



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "SMC" :: PUNE

BEFORE MS.ASHTA CHANDRA, JUDICIAL  
MEMBER AND  
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1840/PUN/2024

निर्धारण वर्ष / Assessment Year: 2017-18

Muktadevi Gramin Bigarsheti Sahakari Patanstha Maryadit Gunjalwadi, At Post – Gunjalwadi, Taluke – Junnar, District – Pune, Pune – 412401. PAN: AAAAM6151H	V s	The Income Tax Officer, Ward-10(1), Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	None
Revenue by	Shri A.D.Kulkarni – Addl.CIT(DR)
Date of hearing	19/11/2024
Date of pronouncement	22/11/2024

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], under section 250 of the Income tax Act, 1961 dated 09.07.2024 for A.Y.2017-18. The assessee has raised the following grounds of appeal :



*“Being aggrieved by the order dated 09/07/2024 passed by the learned **Commissioner of Income Tax (Appeals), NFAC, Delhi u/s 250 of the Income-tax Act, 1961 (“Act”)**, your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:*

*1. On the facts and in the circumstances of the case and in law, the appellant submits that Ld. CIT(A) erred by making disallowance of our claim for deduction u/s. **80P(2)** of the Act. The appellant, therefore, prays that deduction u/s. **80P (2) (a) (i)** and **80P (2) (c) (ii)** be allowed to us as claimed in ITR.*

*2. Your appellant craves leave to alter, modify, amend or delete any of the above grounds of appeal, or to add one or more new ground(s), as may be necessary.”*

### **Submission of Id.AR :**

2. None appeared on behalf of the assessee, however, assessee has filed a paper book and written submission. We have considered the written submission and paper book.

#### **2.1 The relevant part of the written submission is as under :**

“On the facts and in the circumstances of the case and in law, **the Ld. AO erred** in not allowing deduction u/s 80 P (2) (a) (i) of the Act, to its Total Income of Rs.49,82,073/- without appreciating the fact that the Appellant is a Co-operative Credit Society and carrying on the business of accepting deposits from members and advancing loans to their members, which is the primary activity of the Society. All the transactions of the Society were with the members of the Society only.

Similarly, the investments of the Society are in compliance Cash Reserve Requirements (CRR) (@2% of Member’s Deposits), Statutory Reserve Requirements (SLR) (@ 20% of Member’s Deposits), and investments of Reserve fund & other funds as per the guidelines of the Govt. Co-op. Department (Sec. 70, Rule 54 & 55). Therefore, the interest earned on such investments is also attributable to the business of our credit society and deductible



u/s 80 P (2) (a) (i) of the Act.

On the facts of the case and in law, the **Ld. CIT (Appeals), NFAC, Delhi** has erred in confirming the disallowance of Rs. 49,82,073/- made by the Assessing Officer by denial of admissible 100% deduction u/s 80-P(2)(a)(i) and u/s 80-P(2)(c)(ii) of the Income Tax Act for its Income.

The Appellant is a **Registered Co-op. Society** & its all transactions are with the members as per the Maharashtra Co-op. Societies Act, 1960, Rules made thereunder and Bye-laws of the Society. As per Registration Certificate the Society is a **Resource Society and not a Co-operative bank. (Page No. 39)**

The Appellant society has no transaction with the general public and the transaction with the members as per Bye-Laws, The Maharashtra Co-op. Societies Act & Rules made thereunder.

All the Co-op. Banks first of all have to be registered as a Co-op. Society & thereafter they are amending their Bye-laws to convert the same into Co-op. Bank to get banking license from RBI.

**No license from Reserve Bank of India (RBI)** is required to the Appellant to do the business.

RBI Letter Dt. 01/02/2012 stating that the Co-operative Credit Societies which have not been issued licenses under banking regulation Act, 1949 (As applicable to Co-operative societies) to carry out banking business cannot be classified as urban Co-operative bank. **(Page No. 78)**

(iv) It may be noted that, the above all investments were made from member deposits received in course of business, the cost of which overruns interest/benefits received therefrom. **The investments with the Co-operative Banks & Other Banks were “attributable to” to the Appellant’s business for the following reasons:** (Page No. 136 to 137)

- 1) The Investments were in compliance of CRR, SLR & Investments of other funds as per the provisions of Maharashtra Co-operative Societies Act, 1960 & Rules thereunder and the Bye-laws of the Appellant Society.



- 2) Funds transfer to the Branches of the Appellant Society.
- 3) The Ready availability of required Cash for routine business.
- 4) The Overdraft Facility obtained from these Banks.
- 5) There is no danger of loss of invested funds like Co-op. Banks and
- 6) To carry out smoothly all the objectives of the Bye-laws of the Appellant.

Therefore, the Investments are imperative for the business and inseparable & legal part of the business of the Appellant society; hence the co-operative & **non-co-operative bank interest is attributable to business income & allowable as such u/s 80P(2)(a)(i) of the Act, as held in case of M/s. New Satara Zilla Nagrik Sahakari Patsastha Maryadit, Mumbai-12 vs NFAC Delhi- 110041, ITAT Mumbai, "B" Bench, ITA Nos.209, 210 & 211/M/2023 dt.27/04/2023. ( Page No. 133 to 145)**

v) We draw your attention to the case law of **ITO WD - 1 vs. Akshaya Co-op Credit Society Ltd. ITA Nos.529/Pan/2016 ITAT Panji Bench dt. 21/11/2016** wherein the word "**attributable to**" has been elaborately discussed and the Bank Investment Interest has been considered deductible u/s 80P(2)(a)(i) of the Act.

*"9. The word 'attributable' used in the said Section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT[1978] 113ITR 84"*

*In the above case law such deduction is allowed to many Co-operative societies which please be perused. "*

2.2 Assessee relied on following case law :

*"The ITO, Pune V/s Vishwakarma Sarakshan Kamgar Sahakari Patsanstha Maryadit, Shaniwar Peth, Pune - 411 030, ITA Nos. 450*



& 451/PUN/2024, ITAT, Pune: “B” Bench, Pune; dated 09/08/2024;”

**Submission of ld.DR :**

3. Ld.Departmental Representative(ld.DR) for the Revenue relied on the order of the Assessing Officer and ld.CIT(A).

**Findings and Analysis :**

4. In this case, assessee is a Co-Operative Credit Society duly registered with Deputy Registrar, Co-operative Societies vide Certificate dated 03.12.1991 which is at page no.39 of the paper book. Assessee had filed Return of Income for A.Y.2017-18 on 23.10.2017 declaring total income at Rs.NIL, after claiming deduction of Rs.49,82,073/- under section 80P of the Act. The AO in the assessment order held that assessee has invested its surplus funds with PDCC Bank Limited and Other Banks. Assessee has received interest from PDCC and Other Banks. Assessing Officer(AO) held that assessee is not eligible for deduction under section 80P(2) of the Act as PDCC is a Co-operative Bank and not a Co-operative Society. The Assessing Officer held in Para 9 of the Assessment Order as under :

*“9. Thus the conditions essential to qualify as a cooperative banks are satisfied by the assessee i.e. (1) the primary object or principal business of which is the transaction of banking business; (2) the paid up share capital and reserves of the assessee are not less than one*



*lakhs of rupees. Therefore, it is clear that assessee society can be treated as a Cooperative Bank and also nature of the activity shows that it has taken the character of the Cooperative banks which are not eligible for deduction u/s 80P by virtue of share capital and surplus reserves and surpluses which are invested in banks other than mentioned in section 80P(2)(d).”*

4.1 Accordingly, AO disallowed assessee’s claim of deduction u/sec.80P of Rs.49,82,073/-. Aggrieved by the assessment order, assessee filed appeal before the ld.CIT(A). Ld.CIT(A) in para 4.14 and 4.15 held as under :

*“4.14 In view of the above judicial pronouncements, it is held that the impugned interest income from investments held with **Cooperative Banks which by themselves are registered as Cooperative Societies under the respective State Act** alone are to be allowed as deduction under Section 80P(2)(d) of the Act.*

*4.15 For sake of clarity, it is also made clear that deduction u/s.80P(2)(d) shall be restricted to the extent of net interest income earned from investments with cooperative banks only which are registered under Cooperative Societies Act and other interest income from commercial banks and other institutions as noted earlier shall not be allowed as deduction u/s.80P(2)(d) and such income shall be assessed under the head “Income from Other Sources” accordingly and deduction u/s.80P(2)(d) shall be allowed thereon. Appellant’s **Ground** on the issue is allowed partly.”*

4.2 In this case, admittedly assessee had claimed deduction u/sec.80P(2)(a) of the Act. Assessee is a Co-operative Credit Society. Admittedly, assessee do not have any banking license issued by RBI. Therefore, invoking Section 80P(4) of the Act by the Assessing Officer is erroneous.



4.3 The Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited Vs. CIT [2021] 431 ITR 1(SC)

**observed as under :**

*Quote "Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative -societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. " Unquote.*

4.4 The Hon'ble High Court of Andhra Pradesh and Telangana in the case of Vavveru **Co-operative Rural Bank Ltd. [2017] 396 ITR 371** analysed the provisions of Section 80P, succinctly distinguished the decision of Hon'ble Supreme Court in the case of Totagars Cooperative Sale Society, and held as under :

*Quote, "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 the 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 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." Unquote.*

4.5 Thus, Hon'ble High Court of AP &TS held that Interest Income earned by investing Income derived from Business and Profession by a Co-Operative Society was eligible for deduction u/sec.80P(2)(a) of the Act.



5. No contrary decision of the Hon'ble jurisdictional High Court has been brought to our notice. Therefore, as per rule of precedence, the proposition of law laid down by the Hon'ble High Court of AP & TS (supra) are binding precedents for us.

6. The Hon'ble ITAT Pune Bench in the case of Kolhapur District Central Co-op. Bank Kanista Sevakanchi Sahakar Pat Sanstha Ltd. Vs. Income-tax Officer 158 taxmann.com 322 (Pune Tribunal) has held as under :

*Quote "7.....I am of the considered opinion that even the interest income earned by cooperative society on deposits made out of surplus funds with cooperative banks as well as schedule bank qualifies for deduction both under the provisions of section 80P(2)(a)(i) and section 80P(2)(d) of the Act, therefore, the reasoning given by the lower authorities on this issue cannot be accepted. Therefore, I direct the Assessing Officer to allow deduction u/s 80P(2)(a)(i) and 80P(2)(d) in respect of interest income earned from cooperative bank/scheduled bank. Thus, the ground of appeal filed by the assessee stands allowed."*Unquote

7. The Hon'ble ITAT Pune Bench in the case of Yashwant Nagari Sahakari Patsanstha Maryadit Vs. ITO in ITA No.644/PUN/2024 dated 04.06.2024 held that the assessee was



eligible for deduction u/sec.80P(2)(a) of the Act on the Interest earned by assessee.

8. Respectfully following the decision of the Hon'ble High Court (supra) and ITAT Pune(supra), it is held that the Interest earned by the assessee is eligible for deduction u/sec.80P(2)(a) of the Act. Accordingly, Grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open Court on 22<sup>nd</sup> November, 2024.

**Sd/-**  
**(MS.ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> Nov, 2024/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.