



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

AND

HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1256/PUN/2024

निर्धारण वर्ष / Assessment Year : 2014-15

Dr Chandrakant Davtale Path Sanstha

Maryadit Ganeshwadi.

At: Ganeshwadi, Tal. Shirol,

Kolhapur-416115

PAN: AABAD0278M

..... अपीलार्थी / Appellant

**बनाम / V/s**

Income Tax Officer,

Ward-1, Ichalkaranji

..... प्रत्यर्थी / Respondent

**द्वारा / Appearances**

Assessee by : Mr Hari Krishan ['Ld. AR']

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

सुनवाई की तारीख / Date of conclusive Hearing : 12/09/2024

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

**आदेश / ORDER**

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

The assessee by the present appeal impugns DIN & Order No. ITBA/NFAC/S/250/2024-25/1065125500(1) dt. 24/05/2024 passed u/s 250 of Income-tax Act, 1961 ['the Act' hereafter] by National Faceless Appeal Centre, Delhi ['Ld. NFAC' hereafter] which in turn arisen out of order of assessment passed u/s 147 r.w.s. 144 r.w.s. 144B of the Act for assessment year 2014-15 ['AY' hereinafter].

**2. Briefly stated facts born out of case records are;**

2.1 The assessee is a credit co-operative society registered under the provisions of Maharashtra State Co-op. Societies Act and is engaged in the business of providing credit facilitates to its members. For the year

under consideration the assessee earned interest income of ₹8,42,280/- from fixed/term deposits held with various co-operative societies & co-operative banks. While framing the assessment u/s 147 r.w.s. 144 r.w.s. 144B of the Act, the Ld. AO after vouching the source of interest as from various co-operative societies & banks has denied the deduction u/s 80P(2)(a)(i) as well u/s 80P(2)(d) 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*' reported in 83 taxmann.com 140 [Equi: 395 ITR 611 (Kar)] .

2.2 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 restricting the disallowance by allowing deduction to the extent of interest received from societies ₹2,25,684/-.

2.3 Aggrieved assessee came in present appeal alleging that both the tax authorities erred in law and facts in denying the assessee society the valid claim of deduction in-spice of catena of binding judicial precedents.

3. During the course of hearing, Ld. AR reiterated the appellant's version of submissions as were laid before tax authorities below. Adverting to impugned orders appellant made twofold submission that (i) 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 nationalised bank but 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.

4. Heard rival common contentions against twin appeals; 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 and considered the facts in light of settled legal position which are forewarned to parties.

5. 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, during the conduct of its principal business of providing credit facilities to its members deposits therefrom are accepted and to service interest liability thereon it in turn generated interest by placing them either into investment with other financial institutions or by lending them to other members. 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)(a)(i) 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.

6. 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.

7. In the present case, the reasoning given by the tax authorities in denying the claim for deduction u/s 80P(2)(d) of the Act is that interest was received from banks has no legs to stand as a cooperative bank is principally a cooperative society and holds a banking license to operate on a larger scale under the guidelines of RBI. This issue was came to consider by Hon'ble Karnataka High Court in '*CIT Vs Totagars Cooperative Sale Society*', finds reported in 392 ITR 74 wherein their lordships referring to the decision of Hon'ble Apex Court in the case of *Totgars Co-operative Sales Society Ltd.* (supra) held that the ratio of decision of the Hon'ble Supreme Court in the aforesaid case (supra) not to be applied in respect of interest income on investment as same falls u/s 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act. We further note that, the coordinate bench in '*Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. vs. ITO*', reported in 120 taxmann.com 10, after making reference to the decisions of the Hon'ble Supreme Court in the case of *Totgars*



*Cooperative Sales Society Ltd.* (supra) and having noticed the divergent views of the Hon'ble Karnataka High Court in the case of 'Tumkur Merchants Souharda Credit Co-op. Ltd. Vs ITO', 55 taxmann.com 447 and decision of Hon'ble Delhi High Court in 'Mantola Cooperative Thrift Credit Society Ltd. Vs CIT', reported at 50 taxmann.com 278, the decision rendered in '*Mantola Cooperative Thrift Credit Society Ltd.* (supra) had not been preferred to ratio laid in '*Tumkur Merchants Souharda Credit Co-op. Ltd.* (supra), the relevant observation of the coordinate bench are placed as under;

*"9. The Pune Benches of the Tribunal in Sureshdada Jain Nagari Sahakari Patsanstha Maryadit Vs. The Pr.CIT (ITA No.713/PUN/2016, dated 9-4-2019) 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, dated 19-8-2015) 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) 110 DTR 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. (2010) 322 ITR 283 (SC). There being no direct judgment from the Hon'ble jurisdictional High Court on the point, 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). 10. Insofar as the reliance of the ld. DR on the case of Pr. CIT and Another Vs. Totgars Cooperative Sales Society (2017) 395 ITR 611 (Kar.) is concerned, we find that 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 impact of this decision, it turns out that the same is not germane to case under consideration in view of the position that the claim of the instant assessee is directly about the eligibility of deduction u/s.80P(2)(a)(i) of the Act and not u/s.80P(2)(d). Moreover, so many decisions relied on by the ld. AR amply go to prove that the view taken by the AO, cannot by any standard, be construed as not a possible view. We, therefore, hold that the ld. Pr. CIT was not justified in exercising the revisional power anent to interest income of Rs.22,34,270/- earned on investments made with co-operative banks.”  
(Emphasis supplied)

8. Without multiplying judicial precedents on the aforesaid issue, maintaining same parity we adopt equi reasoning and hold that, the interest income earned by the appellant society from its investment held with other co-operative banks since being a registered co-operative society under respective state laws, qualifies for deductions u/s 80P(2) of the Act. Resultantly, we vacate the balance disallowance retained by first appellate authority 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 day of October, 2024.

-S/d-

VINAY BHAMORE  
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 01st day 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 अपीलिय न्यायाधिकरण, पुणे / ITAT, Pune.