

आयकर अपीलीयअधिकरण, विशाखापटणम **SMC** पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM **SMC** BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER
(Through Hybrid Hearing)

आयकर अपील सं./ I.T.A. No.364/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2020-21)

Lankapalli PACS Ltd,
171, Lankapalli Village,
Lankapalli Post,
Ghantasala Mandal-521131,
Krishna District,
Andhra Pradesh-521131.
PAN: AAAAL5410

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by
प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Ward-1(1),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri K. Siva Rama Kumar, AR
Dr. Aparna Villurim, Sr. AR

सुनवाई की तारीख / Date of Hearing : 14/10/2024
घोषणा की तारीख/Date of
Pronouncement : 24/10/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the
Ld. CIT(A)-NFAC, Delhi in DIN & Order No.
ITBA/NFAC/S/250/2023-24/1063164866(1), dated 22/03/2024
arising out of the order passed U/s. 143(3) r.w.s 144C of the
Income Tax Act, 1961 ["the Act"] for the AY 2020-21.

2. Briefly stated the facts of the case are that the assessee is a Primary Agricultural Cooperative Society engaged in the activity of providing credit facilities to its members. As per the information available with the Department, the Ld. AO observed that during the previous year under consideration, the assessee had earned an interest income of Rs. 1,28,27,351/- out of which Rs. 22,77,972/- is from the investment with banks including District Central Cooperative Banks as per the details given in Schedule-18 of the financials and has claimed the entire interest income as deduction U/s. 80P(2)(a)(i) / 80P(2)(d) of the Act. Further, the Ld. AO also observed that the aforesaid deposits / investments in cooperative banks / commercial banks are out of the surplus funds of the society. Further, the Ld. AO observed that any interest income arising from deposit / investment of funds in banks is in the nature of 'income from other sources' taxable U/s. 56 of the Act and cannot be categorized as 'income from profits and gains of business' of the assessee. The Ld. AO also observed that since the deduction U/s. 80P is available only for the profits and gains of the business of assessee ie., providing credit facilities to the members, the said deduction is not available to the interest income which is in the nature of 'other income'. Accordingly, a show cause notice dated 10/11/2021 was

issued to the assessee wherein the assessee was asked to explain and justify its claim for allowability of deduction U/s. 80P of the Act. In response, the assessee filed its reply dated 26/02/2022 and 25/03/2022 and submitted, in toto, that the assessee society is entitled to deduction U/s. 80P on the whole of the amount of profits and gains of business attributable to any one or more of such activities. The Ld. AO did not consider the submissions of the assessee and held that the assessee's claim for deduction with respect to interest income earned from different cooperative banks, commercial banks and other financial institutions is not found to be allowable deduction under any provisions of section 80P of the Act. Accordingly, the Ld. AO brought to tax the entire interest income of the assessee of Rs. 22,77,972/- as income from other sources. Thus, the Ld. AO determined the assessed income of the assessee at Rs. 22,77,972/- and passed the assessment order U/s. 143(3) r.w.s. 144B of the Act dated 20/09/2022. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee and sustained the addition made by the Ld. AO.

Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *In the facts and circumstances of the case, Ld. CIT(A) erred in confirming the addition made for the interest earned on the appellant’s interest income from investment with KDCC Bank, claimed as deduction U/s. 80P(2)(d) of the Act, although the same was allowable as deduction as it formed integral part of the primary agricultural credit society’s business.*
2. *Ld. CIT(A) erred in not considering the appellant’s submissions on the earning of interest on deposits of the appellant with KDCC Bank as integral part of its business.*
3. *Ld. CIT(A) erred in not considering the jurisdictional High Court’s judgment in the appellant’s favour cited before him.*
4. *Ld. CIT(A) erred in not considering the appellant’s differentiation of the case law relied on by the Ld. AO.*
5. *The appellant craves leave to add or amend any ground of appeal.”*

4. The only issue involved in this appeal relates to disallowance of deduction claimed u/s 80P of the Act. At the outset, the Learned Authorized Representative [Ld. AR] argued that the assessee is a Primary Agricultural Cooperative Credit Society Limited and claimed deduction U/s. 80P of the Act for the AY 2020-21. The Ld.AR further submitted that the assessee society, being a cooperative society, make deposits in its regular course of business and accordingly the deposits were made in the Krishna District Co-op. Central Bank Ltd., in compliance with the statutory regulation of AP Cooperative Societies

Act. The assessee is not having any intention to gain any benefit from other sources. The Ld.AR further submitted that the facts relied on by the Ld. Revenue Authorities in the case of M/s. Totgars Cooperative Sale Society Ltd reported in 322 ITR 283 are entirely different from that of the instant case. The Ld. AR also submitted that as per Para-11 of the judgment in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) it is clearly mentioned that “*this judgment is confined to the facts of the present case*” and therefore it cannot be applied in the assessee’s case, hence, eligible for deduction u/s 80P of the Act. He, therefore, pleaded to quash the order passed by the Ld. CIT(A)-NFAC and allow deduction u/s 80P of the Act.

5. Per contra, the Ld. DR argued that the Ld.CIT(A)-NFAC has rightly upheld the addition made by the Ld. AO as the assessee is not eligible to claim deduction u/s 80P of the Act. The Ld. DR, therefore, pleaded to uphold the order passed by the Ld. CIT(A) -NFAC and dismiss the appeal of the assessee.

6. I have heard both the parties and perused the material placed on record. Now the question before me is to decide whether the assessee is eligible for deduction u/s 80P with respect to the interest earned on deposits pertaining to reserve fund with Krishna District Coop. Central

Limited or not? It is an admitted fact that the assessee has claimed deduction u/s 80P of the Act. The contention of the Ld. AO is that interest accrued on Reserve Fund Deposits is not eligible for deduction U/s 80P of the Act. The Ld. Revenue Authorities relied on various case laws to state that *income from interest on securities ear marked to reserve fund has been held not eligible for deduction u/s 80P*. The Ld. Revenue Authorities have also placed relied on the decision of Hon'ble Supreme Court of India in Civil Appeal No.1622 of 2010 in the case of M/s Totgars Cooperative Sale Society Ltd., wherein it was held that "*investment of surplus on hand not immediately required in Short Term deposits and securities by a co-operative society providing credit facilities to members or marketing agriculture produce to member*". However, in the instant case, the facts are distinguishable and hence, in my view, the ratio laid down in the case of M/s Totgars Cooperative Sale Society Ltd.(supra) shall not be applied to the instant case. On similar set of facts, coordinate Bench of this Tribunal in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society held in favour of the assessee vide I.T.A.No.107/Viz/2022, CO No.07/Viz/2022 dated 30.08.2023. For the sake of reference, relevant paragraphs of the order are extracted as under :

"8. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities.

It is an admitted fact that the assessee has claimed deduction U/s. 80P(2)(a)(i) of the Act on the interest accrued and received by the assessee U/s. 80P(2)(a)(i) of the Act. The contention of the Ld. AO is that as per section 80P(2)(d), the assessee is eligible to claim deduction U/s. 80P(2)(a)(i) of the Act only when it is invested with any other cooperative society. The Ld. AO also placed heavy reliance in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) while disallowing the claim made by the assessee U/s. 80P(2)(a)(i) of the Act. We have perused the ratio laid down by the Hon'ble Apex Court in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) and found that in that case the society is engaged in marketing of the agricultural produce by its members as per section 80P(2)(a)(iii) while carrying on the business of banking or providing credit facilities to its members U/s. 80P(2)(a)(i) of the Act. In that case, the Society retained the sale proceeds which was otherwise payable to its members from whom the produce was bought which was invested in short term deposits / securities. It is also found that the amount payable to its members realized from sale proceeds of the agricultural produce of its members was retained by the society and was shown as liability on the balance sheet. Therefore, the Hon'ble Apex Court has held that interest earned from retaining the amount payable to its members shall not be considered as income from other sources. However, in the instant case the facts are distinguishable and hence in our view the ratio laid down in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) shall not be applied. Section 80P(1) of the Act entitles the Cooperative Societies to deduct the sums specified in sub-section (2) from its gross total income while computing the total income. Sub-section (2) of section 80P, in the sub-clause (a) allows deduction to cooperative society which is engaged in the following activities:

- “(a) in the case of a co-operative society engaged in—*
- (i) carrying on the business of banking or providing credit facilities to its members, or*
 - (ii) a cottage industry, or*
 - [(iii) the marketing of agricultural produce grown by its members, or]*
 - (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or*
 - (v) the processing, without the aid of power, of the agricultural produce of its members, [or]*
the collective disposal of the labour of its members, or
 - [(vi)*
 - (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its*

*members,]
the whole of the amount of profits and gains of business
attributable to any one or more of such activities.”*

9. Further, we also extract below the provisions of section 80P(2)(d) and (e) of the Act for reference:

- “(d) *in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;*
- (e) *in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;”*

10. From the plain reading of section 80P(2)(a)(i) of the Act, the whole of amount of profits and gains of the business attributable to one or more of such activities shall be allowed as a deduction. Further, section 80P(2)(d) and 80P(2)(e) of the Act also allows similar deductions. It is clear that the deductions available under clauses (a) to (e) of section 80P(2) are activity based whereas clauses (d) and (e) are investment based. The distinction between clauses (a) and clauses (d) & (e) on the other hand is that the benefit under clause (a) is restricted to only into those activities of a cooperative society enlisted in sub-clause (a) whereas the benefit of clauses (d) & (e) are available to all cooperative societies without any restriction on the activities carried on by them. In simple terms, the benefit under clause (a) will be limited only to the profits & gains of the business attributable to any one or more of such activities. But in case, if the cooperative society has an income not attributable to any one or more of such activities listed in sub-clauses (i) to (vii) of clause-(a), the same may go out of the purview of clause (a) but still the cooperative society may claim the benefit of clause (d) or (e) as per the conditions laid down therein. In the instant case, the original source of investments made by the assessee in Nationalized Banks is admittedly the income of the assessee derived from the activities listed in sub-clauses (i) to (vii) of clause (a). The character of such income must be last, especially when the statute uses the expression “attributable to” and not any one of the expressions viz., “derived from” or “directly attributable to”. The Hon’ble jurisdictional High Court of Andhra Pradesh and Telangana in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another [2017] 396 ITR 0371 (AP) in para 34 has discussed about the decision of the Hon’ble Supreme Court in the case of Totgar’s Cooperative Sale Society Ltd (supra) and distinguished the facts while deciding the case. For the sake of brevity, we extract the

relevant para 34 of the judgment of the Hon'ble Andhra Pradesh and Telangana High Court herein below:

“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.”

11. Further, the Hon'ble jurisdictional High Court of Andhra Pradesh and Telangana in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another (supra) held that the cooperative society is eligible for deduction U/s. 80P(2)(a)(i) of the Act on the interest income received from investment in banks. The Hon'ble High Court in paras 35 to 37 of its judgment held as under:

35. But, as rightly contended by the learned senior counsel for the petitioners, the investment made by the petitioners in fixed deposits in nationalized 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.”*

12. *Further, the Coordinate Bench of Hyderabad in Tirumala Tirupati Devasthanams Employees Coop. Credit Society vs. ITO also affirmed the same view by following the decision of the Hon’ble AP High Court in the case of Vavveru Cooperative Rural Bank Ltd (supra). In the instant case also, the assessee has invested surplus funds out of the activities carried out as per the provisions of section 80P(2)(a) of the Act. We therefore by respectfully following the jurisdictional High Court are of the view that interest income should be allowed as deduction U/s. 80P(2)(a)(i) of the Act and thereby the Ld. CIT(A)-NFAC has rightly held by deleting the addition made by the Ld. AO and hence we find no infirmity in the order of the Ld. CIT(A)-NFAC.*

13. *In the result, appeal of the Revenue is dismissed.”*

7. Respectfully following the decision of the Hon’ble High Court of Andhra Pradesh in the case of Vavveru Cooperative Rural Bank Ltd.(supra) and the ratio laid down by the Coordinate Bench of the Tribunal in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society Limited (supra), I am inclined to quash the order passed by the Ld.CIT(A)-NFAC and allow the appeal of the assessee.

8. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 24th October, 2024.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Dated :24/10/2024
OKK - SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Lankapalli PACS Ltd, 171, Lankapalli Village, Lankapalli Post, Ghantasala Mandal-521131, Krishna District, Andhra Pradesh-521131.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(1), Central Revenue Buildings, Vijayawada-521002, NRT District, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam