.12.2022, disposing 21 nos. of appeals on the identical issue incl. ITA No. 303/PUN/2022.*

5.5 *The rival contentions of the appellant and the A.O. have been carefully considered. It is noted that the issue involved is squarely covered by the judgment dated 20.12.2022 of the Hon'ble jurisdictional ITAT 'A' Bench, Pune by a consolidated order passed in the case of 21 nos. of similarly placed co-operative societies(including in ITA No. 303/PUN/2022)for AY 2017-18 on the identical issue, holding interest from banks earned by credit co-op societies to be eligible for deduction u/s 80P(2)(a)(i) as well as u/s 80P(2)(d) in case of interest from co-operative banks. The relevant part of the said decision is excerpted below for ready reference:*

*“4. We have heard the rival submissions and gone through the relevant material on record. Insofar as the allowability of deduction u/s.8P(2)(a)(i) is concerned, we find that the Pune Benches of the Tribunal in Sureshdada Jain Nagari Sahakari Patsanstha Maryadit Vs. The Pr.CIT (ITA No.713/PUN/2016) decided the question of availability of deduction u/s 80P on interest income by noticing that the Pune Bench in an earlier case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO (ITA No.604/PN/2014) has allowed similar deduction. In the said case, the Tribunal discussed the contrary views expressed by the Hon'ble Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(2015) 230 Taxman 309 (Kar.) allowing deduction u/s. 80P on interest income and that of the Hon'ble Delhi High Court in Mantola Cooperative Thrift Credit Society Ltd. Vs. CIT (2014) 110DTR 89 (Delhi) not allowing deduction u/s.80P on interest income earned from banks. Both the Hon'ble High Courts took into consideration the ratio laid down in the case of Totgar's Cooperative Sale Society Ltd. (supra). No direct judgment from the Hon'ble jurisdictional High Court on the point having been pointed out, the Tribunal in Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit (supra) preferred to go with the view in favour of the assessee by the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd.(supra). The position continues to remain the same before this Tribunal also.*

*5. Reliance of the ld. Pr. CIT in some of the cases under consideration on the decision of Pr.CIT and Another Vs. Totagars Cooperative Sales Society (2017) 395 ITR 611 (Kar.) is not relevant. The issue in that case was the eligibility of deduction u/s.80P(2)(d) of the Act on interest earned by the assessee cooperative society on investments made in co-operative banks. In that case, the assessee was engaged in the activity of marketing agricultural produce by its members; accepting deposits from its members and providing credit facility to its members; running stores, rice mills, live stocks,*

*van section, medical shops, lodging, plying and hiring of goods and carriage etc. It was in that background of the facts that the Hon'ble High Court held that the assessee could not claim deduction u/s.80P(2)(d) of the Act. When we consider the effect of this decision, it turns out that the same is not germane to case under consideration in view of the position that the primary claim of the extant assessee is directly about the eligibility of deduction u/s.80P(2)(a)(i) of the Act.*

6. *Coming to the cases of eligibility of deduction u/s.80P(2)(d), the respective assessees are Cooperative credit societies engaged in providing credit facilities to its members. The ld. PCIT has held the assessment order to be erroneous and prejudicial to the interest of the Revenue only on the ground that the claim of deduction u/s.80P on interest income was not in order. In this regard, it is observed that though co-operative banks, other than primary agricultural credit society or a primary co-operative agricultural and rural development bank, are not eligible for deduction pursuant to insertion of section 80P(4) w.e.f. 1.4.2007, but this provision does not dent the otherwise eligibility u/s 80P(2)(d) of the Act of a cooperative society on interest income on investments/deposits parked with a co-operative bank, which is a registered co-operative society as per section 2(19) of the Act, defining co-operative society to mean a co-operative society registered under the Co-operative Societies Act, 1912 or under any law for the time being in force. The assessees are also Co-operative society registered.*

7. *Similar view has been taken by the Pune Benches of the Tribunal in several cases including The Sesa Goa Employees Coop. Credit Society Ltd. Vs. ACIT (ITA No.203/PUN/2019, order dated 16-11-2022).*

8. *In view of the fact that the Pune Benches of the Tribunal in series of decisions have held that the assessees are entitled to deduction u/s.80P(2)(a)(i)/80P(2)(d) in respect of interest income, we hold that the impugned orders cannot be sustained. All the orders are, therefore, overturned.”*

5.6 *In view of the above discussed judicial pronouncements by the Hon'ble jurisdictional ITAT, which have been 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 of Rs. 6,28,12,514 earned on deposits with banks as well as eligible for alternate deduction u/s 80P(2)(d) in respect of interest income of Rs.6,15,70,983 earned from co-operative banks/other co-op credit societies and thus, the disallowance of*

*deduction u/s 80P made by the A.O. in the impugned assessment order is hereby deleted.*

6. *In the result, the appeal filed by the appellant is fully allowed.”*

7. It is against the above first appeal order, the Revenue is in appeal before this Tribunal.

8. The ld. DR submitted before us that the order passed by the ld. CIT(A)/NFAC is not correct and in the light of the order passed by the Hon'ble High Court of Karnataka in the case of PCIT, Hubballi vs. Totagars Co-operative Sale Society (supra), the addition made by the Assessing Officer may kindly be sustained.

9. On the other hand, ld. AR submitted before us that the order passed by the ld. CIT(A)/NFAC is correct and have been passed after relying on the various decisions passed by the jurisdictional Bench of this Tribunal. It was therefore requested before the Bench to dismiss the appeal filed by the Revenue.

10. We have heard ld. Counsels from both the sides and perused the material available on record. We find that the issue in the instant case has already been decided by the Co-ordinate Benches of this Tribunal in various other cases, wherein, it is held that where the co-operative society being involved in providing credit facilities to its members, then the interest on deposits shall be

treated to be arising during the course of business and, therefore, the interest income of the co-operative society shall be entitled to the benefit of deduction u/s 80P(2)(a)(i) of the IT Act. Further, it has also been decided by the Co-ordinate Benches of this Tribunal in various other cases that the interest income earned on investments with any other co-operative society shall also be entitled to the benefit of deduction u/s 80P(2)(d) of the IT Act. Considering the totality of the facts & in the light of coordinate benches' decisions passed in the cases of Dhanshree Multistate Cooperative Society Ltd., ITA No.463/PUN/2024 order dated 13-06-2024, Rena Sahkari Sakhar, ITA No.1249/PUN/2018 order dated 07-01-2022, Karmveer Bhaurao Patil Nagri Sahkari Patsanstha Maryadit ITA No.1045/PUN/2023 order dated 21-02-2024, wherein, under similar circumstances, the coordinate benches of this Tribunal has decided identical issue & allowed the deduction u/s 80P(2)(a)(i) & 80P(2)(d) of the IT Act to the assessee cooperative societies, therefore, we do not find any infirmity in the order passed by LD CIT(A)/NFAC. Therefore, we dismiss the appeal filed by the Revenue.

11. In the result, the appeal filed by the Revenue in ITA No.765/PUN/2024 for A.Y. 2018-19 stands dismissed.

**ITA No.766/PUN2024, A.Y. 2020-21:**

12. Since the facts and issues involved in this appeal of the Revenue are identical to the facts of the case for assessment year 2018-19, therefore, our decision in ITA No.765/PUN/2024 for A.Y. 2018-19 shall apply *mutatis mutandis* to this appeal of the Revenue in ITA No.766/PUN/2024 for A.Y. 2020-21. Accordingly, the appeal of the Revenue in ITA No766/PUN/2024 for A.Y. 2020-21 stands dismissed.

13. To sum up, both the above captioned appeals of the Revenue stands dismissed.

Order pronounced on this 27<sup>th</sup> day of September, 2024.

Sd/-  
**(R. K. PANDA)**  
VICE PRESIDENT

Sd/-  
**(VINAY BHAMORE)**  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> September, 2024.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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