आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.192/Ind/2024
(Assessment Year: 2020-21)

M.P. Police Sakh Sahakari Sanstha Maryadit, 32nd Battalion, Dewas Road Nagari, Ujjain	Vs.	ITO 2(1), Ujjain
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AABAM5551C		

Assessee by	Shri Milind Wadhwani, AR
Revenue by	Shri Ashish Porwal, Sr.DR
Date of Hearing	27.02.2025
Date of Pronouncement	28.02.2025

O R D E R

This appeal by the assesse is directed against the order dated 30.07.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi for A.Y.2020-21 which is arising from the assessment order u/s 143(3) of the Act dated 23.09.2022 framed by Assessing Officer 2(1), Ujjain.

2. Assessee has raised following grounds of appeal:

"1. That on the facts and circumstances of the case and in law, The Ld. CIT (A) erred in upholding the action of Ld. AO in determining the total income of the appellant, except for the partial relief granted in respect of allowing deduction on the interest earned out of the amount of profit which is transferred to reserves and partial allowance of expenditure against interest income which is not treated as business income.

2. That on the facts and circumstances of the case and in law, the learned CIT(A) erred in restricting the deduction only up to the amount of interest earned on the amount reserved by the assessee i.e. 25% of profit transferred to reserves.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing to allow expenditure only up to the amount of interest income which is not treated as business income.

4. That on the facts and circumstances of the case and in law, The Ld. CIT (A) erred in predominantly upholding the action of Ld. AO in determining the total income of the appellant at Rs. 23,92,976/-as against the returned income of Rs. Nil thereby making addition of Rs. 23,92,976/-.

5. That on the facts and circumstances of the case and in law, The Ld. CIT(A) erred in predominantly upholding the action of Ld. AO in making addition of Rs. 23,92,976/- to the income of the appellant.

6. That on the facts and circumstances of the case and in law, The Ld. CIT(A) erred in confirming the action of Ld. AO in treating the interest received from bank as Income From Other Sources and denying the benefit of deduction under section 80P of the Act

7. That on the facts and circumstances of the case and in law, The Ld. CIT(A) erred in confirming the action of Ld. AO in holding that the interest income earned by the appellant credit society from Bank was not falling under the provisions of section 80P and therefore, the interest income earned by the appellant from such bank was liable for taxation under the head income from other sources.

8. That on the facts and circumstances and in law. The Ld. CIT(A) erred in confirming the action of Ld. AO in not considering and appreciating the material fact that the appellant society had made deposits with Bank during the course of and for the purpose of carrying out its business of providing credit facilities to its members.

9. That on the facts and circumstances and in law The Ld. CIT(A) erred in confirming the action of Ld. AO in in not considering and appreciating the

material fact that the earlier assessment years the claim of the appellant as regard to deduction under section 80P qua the interest income on deposits with bank was duly allowed even in the earlier assessments framed u/s. 143(3) of the Act and therefore in absence of any change in the facts and circumstances of the case there was no reason for taking a different view in for the assessment year under consideration.

10. That on the facts and circumstances of the case and in law, the assessment order dated 23.09.22 passed under section 143(3) rws 144B is without jurisdiction, bad in law and on facts and hence it is liable to be quashed.

11. That the reassessment order is contrary to law, facts and circumstances of the case and in any case is opposed to the principles of equity, natural justice and fair play.

12. That the Ld. CIT-(A) erred in confirming the above addition on mere conjectures, surmises and suspicions.

13. That the Ld. CIT-(A) erred in not considering the explanations and submissions furnished by the appellant.

14. That the assessment order was passed without complying with the statutory requirements of the law.

15. The appellant craves leave to add, amend, alter vary and or withdraw any or all the above grounds of appeal.

16. PRAYER For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that this Hon. Tribunal may be pleased to:
a. Deduction u/s. 80P may be allowed in full;
b. Disallowance of deduction may be deleted.
c. Quash the order dated 23.09.22 passed u/s 143(3) rws 144B of the act.
d. Allow the claim of the appellant."

3. The assessee has raised as many as 15 grounds of appeal which are repetitive in nature and not inconsonance with the Income Tax Tribunal Rules. However the sole grievance is that the

Ld. CIT(A) erred in partly sustaining the addition made by the Ld. A.O denying the claim of deduction u/s 82 of the Act at Rs.23,92,976/-.

4. The facts of the case in brief are that the assessee is a co-operative society engaged in providing credit facilities to its members and is eligible for deduction u/s 80P(a)(i) of the Act. The case selected for scrutiny and during the course of proceedings it was observed by the Ld.A.O that the assessee earned interest income of Rs.23,92,976/- from the investment of surplus funds with statutory banks. The Ld. A.O specifically observed that the investment of the assessee society with Bank of India at Rs.4,87,30,886/- fetched interest income of Rs.23,92,976/-. The Ld. A.O passed the assessment order relying on the decision of Hon'ble Supreme Court in case of *Totgar Cooperative Sale Society 322 ITR 283, State Bank of India (2016) 72 Taxman (Gujarat)* and others (as referred in the assessment order)and observed that the assessee is not entitled for deduction u/s 80P 2((a)i) for the alleged interest income from deposits with scheduled bank at Rs.23,92,976/- .

5. Thereafter aggrieved assessee preferred appeal before Ld. CIT(A), who followed the ratio laid down by the jurisdictional Tribunal giving part relief to the assessee by giving following directions to the Ld. A.O:-

> *1. allow deduction on the interest earned out of the amount reserved by the assessee i.e.25% of profit transferred to the reserves.*
>
> *2. allow expenditure against interest income which is not treated as business income.*

6. Aggrieved assessee preferred appeal before this Tribunal challenging the part addition sustained by the Ld. CIT(A). Ld. Counsel for the assessee referred to the written submissions and mainly referred to the judgment of Hon'ble Supreme Court in *CIT vs. Nawanshahar Central Cooperative Bank Ltd 160 Taxman 48* and also referring to the CBDT *Circular No.18 of 2015 dated 2.11.2015* and stated that even the cooperative societies are eligible for 80P deduction on the interest income earned from scheduled banks.

7. On the other hand Ld. Departmental Representative supporting the orders of the lower authorities.

8. I have heard rival contentions and perused the records before me. The Ld. A.O made the disallowance u/s 80P at Rs.23,92,876/- on observing that the assessee has earned the alleged sum towards the interest earned from the scheduled banks. Ld. CIT(A) gave part relief to the assessee as follows:

> *8. We have heard the rival submissions, perused the materials available on records and gone through the orders of the authorities below. The only basis of declining claim of deduction u/s 80P(2)(d) by the AO is that the surplus funds deposited in bank account would partake character of 'Income from other sources' but not 'income from business'. We have perused the case laws as relied by the Ld. Counsel for the assessee. The Hon'ble Karnataka High Court in the case of Guttigedarara Credit Co-operative Society Ltd. Vs. ITO (supra) has held as under:*
>
>> *8. In this regard, it is necessary to notice the relevant provision of law ie. Section 80P(2)(a) (1):-*
>>
>> *"80P Deduction in respect of income of co-operative societies:- (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*
>>
>> *(2) The sums referred to in sub-section (1) shall be the following, namely:*
>> *(a) in the case of co-operative society engaged in-*
>>
>> *(i) carrying on the business of banking or providing credit facilities to its members, or*

*(ii) to (vii) *****

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

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] 113 ITR 84 (at page 93) as under:-

'As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from" Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity'

10. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Co-operative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as

to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

11. In this context when we look at the judgment of the Apex Court in Totgars Co-operative Sale Society's case (supra), on which reliance is placed, the Supreme Court was dealing with a case where the assessee/Co-operative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought was invested in a short-term deposit/security.
Such an amount which was retained by the assessee-Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court hold the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear Supreme Court was not laying down any law.

12. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State Co-operative Bank Ltd. [2011] 336 ITR 516/200 Taxman 220/12 taxmann.com 66.

13. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The

substantial questions of law are answered in favour of the assessee and against the revenue. Hence, we pass the following order:-

9. In the present case, the undisputed fact is that the assessee society is required to deposit 25% of its profit as mandated by section 43(2) of the M.P. Chattisgarh Societies Act, 1960. Hence, the assessee is under legal obligation to keep 25% of its profits as reserves. Any interest accrued there on would certainly, in our considered view pertake character of business income of the assessee. Hence, it would be eligible for deduction. Therefore, the A.O. is directed to allow deduction on the interest earned out for amount so reserved by the assessee i.e., 25% of profit transferred to reserves.

10. Another ground of the assessee that the A.O. ought to have allowed expenditure incurred for the earning of the interest income, when he treated the same as 'income from other sources. We find merit into the contentions of the assessee that the set off of expenditure incurred ought to have been allowed by the AO. When the interest income is charged to tax, the expenditure incurred for earning of such income would certainly be deductible. We direct accordingly. The A.O. would allow the deduction of expenditure incurred for earning of the interest income. We would like to clarify that the allowance of expenditure is restricted to the interest income, which has not been treated as a business income, in view of the discussion herein above Both the grounds of the assessee are allowed in terms indicted herein above. Appeal of the assessee is allowed.

Following the decision of the jurisdictional Tribunal (supra), I direct the AO to

1. *allow deduction on the interest earned out of the amount reserved by the assessee ie 25% of profit transferred to reserves.*

2. *allow expenditure against interest income which is not treated as business income.*

The grounds of appeal 1 to 8 are partly allowed."

9. On going through the above finding of Ld. CIT(A) which has been given after following the decision of the jurisdictional Tribunal in the case of the asseesee's sister organization i.e *M.P Police Sakha Sahakari Vs ITO Ward 4(5), Indore ITA No.649/Ind/2018 dated*

17.12.2019 find that CIT(A) has rightly given the part relief to the assessee. So far as the submissions made by the assessee. I find that the same have no merits because in the judgment of Hon'ble Apex Court in case of *CIT vs. Nawanshahar Central Cooperative Bank Ltd* (supra) the assessee was a cooperative bank having banking licensing whereas in the instant case the assessee is not cooperative bank and it does not have any banking license but is merely a cooperative society engaged in providing credit facility to its members. Therefore the ratio laid down by the Hon'ble Apex Court in the case of *CIT vs. Nawanshahar Central Cooperative Bank Ltd* (supra) is not applicable on the facts of the instant case. Even the CBDT circular No.18/2015 is not applicable on the assessee society because this circular has been given referring to the judgment of Hon'ble Apex Court in case of *CIT vs. Nawanshahar Central Cooperative Bank Ltd (supra)* and it was only with regard to bank/commercial bank to which banking license applies. Since the assessee is not registered under banking Act 1949 and is merely a cooperative society CBDT Circular No.18/2015 (supra) will not apply on it.

10. In view of the above we fail to find any merit in the grounds of appeal raised by the assessee and thus no infirmity is called for in the finding of Ld. CIT(A). Ground No.1 to 15 are dismissed. Ground No.16 is general in nature which does not require any adjudication.

11. In the result appeal of the assessee is dismissed.

Order pronounced in the open court on 28.02.2025.

Sd/-

(MANISH BORAD)
Accountant Member

Indore, 28 .02.2025
Dev/Sr. PS

Copies to: *(1) The appellant*
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore