

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "B" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

I.T.A.No.1314/PUN./2024 [E-APPEAL]

Assessment Year 2020-2021

The ACIT, Central Circle-2(3), Room No.632, Bodhi Tower, Salisbury Park, PUNE. PIN – 411 037. Maharashtra.	vs.	Parshwanath Nagari Sahakari Parsanstha Maryadit, 75/76, Guruwar Peth, Chwadi Chowk, Karad, Dist. SATARA. Maharashtra. PIN 415110. PAN AAAAP0511C
(Appellant)		(Respondent)

For Revenue :	Shri Arvind Desai, Addl. CIT-DR
For Assessee :	Shri B.C. Malakar

Date of Hearing :	26.11.2024
Date of Pronouncement :	27.11.2024

**ORDER**

**PER RAMA KANTA PANDA, V.P. :**

This appeal filed by the Revenue is directed against the order of the learned CIT(A), Pune-12, Pune dated 15.03.2024, relating to assessment year 2020-2021.

2. Grounds raised by the Revenue are as under :

1. *“On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is eligible for deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 on interest earned on the deposits made with co-operative banks and nationalized banks.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s.80P(2)(a)(i) by ignoring the fact that the assessee society is engaged in providing credit facilities to its members and therefore, the interest earned by depositing surplus funds with banks, not being attributable to business carried on by the society, is not deductible under section 80P(2)(a)(i).*
3. *The Ld. CIT(A) has erred in allowing deduction u/s.80P(2)(a)(i) by ignoring the decision of Hon'ble Supreme Court in the case of Totgar's Co-operative Sales Society Ltd. 322 ITR 283(SC) wherein it was held that such interest income earned by assessee was taxable under the head Income from Other Sources under section 56 of the Act and was not deductible from the gross total income under section 80P(2)(a)(i).*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is not hit by the provisions of section 80P(4) of the Act.”*

3. Facts of the case, in brief, are that the assessee is a cooperative credit society engaged in providing credit facilities to its members. It filed its return of income on 25.01.2021 declaring NIL income after claiming deduction under Chapter-VIA at Rs.3,53,40,393/- i.e., u/sec.80P(2)(a)(i) of the Act. The case was selected for scrutiny under CASS. Accordingly statutory notices u/sec.143(1) and 142(1) were issued and

served on the assessee, in response to which, the Authorised Representative of the assessee appeared before the Assessing Officer and filed requisite details from time to time.

3.1. During the course of assessment proceedings, the Assessing Officer, on perusal of the return of income filed by the assessee for the year under consideration, noted that assessee has offered gross total income of Rs.3,53,40,393/- and has claimed deduction under Chapter-VIA of the same being deduction u/sec.80P(2)(a)(i) of the Act. On being asked by the Assessing Officer to justify it's claim of deduction with supportive documents, the assessee mentioned that it is a cooperative credit society engaged in the business of providing credit facilities to it's members; obtaining deposits from members and giving loans and advances to it's members. It was submitted that the assessee-society is registered under the Maharashtra Cooperative Societies' Registration Act, 1969 and, therefore, it's income qualifies for deduction u/sec.80P(2) of the Act. The decision of the Tribunal in assessee's own case was relied upon. Further the assessee also relied upon various other decisions to support it's claim.

3.2. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that a plain reading of the provisions of sec.80P shows that only the amount of profits and gains earned by carrying on the

business of banking or providing credit facilities to its members; the assessee-society is eligible for claiming deduction u/sec.80P(2)(a)(i) of the Act. However, in the present case, a perusal of the financial statement from the profits and loss account shows that assessee-society has credited certain incomes which do not fall under the head “profits and gains of business” of the assessee. The Assessing Officer narrated some of the income which are as under :

- a) Interest on Investments of Rs.5,20,94,764/-:  
(Rs.5,16,20,864/- from Co-operative Bank and Rs.4.73.899/- from commercial & Nationalized Bank):  
Income from Other Sources(refer to the decision of Apex Court in the case of (Totgars, Co-operative Sale Society Ltd Vs ITO, Karnataka [2010] 188 Taxman 282 (SC)).
- b) Dividend of Rs.3,000/-: Income from Other Sources.
- c) MSEDCL Commission of Rs.1,45,053/-: Income from Other Sources.
- d) Office rent received of Rs.1,32,000/-: Income from House Property.

3.3. The Assessing Officer relied on various decisions and observed that the decision of the Tribunal in assessee's own case has not been accepted and appeal has already been filed by the Revenue before the Hon'ble jurisdictional Bombay High Court which is pending on date. The Assessing Officer,

therefore, denied the claim of exemption u/sec.80P(2)(a)(i) of the Act. It is pertinent to mention herein that the Assessing Officer at Page-35 Para-E of the order has observed as under :

*“E] Moreover, the decisions of the Hon'ble ITAT for A.Y. 2011-12 in the case of assessee, Parshwanath Nagari Sahakari Patsantha Maryadit has not been accepted and appeal before the Hon'ble Bombay High Court has already been filed by the Revenue, which is pending as on date.”*

4. In appeal, the learned CIT(A) allowed the claim of assessee by observing as under :

*“Findings :*

*4.2. Grounds No.1 to 3 are in respect of disallowances of the claim of Rs.5,23,74,817/- in respect of deduction u/s 80P(2)(a)(i) of the Act and Grounds No.4 to 6 are additions on account of interest on investment, dividend and MSEDCL commission and addition u/s 43B, Brief facts of the case are that the appellant is a Co-operative Society (AOP), engaged in providing credit facilities to its members. The appellant takes deposits from its members and advances loans as per the requirement of the members. The residue of income is deposited by the appellant society in the Nationalized/ Scheduled Banks and Co-operative*

*Banks. The AO during the course of the assessment proceedings disallowed the claim of deduction u/s 80P(2)(a)(i) relying on the decision of Hon'ble Apex Court in the case of Totgar's Cooperative Sales Society Ltd Vs ITO, Karnataka [2010] 188 Taxmann 282 (SC).*

4.3. *The appellant submitted that the issue is covered in favour of the appellant in its own case vide Hon'ble ITAT, Pune's order in ITA No. 265/PUN/2019 (AY 2014-15) wherein the Hon'ble ITAT has held that the ratio of Hon'ble Apex Court in the case of Totgar's Co-Operative Sale Society (supra) is not applicable to the case of the appellant. However, the AO made the impugned additions as the department has contested the matter before the Hon'ble Bombay High Court and the same is pending before the Hon'ble High Court.*

4.4. *The Hon'ble ITAT, Pune vide their order in ITA No. 265/PUN/2019 in the case of the appellant for AY 2014-15 has held as under :*

*"3. We have heard the rival submissions in Virtual Court and gone through the relevant material on record. The Pune Benches of the Tribunal in Sureshdada Jain Nagari Sahakari Patsanstha*

*Maryadit Vs. The Pr.CIT (ITA No: 713/ PUN/2016) decided the question of availability of deduction u/s 80P on interest income by noticing that the Pune ITAT in an earlier case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO (ITA.No.604/PN/2014) had allowed the deduction in similar circumstances. 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 Lid (supra). No direct judgment from the Hon'ble jurisdictional High Court on the point having been pointed out, 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 Kamataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd (supra).*

*The position continues to remain the same before this Bench also.*

4. *Reliance of the Id. DR in the case of Pr. CIT and Another Vs. Totagars Cooperative Sales Society (2017) 395 ITR 611 (Kar.) is not relevant. The issue in that case was the eligibility of deduction u/s 80P(2)(d) of the Act on interest earned by the assessee co operative 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 effect of this decision, it turns out that the same is not germane to case under consideration in view of the position that the primary claim of the extant assessee is directly about the eligibility of deduction u/s.80P(2)(a)(i) of the Act. In view of the foregoing discussion, we uphold the conclusion drawn by the Id CIT(A) in the impugned*

*order by allowing deduction u/s 80P(2)(a)(i) of the Act.*

5. *In the result, the appeal is dismissed."*

4.5. *Hence, relying on the above order of the Hon'ble ITAT and the other judicial pronouncements relied upon by the appellant which cover Grounds No. 1 to 6 of the appeal under consideration in favour of the appellant, respectfully following these binding decisions, Grounds no. 1 to 6 of the appeal are, hereby, ALLOWED."*

5. Learned DR strongly opposed the order passed by the learned CIT(A). He submitted that Assessing Officer thoroughly discussed the issue and has given valid reasons for not accepting the order of the tribunal in assessee's own case for assessment year 2011-12 and therefore, the CIT(A) should not have deleted the additions made by the Assessing Officer.

6. Learned counsel for the assessee on the other hand while supporting the order of learned CIT(A) filed a chart showing similar claim that has been accepted by the AO. He submitted that in assessment year 2011-12 the Tribunal has allowed the claim of deduction u/sec.80P(2) which was denied by the AO but allowed by CIT(A). The appeal filed by the Revenue was dismissed. For assessment years 2012-2013 to 2016-2017, the Assessing Officer in the assessment orders

passed u/sec.143(3) or 154 r.w.s.153A has allowed the claim of deduction u/sec.80P(2) of the Act. Similarly, for assessment year 2017-18 also, the deduction u/sec.80P(2) was allowed. For assessment years 2018-19 and 2019-2020 the learned CIT(A) has allowed the claim of deduction u/sec.80P(2) of the Act. Therefore, there is no error in the order of the learned CIT(A) in allowing the claim of deduction u/sec.80P(2)(a)(i) of the Act.

7. We have heard the rival arguments made by both the parties and perused the material available on record. We find the Assessing Officer denied the claim of deduction u/sec.80P(2)(a)(i) of the Act on the ground that the decision of the Tribunal in assessee's own case was not accepted by Revenue and an appeal is pending before the Hon'ble jurisdictional Bombay High Court which is still pending. Further, only the amount of profits and gains earned by carrying on the business of banking or providing credit facilities to its members; the assessee-society is eligible for claiming deduction u/sec.80P(2)(a)(i) of the Act. However, in the present case, the assessee-society has credited certain incomes which do not fall under the head of "Profits and Gains of Business" of the assessee-society.

8. We find that the instant issue has come-up before the tribunal in assessee's own case for the assessment year 2011-

12 and the tribunal vide order dated 27.01.2022 in ITA.No.265/PUN./2019 has dismissed the appeal filed by the Revenue by observing as under :

*“3. We have heard the rival submissions in Virtual Court and gone through the relevant material on record. The Pune Benches of the Tribunal in Sureshdada Jain Nagari Sahakari Patsanstha Maryadit Vs. The Pr.CIT (ITA No.713/PUN/2016) decided the question of availability of deduction u/s 80P on interest income by noticing that the Pune ITAT in an earlier case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO (ITA No.604/PN/2014) had allowed the deduction in similar circumstances. 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. (supra). No direct judgment from the Hon’ble jurisdictional High Court on the point having been pointed out, 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). The position continues to remain the same before this Bench also.*

4. *Reliance of the ld. DR in the case of Pr. CIT and Another Vs. Totagars Cooperative Sales Society (2017) 395 ITR 611 (Kar.) is not relevant. The issue in that case was the eligibility of deduction u/s.80P(2)(d) of the Act on interest earned by the assessee co-operative 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 effect of this decision, it turns out that the same is not germane to case under consideration in view of the position that the primary claim of the extant assessee is directly about the eligibility of deduction u/s.80P(2)(a)(i) of the Act. In view of the foregoing*

*discussion, we uphold the conclusion drawn by the ld CIT(A) in the impugned order by allowing deduction u/s.80P(2)(a)(i) of the Act.*

*5. In the result, the appeal is dismissed.”*

8.1. We further find from the details furnished by the learned counsel for the assessee that the Assessing Officer in the order passed u/sec.143(3) for assessment years 2012-13 and 2013-14 has allowed the claim of deduction u/sec.80P(2) of the Act. Similarly, for the assessment years 2014-15 and 2015-16 such deductions were allowed by the Assessing Officer in the order passed u/sec.154 r.w.s.153A. For the assessment year 2016-17 such deduction was allowed vide order passed u/sec.143(3) r.w.s.153A. For assessment year 2017-18, although an addition has been made u/sec.68 of the Act amounting to Rs.7,20,24,836/-, however, no disallowance u/sec.80P(2) was made by the Assessing Officer in the order passed u/sec.143(3) r.w.s.153A. We find for assessment year 2018-19 Assessing Officer has not disallowed the deduction claimed u/sec.80P in the order passed u/sec.143(3). Further for the assessment year 2019-20 an order has been passed u/sec.143(1)(a) and the deduction claimed u/sec.80P(2) has been allowed. Therefore, following the rule of consistency as well as following the order of the tribunal in assessee's own case for assessment year 2011-12, we do not find any infirmity

in the order of the learned CIT(A) in allowing the claim of deduction u/sec.80P(2)(a)(i) of the Act. Thus, the same is upheld and the grounds raised by the Revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 27.11.2024.

Sd/-  
[MS. ASTHA CHANDRA]  
JUDICIAL MEMBER

Sd/-  
[RAMA KANTA PANDA]  
VICE PRESIDENT

Pune, Dated 27<sup>th</sup> November, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Pune-11, Pune.
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "B" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.