



BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER  
and

HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1423/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19

Jakraya Multi-State Co-operative Credit Society Ltd.

At: Watwate, Post: Inchgaon,

Tal.: Mohol, Dist.: Solapur-413254

PAN: AABAJ2537K

..... अपीलार्थी / Appellant

बनाम / V/s

Income Tax Officer,

Ward-1, Pandharpur

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : None for the assessee

Revenue by : Mr BS Rajpurohit ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 10/09/2024

घोषणा की तारीख / Date of Pronouncement : 01/10/2024

आदेश / ORDER

**Per G. D. Padmahshali, AM;**

By this appeal the assessee impugns DIN & Order No. ITBA/NFAC/S/250/2023-24/1061342408(1) dt. 22/02/2024 passed u/s 250 of Income-tax Act, 1961 ['the Act' hereafter] by the first appellate authority ['Ld. NFAC/CIT(A)' hereafter] which in turn arising out of order of assessment dt. 25/02/2021 passed u/s 143(3) r.w.s. 143(3A & 3B) of the Act for assessment year 2018-19 ['AY' hereinafter].



2. The case was called twice; none appeared at the behest of the appellant and on the primary briefing from the Ld. DR, we deem it fit to invoke rule 24 of ITAT-rules, 1963 and proceed to adjudicate the limited issue *ex-parte*. Advanced accordingly.

3. At the outset, after vouching sufficiency of reasons beyond undeliberate delay of 90 days occurred in instituting the present appeal, in the larger interest of justice and after placing reliance on '*Vijay Vishin Meghani Vs. DCIT & Anr*' reported 398 ITR 250 (Bom) and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' [167 ITR 5 (SC)], we deem it fit to condone the same and advanced accordingly.

**4. The long and short of the case is that;**

4.1 The assessee is a credit co-operative society registered under the provisions of Multi-State Co-op. Societies Act and is engaged in providing credit facilities to its members. For the year under consideration the assessee filed its return of income declaring total income at NIL after claiming 80P(2) deduction of ₹67,15,641/- representing interest income. The case of the assessee was selected for scrutiny wherein the Ld. AO after vouching the source of interest of ₹30,05,033/- earned by assessee from investment denied the deduction u/s 80P(2) of the Act by pressing into service the decision of Hon'ble High Court of Karnataka rendered in '*PCIT Vs Totagars Co-op. Sale Society*' [2017, 395 ITR 611 (Kar)] .



4.2 Aggrieved by denial of claim for deduction the assessee filed an appeal before first appellate authority. The submission of the assessee did partially make out its case on merits, in the event the Ld. NFAC partly allowed the appeal by directing the Ld. AO to allow deduction u/s 80P(2)(d) in respect of interest received on investment held by the assessee with other co-operative societies and bank. In pursuance thereof, the Ld. AO passed an order dt. 20/05/2024 giving effect to the direction and allowed additional deduction of ₹24,68,298/- u/s 80P(2)(d) of the Act, in result the disallowance stood restricted to ₹5,36,732/- representing the interest received from Dena Bank & IDBI bank.

4.3 Aggrieved assessee came in present belated appeal filed on 20/06/2024 challenging the balance disallowance of ₹5,36,732/- retained by the Ld. AO after giving effect to the direction.

5. The appellant's submission suggests impugned order is challenged on threefold contentions viz; (i) in view of the restriction placed by section 251(1)(a) of the Act the Ld. NFAC had no right to issue any direction (ii) interest accrued/earned on fixed/term deposits investment held with co-operative & other banks is solely attributable to the principal business of the appellant. The theory of surplus fund does have no application because investing liquid funds with other banks for generating income was to service interest liability on deposits accepted from its member and that



being the principal business activity of the society it qualifies for deduction u/s 80P(2)(a)(i) of the Act and (ii) alternatively since no portion of interest is earned from co-operative banks where these are registered as credit co-operative societies therefore eligible for deduction u/s 80P(2)(d) of the Act. *Per Contra*, the Ld. DR Mr Rajpurohit placed strong reliance on the impugned orders.

6. Heard rival submissions; and subject to provision of rule 18 of ITAT-Rules, 1963 perused material placed on record, case laws relied upon by both the rival parties. The solitary issue in these appeals hinges around allowability of deduction u/s 80P(2) of the Act. We see strong force in the first contention of the appellant that, in view of the restriction placed u/s 251(1)(a)/(1A)(a) of the Act the Ld. NFAC was duty bound to cease the subject matter of appeal by either confirming, reducing, enhancing or annulling the assessee without the right to direct or remand the subject to Ld. AO. Insofar as the interest on investment with co-operative societies/banks and other bank is concerned, such income is earned/accrued to it during the conduct of its principal business of providing credit facilities to its members deposits therefrom are accepted and to service interest liability thereon. The net positive interest generated out of such activities without a smoke of doubt partakes the character of business income as it possess all attributes of section 80P(2) of the Act, resultantly



qualifies for deduction therein. ***Insofar as the deduction u/s 80P(2)(a)(i) is concerned the theory of surplus funds does not apply to credit co-operative society for the reasons that,*** (i) credit co-operative society owing to regulatory supervision operates with liquid funds which cannot be characterised as other than business funds and (ii) such liquid funds for the purpose of generation of income are invested into liquid assets like fixed deposits / term deposits, etc. The interest generated from such liquid investment partakes the character of business income being earned while carrying on the business of providing credit facilities to its members. The surplus fund theory as applied in '*Totagars Co-op. Sale Society*' and as binding precedents shall apply to societies other than credit co-operative societies. The appellant in the present case, undisputedly a registered credit co-operative society and engaged in the qualified business of providing credit facilities to its members, therefore the impugned interest earned by it out of liquid funds placed/invested with other co-operative & banks qualifies the test laid in section 80P(2)(a)(i) of the Act, hence very much deductible. Alternatively on perusal of section 80P(2)(d), it is ostensibly clear that interest & dividend income derived by one cooperative society from its investment held with other cooperative societies is eligible for deduction u/s 80P(2)(d) of the Act. For this purpose, the chief determinant factor entitling a claim of deduction u/s 80P(2)(d) in the hands of assessee society is that, interest income should have been earned by it from an



investment made with any other cooperative society registered under the provisions of law, irrespective of its nomenclature. A similar dispute came in the case of '*Vavveru Co-operative Rural Bank Ltd. Vs CCIT* [2017, 396 ITR 371 (AP&THC)] wherein their lordship succinctly distinguished '*Totgar Cooperative Sale Society*' (supra), and then held that;

*"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 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.*

*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 ITA Nos.450 & 451/PUN/2024 and C.O.Nos.23 & 24/PUN/2024 Vishwakarma Sarkshan Kamgar Sahakari Patsanstha Maryadit 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."  
(Emphasis supplied)*

7. Thus, in substance, the Hon'ble High Court of AP &TS (supra) held that interest income derived on investment with banks is earned / derived from by a co-operative society in the course of its regular business of accepting deposit & providing credit facilities to its members hence eligible for deduction u/s 80P(2)(a) of the Act.



8. On the other hand, the Revenue could place no contrary decision of Hon'ble Jurisdictional High Court. Therefore, without multiplying judicial precedents on the aforesaid issue in view of the ratio laid down in '*Smt. Godavari devi Saraf Vs CIT*' [1978, 113 ITR 589(Bom)] we adjudicate the issue in favour of assessee following the decision of non-jurisdictional High Court laid in '*Vavveru Co-operative Rural Bank Ltd.*' (*supra*) by holding that, the interest income earned by the appellant from its investment held with co-operative & other banks qualifies for deductions u/s 80P(2)(a)(i) of the Act since arisen in the course of regular business. Resultantly, we vacate the balance disallowance and direct the Ld. AO delete the disallowance in its entirety. The grounds accordingly stand adjudicated.

## 9. In result, the appeal of the assessee stands **ALLOWED**.

In terms of rule 34 of ITAT Rules, order pronounced in open court on this Tuesday 01st Days of October, 2024.

-S/d-

**VINAY BHAMORE**  
**JUDICIAL MEMBER**

पुणे / PUNE ; दिनांक / Dated : Tuesday 01st Days of October, 2024.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

4. The NFAC, Delhi, New Delhi

5. DR, ITAT, SMC Bench, Pune

Ashwini

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

3. The Pr.CIT, -Concerned

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune