IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member

ITA No.122/Coch/2024 : Asst.Year 2018-2019
ITA No.123/Coch/2024 : Asst.Year 2020-2021

The Chorode Service Co-operative Bank Limited, LL139 Chorode, Vadakara Kozhikode – 673 306. **PAN : AAAAT7826N.**	v.	The Income Tax Officer Ward – 2(2) Kozhikode.
(Appellant)		(Respondent)

Appellant by : Sri.V.S.Narayanan, CA
Respondent by : Dr.S.Pandian, CIT-DR

Date of Hearing : 16.08.2024		**Date of Pronouncement : 05.11.2024**

O R D E R

Per Bench :

These two assessee's appeals in ITA No.122/Coch/2024 & ITA No.123/Coch/2024 for assessment year 2018-2019 & 2020-2021, respectively, arise out of the order of the Commissioner of Income-tax (Appeals) / NFAC vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1059066843(1) & 1059102497, both dated 26.12.2023, in proceedings u/s.143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter.

2. Cases called twice. None appears at assessee's behest. It is accordingly proceeded *ex parte* against the assessee.

3. Learned CIT-DR appearing for the Revenue at the outset takes us to the CIT(A)/NFAC's identical lower appeal discussion rejecting the assessee's appeal as not

maintainable as under:-

> *"5. Finding and Decision of the Appellate Authority:*
> *There are two issues being agitated in this appeal. The first issue is related to addition of Rs. 6,18,71,520/- which was made on account of reserve and provisions. The second issue is related to addition of Rs. 1,59,602/- which was treated as income assessable under the head 'income from other sources' and was therefore, not held to be eligible for deduction under section 80P(2)(a)(i) of the Act. The issues are discussed as under:*
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> *5.2 Addition of Rs. 6,18,71,520/-; The appellant co-operative society had filed the ROI on 25.10.2018 at nil income after claiming deduction of Rs.3,15,21,310/- under section 80P of the Act. The ROl was processed under section 143(1) of the Act on 07.02.2020 in which provision and reserve amounting to Rs. 6,18,71,520/- was added back. Meanwhile, the case was selected for scrutiny vide issuance of notice under section 143(2) of the Act dated 23.09.2019 and assessment was completed under section 143(3) vide order dated 05.05.2021. While addition of Rs. 6,18,71,520/- was made in the 143(1) order, appellant has sought adjudication/relief on this addition in appeal filed against order under section 143(3) of the Act.*
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> *5.2.2 Upon due consideration of factual matrix of the case, I am of the view that addition of Rs. 6,18,71,520/- cannot be adjudicated upon in appeal against order under section 143(3) of the Act. In body of the 143(3) order, Assessing Authority had clearly mentioned in para 12 of the order as extracted supra that no decision was being rendered on that issue as matter was sub-judice. Thereafter, in the computation of the income, the addition of Rs. 6,18,71,520/- was merely re-iterated.*
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> *5.2.3 It is pertinent to mention that an order under section 143(1) of the Act is an appealable order before the Commissioner (Appeals) as prescribed in section 246A of the Act. As addition of Rs. 6,18,71,520/- was made in the 143(1) order and not the 143(3) order, therefore, the issue(cause) which aggrieved the appellant, arose on passing of the 143(1) order and not 143(3) order. The Assessing Authority while passing 143(3) order dated 05.05.2021 correctly re-iterated the earlier addition made in 143(1) order on 07.02.2020. In addition, it may also be mentioned that scope of 143(1) order has been significantly enlarged over the last 7-8 years unlike the position prevailing earlier from 2001 to 2015 when 143(1)*

intimation merely computed the correctness of the taxes paid and made adjustment in the returned income only in those instances which were found upon consideration of taxes paid by the assessee. Thus, unless the Assessing Authority, while passing the 143(3) order had specifically dwelt upon the addition of Rs. 6,18,71,520/-, the 'doctrine of merger' which sub-sumes the lesser order i.e. 143(1) order into the larger order i.e. 143(3) order is not applicable. This is the factual position in this case. Secondly, with introduction of section 246 in the Act by the Finance Act, 2022, the appellate authority for 143(1) order is also likely to be different as now such cases are largely adjudicated by the Joint Commissioner (Appeals) unlike earlier.

5.2.4 In the context of this issue, I would also like to place reliance upon two recent decisions of the Hon'ble Tribunals. In the case of Areca Trust in ITA No. 433/Bang/2023 dated 26.07.2023, Hon'ble ITAT, Bangalore has observed and adjudicated as under:

"7. We have heard the rival submissions and perused the material on record. On perusal of the impugned Assessment Order passed under section 143(3) (order dated 12.02.2021), it is clear that AO has assessed the total income at Rs.23,29,62,420/- solely relying on the adjustment made by the AO/CPC in the intimation made under section 143(1) of the Act. In the impugned Assessment Order passed under section 143(3) of the Act, there is no independent discussion as regards the income assessed at Rs.23,29,62,420/-. The relevant portion of the assessment completed under section 143(3) of the Act dated 12.02.2021 reads as follows: "4. In response to the notice, the assessee responded via e-proceedings and submitted the details called for. Details filed are examined and the income is assessed at Rs. 23,29,62,420/ as per 143(1)(a) of the Act."
8. Section 246A specifically provides for an appeal as against intimation issued under section 143(1) of the Act. In the instant case, total income has been assessed at Rs.23,29,62,420/- as per the intimation passed under section 143(1) of the Act. Therefore, the cause of action for the assessee arises from the intimation issued under section 143(1) of the Act and appeal ought to have been filed as against the same. The assessment completed under section 143(3) of the Act merely adopts the assessed figures in the intimation order passed under section 143(3) of the Act.
Therefore, no cause of action arises from the order passed under section 143(3) of the Act.

9. Section 143(4) of the Act only mentions that on completion of

regular assessment under section 143(3) or 144 of the Act, the tax paid by assessee under section 143(1) of the Act shall be deemed to have been paid toward such regular assessment. That by itself does not mean there is merger of intimation under section 143(1) with that of regular assessment under section 143(3) / 144 (unless issue has been discussed and adjudicated in regular assessment under section 143(3) / 144 of the Act). Assessee, against the intimation under section 143(1) of the Act, has filed a rectification application under section 154 of the Act (vide application dated 16.06.2020) and the same is pending disposal. The CIT(A) in the impugned order has directed the AO to dispose off the said rectification application dated 16.06.2020. Moreover, if assessee is advised to file an appeal as against the intimation under section 143(1) of the Act, a liberal approach may be taken for condonation of delay since assessee's application for rectification of the intimation under section 143(1) of the Act has been filed within time and same is pending disposal. With the above said observation, the grounds of the assessee are rejected."

5.2.5 The above decision was relied upon by the Hon'ble ITAT, New Delhi in the case of Orient Crafts Ltd. In ITA No. 1097/Del./2023 dated 31.10.2023 in holding 143(1) and 143(3) orders as separate. The Court further observed as under:

**14. Thus where the additions made under intimidation /s 143(1) and I43(3) are onr different issues and heads and intimation /s 143(1) of the Act stood final after withdrawal of appeal by assessee, on what so ever erroneous belief, there was no merger of two orders."*

5.2.6 Respectfully following the aforementioned decisions and considering the supposition of law, as discussed supra, all the grounds of appeal related to addition of Rs. 6,18,71,530/- are hereby rejected.

5.3 Addition of Rs. 1,59,602/-: The Assessing Authority held that interest income from Savings Bank accounts at SBI & ICICI Bank was assessable under the head 'income from other sources' and not under the head 'business income', and hence, was not found eligible for deduction under section 80P(2)(a)(i) of the Act. Appellant has submitted that these account(s) are maintained for business exigencies and as e-banking facility for RTGS/NEFT transactions. In the context of this issue, I would like to place reliance on decision of Hon'ble ITAT, Visakhapatnam in the case of Kakateeya Mutually Aided Thridt and Credit Co-op Society Ltd. In ITA No.

107/Viz./2022 dated 30.08.2023. The relevant part of this judgment is 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 8OP (2)(a)(ii) while carrying on the business of banking or providing credit facilities to its members Us. 80(2)(a)() 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 eared 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 (ii) 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) [(vi) the collective disposal of the labour of its members, or (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 80P2(d) and (e) of the Act for reference:

**(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other cooperative 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) areavailable 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 caso, 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-(e), 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 Kamataka 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 leared 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."
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."

5.3.2 Respectfully following the above cited judgment of Hon'ble Visakhapatnam, in the specific facts and circumstances of appellant's case, it is held that interest income accruing from Savings Bank A/c is to be taxed under the head 'income from business or profession' and accordingly, amount of Rs. 1,59,602/-, being the resultant interest income, is eligible for deduction under section 80P(2)(a)i) of the Act. Therefore, the relevant grounds of appeal are hereby treated as Allowed."

4. The Revenue's case before us is that the right course for the assessee herein is to institute a fresh lower appeal in sec.143(1) proceedings than taking recourse to filing appeal against 143(3) assessment(s) in both these assessment years. We find merit in the Revenue's instant technical argument since supported by the tribunal's judicial precedents cited in CIT(A)/NFAC's identical lower appellate discussion. We direct accordingly. We make it clear that the assessee shall be indeed at liberty to take recourse later appeal mechanism as per law in both the assessment years; if so advised, which shall be decided on merits. Ordered accordingly.

5. These, assessee's twin appeals ITA.Nos.122 & 123/ Coch/2024 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on this 5th day of November, 2024.

Sd/-	**Sd/-**
(Amarjit Singh)	**(Satbeer Singh Godara)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cochin ; Dated : 05th November, 2024.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin