IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.383/Nag./2024
(Assessment Year : 2018–19)

Vinayak Nagari Sahakari Pat Sanstha
Near Riddhi Mandir, Narkesari Ward ……. Appellant
Bhandara 441 904 PAN – AABAV4980A

v/s

Income Tax Officer
Ward–2, Bhandara ……. Respondent

Assessee by : Shri Dilip Lohiya
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 07/11/2024	Date of Order – 18/11/2024

O R D E R

The captioned appeal has been filed by the assessee challenging the impugned order dated 16/05/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2018–19.

2. In its appeal, the assessee has raised following grounds:–

"1. That the orders of the learned Commissioner of Income Tax (Appeals) (NFAC) under the Income Tax Act, 1961 are illegal, erroneous and perverse thus needs to be quashed.

2. That the learned Commissioner of Income Tax (Appeals) (NFAC) erred in dismissing the appeal ex- parte without appreciating that allowability of the provisions of Section 80P in view of the fact & circumstances of the case.

3. That the learned Commissioner of Income Tax (Appeals) (NFAC) is not justified in concurring with the order passed by the A.O., while confirming the quantum additions and taxes imposed by AO without going into the provisions of law and without appreciating the facts and grounds of appeal of the present case.

4. That the learned Commissioner of Income Tax (Appeals) (NFAC) has erred in law and not justified in proceeding with confirming the addition made by learned AO for interest on FDR from nationalized or schedule bank without going into the merits of the case and the provisions of the law u/s 80P(2)(a)(i) of the Income Tax Act, 1961 and passed the order. Therefore, the order passed is unjustified, unwarranted, and excessive.

5. That the learned Commissioner of Income Tax (Appeals) (NFAC) erred in law for disallowing for interest earned U/s 80P(2)(a)(i) in the regular operation of business from fixed deposits at Rs.18,33,603/- without going into the provisions of law and facts of the case, therefore the order passed is unjustified, unwarranted and excessive.

6. That the learned Commissioner of Income Tax (Appeals) (NFAC) has erred in law and not justified in proceeding with confirming the addition made by learned AO who has wrongly interpreted the deduction u/s 80P(2)(a)(i) with section 80P(2)(d) and disallowed the interest on fixed deposits from nationalized or schedule bank of Rs. 18,33,603/- as interest received by the assessee society from the nationalize bank etc. and not from co-operative society as per section 80P(2)(d) and taxed in the hands of the assessee society.

7. a) Whether the disallowance of the interest on fixed deposits during the regular course of business activity of providing banking or credit facilities to its member as co-operative society under the head income from other sources as interest received by the assessee society from the nationalize bank and not from co- operative society is justified?

b) Whether provisions of section 80P(2)(a)(i) are not applicable to the co-operative society providing banking or credit facilities to its member and accordingly deduction U/s 80P is not allowable deduction under the Act?

8. The learned Commissioner of Income Tax (Appeals) (NFAC) erred in law for not justified in proceedings for disallowance of the deduction U/s 80P of the Income Tax Act, 1961 without following the judicial pronouncements awarded by the Honorable High Courts and ITAT.

➢ The honorable ITAT, Pune took a view that such interest income is attributable to the activities of the society therefore eligible for exemption U/s 80P(2)(a)(i) in this regards, hence disallowance made and order passed are illegal, invalid and bad in law.

i) Subordinate Engineers Association MSEB Co.op. Credit Society Ltd Vs ITO, Ward- 2(2), Kolhapur, dated 16.05.2023, Pune Bench

ii) Jankalyan Nagari Sahakari Patsanstha Ltd Vs ITO, Ward-1, Satara Pune Bench Dt.29.05.2023.

iii) Tejas Karshanbhai Dari Vs ITO ITA No. 1459/Ahd/2019 dt.29.04.2022 "Even otherwise, as held by ITAT in the case of Kashmir Road Lines v. DCIT 2021] 123 taxmann.com 5 (Amritsar Trib.), even when the assessee is not interest in pursuing the appeal, even then the Ld. CIT(A) should dispose of the appeal on merits".

9. In view of the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) (NFAC) is not justified in upholding the disallowance of deduction claimed U/s 80P(2)(a)(i) of the Income Tax Act, 1961. Therefore, it is the humble request from the assessee society accept the appeal and allow the deduction.

10. That the learned Commissioner of Income Tax (Appeals) (NFAC) has erred in law and the act was not justified in proceeding with confirming the addition made by the learned assessing officer without going into the provision of law and without giving the proper opportunity of being heard in the present matter against the principles of natural justice thereby rendering the order void ab initio.

11. That interest charged U/s. 234A, 234B, 234C and 234D of the Act may kindly be deleted.

12. That each grounds mentioned hereinabove are independent and without prejudice to each other.

13. The appellant, therefore, pray that the appeal may be allowed and orders may be passed rendering justice to the appellant.

14. That the Appellant craves leave to alter, amend, modify, delete, vary and/or add any grounds of appeal at any time hereinafter with due permission."

3. Though the assessee has raised as many as 14 grounds of appeal, however, the short issue that I need to adjudicate here is, whether or not the learned CIT(A) was justified in disallowing the claim of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (*"the Act"*) on account of interest earned from deposits / investment made in Nationalized Bank.

4. During the course of hearing, both the parties are in agreement with us that the issue in hand is covered by the decision of the Co–ordinate Bench of the Tribunal (the very same Bench was a party to that order), rendered in The Ismailia Urban Co–operative Society v/s ITO, ITA no.122/Nag./2023,

order dated 18/06/2024, wherein the Tribunal has considered this issue in detail and held that interest income earned by the assessee trust is eligible for deduction under section 80P(2)(a)(i) / 80P2(d) of the Act. The relevant portion of the order reproduced below:–

> *"9. Upon hearing both the counsel and perusing the record, we find that the issue involved is covered in favour of the assessee by a catena of decisions from ITAT as well as a decision of jurisdictional High Court. In this regard we may gainfully refer the Hon'ble Jurisdictional High Court decision in the case of CIT vs. Solapur Nagri Audyogik Sahakari Bank Ltd. 182 Taxman 231 wherein the following question was raised.*
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> > *"Whether the interest income received by a Co-operative Bank from investments made in Kisan Vikas Patra ('KVP' for short) and Indira Vikas Patra ('IVP' for short) out of voluntary reserves is income from banking business exempt under Section 80P(2)(a)(i) of the Income Tax Act, 1961?"*
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> *After considering the issue, the Hon'ble Jurisdictional High Court has concluded as under :*
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> > *"12. Therefore, in all these cases, where the surplus funds not immediately required for day-to-day banking were kept in voluntary reserves and invested in KVP/IVP, the interest income received from KVP/IVP would be income from banking business eligible for deduction under section 80P(2)(i) of the Act.*
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> > *13. In the result, there being no dispute that the funds in the voluntary reserves which were utilized for investment in KVP/IVP by the co-operative banks were the funds generated from the banking business, we hold that in all these cases the Tribunal was justified in holding that the interest income received by the co-operative banks from the investments in KVP/IVP made out of the funds in the voluntary reserves were eligible for deduction under section 80P(2)(a)(i) of the Act."*
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> *The above case law fully supports the assessee's case. Here also surplus funds not immediately required for day to day banking were kept in Bank deposits. The income earned there from thus would be income from banking business eligible for deduction u/s 80P(2)(a)(i).*
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> *10. Similarly we find that similar issue was considered by this Tribunal on similar grounds raised by the Revenue in the case of MSEB Engineers Co-Op. Credit Society Ltd., wherein the ITAT, Nagpur Bench, vide order dated 05/05/2016 held as under :*
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> > *"Upon hearing both the counsel and perusing the records, we find that the above issue is covered in favour of the assessee by the decision of this ITA, referred by the Ld. CIT(A) in his appellate order. The distinction mentioned in the grounds of appeal is not at all sustainable. We further find that this Tribunal again in the case of Chattisgarh Urban Sahakari Sanstha Maryadit Vs. ITO in ITA No. 371/Nag/2012 vide order dated 27.05.2015 has adjudicated similar issue as under:-*

"11. Upon careful consideration, we not that identical issue was the subject matter of consideration by ITAT, Ahmedabad Bench decision in the case of Dhanlaxmi Credit Cooperative Society Ltd (supra), in which one of us, learned Judicial Member, was a party. The concluding portion of the Tribunal's decision is as under:

> *"4. With this brief background, we have heard both the sides. It was explained that the Co-operative Society is maintaining "operations funds" and to meet any eventuality towards repayment of deposit, the Co-operative society is maintaining some liquidated funds as a short term deposit with the banks. This issue was thoroughly discussed by the ITAT "B" Bench Ahmedabad in the case of The Income Tax Officer vs. M/s.Jafari Momin Vikas Co-op Credit Society Ltd., bearing ITA No. 1491/Ahd/2012 (for A.Y. 2009-10) and CO No. 138/Ahd/2012 (by Assessee) order dated 31/10/2012. The relevant portion is reproduced below :-*
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> *"19. The issue dealt with by the Hon'ble Supreme Court in the case of Totgars (supra) is extracted, for appreciation of facts as under :*
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> *What is sought to be taxed under section 56 of the Act is interest income arising on the surplus invested in short term deposits and securities, which surplus was not required for business purposes? The assesse(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question before us, is whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? In our view, such interest income would come in the category of 'income from other sources' hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer….."*
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> *19.1 However, in the present case, on verification of the balance sheet of the assessee as on 31.3.2009, it was observed that the fixed deposits made were to maintain liquidity and that there was no surplus funds with the assessee as attributed by the Revenue. However, in regard to the case before the Hon'ble Supreme Court –*
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> *"(on page 286) 7 …….. Before the assessing officer, it was argued by the assesse(s) that it had invested the funds on short term basis as the funds were not required immediately for business purposes and consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under section 28 and not under section 56 of the Act and, consequently, the assessee(s) was entitled to deduction under section 80P(2)(a)(i) of the Act. The argument was rejected by the assessing officer as also by the Tribunal and the High Court, hence these civil appeals have been filed by the assessee(s).*
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> *19.2 From the above, it emerges that*

(a) that assessee (issue before the Supreme Court) had admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

(c) that assessee carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii)marketing the agricultural produce; and

(d) that the surplus had arisen emphatically from marketing of agricultural produces.

19.3 In the present case under consideration, the entire funds were utilized for the purposes of business and there were no surplus funds.

19.4 While comparing the state of affairs of the present assessee with that assessee (before the Supreme Court), the following clinching dissimilarities emerge, namely:

(1) in the case of assessee, the entire funds were utilized for the purposes of business and that there were no surplus funds:-

- in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present assessee, it had not carry out any activity except in providing credit facilities to its members and that the funds were of operational funds. The only fund available with the assessee was deposits from its members and, thus, there was no surplus funds as such;

- in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds;

19.5 Considering the above facts, we find that there is force in the argument of the assessee that the assessee not a co-operative bank, but its nature of business was coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in short-term deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs.13,69,955/- [source : Balance Sheet of the assessee available on record].

19.6 In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot in any way come to the rescue of either the Ld. CIT (A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT (A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s 56 of the Act. It is ordered accordingly."

> *5. Respectfully following the above decision of the Co-ordinate Bench, we hereby hold that the benefit of deduction u/s 80P(2)(a)(i) was rightly granted by ld. CIT(A), however, he has wrongly held that the interest income is taxable u/s 56 of the Act so do not fall under the category of exempted income u/s 80P of the Act. The adverse portion of the view, which is against the assessee, of ld. CIT(A) is hereby reversed following the decision of the Tribunal cited supra, resultantly ground is allowed.*
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> *8. We find that the ratio of above case also applies to the present case. As observed in the above case law, in this case also the submissions of the assessee's counsel is that the assessee society is maintaining operational funds and to meet any eventuality towards repayment of deposit the cooperative society is maintaining some liquidated funds as short term deposits with banks. Hence adhering to the doctrine stair desises, we hold that the assessee should be granted benefit of deduction under section 80P(2)(a)(i). Accordingly, the interest on deposits would qualify for deduction under the said section. Accordingly, we set aside the order of authorities below and decide the issue in favour of assessee. "*
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> > *4. We further find that batch of similar appeals decided by the ITAT in favour of the assessee has also been considered by the Jurisdictional High Court. The Hon'ble Jurisdictional High Court has duly affirmed of this Tribunal. Accordingly, in the background aforesaid discussion, we do not find infirmity in the order of Ld. CIT(A)."*
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> *11. In the background of aforesaid discussion and decisions, we find that CIT (A) has erred in upholding the assessment order. The Appellant Co-operative society is entitled for deduction u/s 80P as claimed in the return."*

5. In the above decision, the Co–ordinate Bench has already considered the judgment of the Hon'ble Supreme Court in The Totgars' Co–operative Sale Society Ltd. (supra) and held that the facts of this case is distinguishable and not applicable to the facts of the present case. The interest income derived from deposits with Nationalised Bank which is other than Co–operative Banks by the assessee Co–operative Society is an income derived by it from its business activities which is assessable under the head *"Income From Business"* and not under the head *"Income From Other Sources"*. I, therefore, respectfully following the decision of the Co–ordinate Bench in The Ismailia Urban Co–operative Society v/s ITO, ITA no.122/Nag./2023, order dated 18/06/2024, set aside the impugned order passed by the learned CIT(A) and

hold that the assessee is eligible to claim deduction under section 80P(2)(a)(i) of the Act on account of interest income derived from deposits in Nationalized Bank. Accordingly, all the grounds raised by the assessee are allowed.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 18/11/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 18/11/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur

		Date	Initial	
1.	Dictated on	08.11.2024		Sr.PS
2.	Draft placed before author	11.11.2024		Sr.PS
3.	Draft proposed & placed	– –		JM/AM