IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.125/Nag./2024
(Assessment Year : 2018–19)

Utkarsh Nagpur Z.P. Prathmik
Shikshan Pat Sanstha Maryadit
Plot no.201, Sakkardhara Road ……. Appellant
Gajanan Chowk, Old Shukrawari
Nagpur 440 009 PAN–AAAAU6867G

v/s

Income Tax Officer
Ward–4(4), Nagpur ..... Respondent

Assessee by : Shri Kishore P. Dewani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 26/11/2024	Date of Order – 28/11/2024

O R D E R

PER K.M. ROY, A.M.

The captioned appeal by the assessee is against the impugned order dated 20/04/2021, 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. In the regular assessment framed u/s 14313) on 20/04/2021 income shown in the return at Rs Nil was accepted however in tax computation sheer tax was levied on income at Rs.85,78,260/- Levy of tax in the computation sheet in the absence of income determined u/s 143(3) of I.T. Act 1961 is unjustified, unwarranted and bad in law.*

2. In the absence of any addition in the assessment framed u/s 143(3) of I.T. Act 1961 no tax can be levied merely in the computation sheet. Levy of tax is bad in law and ought to have been cancelled.

L The learned CIT(A) erred in holding that addition made at Rs.11.37.656/- in the intimation cannot be challenged in appeal against the order passed u/s 143(3) of I.T. Act 1961. 3.

4. Addition made at Rs 11,37,656/- by not allowing deduction uls 80P of I.T. Act 1961 is unjustified unwarranted and bad in law

5. The assessee denies liability to pay interest under section 234A, 234B and 234C of IT Act 1961. Without prejudice, levy of interest under section 234A, 2340 and 234C of I.T. Act 1961 is unjustified, unwarranted and excessive

6. Any other ground shall be prayed at the time of hearing."

3. Facts of the case are, the assessee is a registered Employees Credit Co–operative Society. The main object of the assessee society is accepting deposits from its members and providing credit facilities to its members. For the relevant assessment year, the assessee filed its return of income on 24/10/2018, disclosing total income of ₹ nil, after claiming deduction of ₹ 74,40,599, under section 80P(2)(a)(i) of the Income Tax Act, 1961 (*"the Act"*). The said return of income was processed under section 143(1) of the Act assessing total income at ₹ 31,85,280, by making certain adjustments after allowing deduction of ₹ 74,40,599 under section 80P of the Act. Subsequently, the case of the assessee was selected for limited scrutiny on the issue of – (i) Investments / Advances / Loans; and (ii) Deduction from total income under Chapter VI–A of the Act. The assessee, in response to the notices under section 143(2) and 142(1) of the Act issued by the Assessing Officer to the assessee to examine the above issues, filed details / documents which were considered by the Assessing Officer. The Assessing Officer completed the assessment under section 143(3) r/w section 144B of the Act

on 20/04/2021 by accepting the returned income. However, the Assessing Officer computed the total income of the assessee at ₹ 85,78,260, without giving any deduction under Chapter VI–A in the computation sheet.

4. On appeal, the learned CIT(A) allowed the claim of deduction under section 80P of the Act with the following observations and directions:–

> *"6.6 In the instant case, apparently the AO has not disallowed the claim u/s 80P of the Act in assessment order however in the computation sheet the claim of deduction u/s 80P of the Act has been disallowed. Moreover, as seen from the intimation/order(supra) u/s.143(1) of the Act dated, the deduction u/s.80P has been allowed to the appellant. In view of the above, prima facie, it appears that there is mistake apparent from record. Therefore, the AO is directed to examine the above facts & rectify the mistake apparent from record, if any and, accordingly, allow the deduction of Rs.74,40,599/- claimed by the assessee u/s 80P of the Act. Hence, the ground no. 4 filed by the assessee is allowed subject to the above."*

The assessee being aggrieved is in further appeal before the Tribunal.

5. The learned Counsel, Shri Kishore P. Dewani, appearing for the assessee, submitted that the assessee, along with its return of income, also filed Audited Financial Statements indicating income derived from providing credit facilities to its members and the same have been accepted and not faulted in the regular assessment framed under section 143(3) of the Act. The learned Counsel further submitted that in the tax computation sheet, income from business or profession is taken at ₹ 85,78,260, and it appears that the same is on account of mistake in not granting deduction under section 80P of the Act. The learned Counsel submitted that it is not the case of the Assessing Officer and/or the learned CIT(A) that the assessee is carrying on any activities other than the activity of providing credit facilities to its members. Amount received on interest from investment of statutory funds is income in

the course of activity of providing credit facilities to its members and deduction under section 80P of the Act cannot be denied in respect to such sum and.

6. The learned Departmental Representative, Shri Abhay Y. Marathe, appearing for the Revenue relied upon the order of the authorities below.

7. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. Though the learned CIT(A) has directed the Assessing Officer to examine the facts of the case and rectify the mistake apparent from record, if any, and accordingly allow the deduction of ₹ 74,40,599, claimed under section 80P of the Act. Be that as it may. However, we find 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?"*

After considering the issue, the Hon'ble Jurisdictional High Court has concluded as under :

> *"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."*

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).

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 :

> *"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:-*
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> > *"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:*
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> > > *"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 :-*
> > >
> > > *"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 :*

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….."

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 –

"(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).

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.

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. "

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)."

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."

8. 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 from Co–operative Banks in respect of the amount received from the Members of Co–operative Society is assessable under the head *"Income From Business"* and not under the head *"Income From Other Sources"*. We, 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, we uphold 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. Thus, all the grounds raised by the Revenue are dismissed.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 28/11/2024

Sd/-	**Sd/-**
K.M. ROY	**V. DURGA RAO**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

NAGPUR, DATED: 28/11/2024

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