

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "SMC" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No. 140/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2018-19)**

Sri Lakshmi Venkateswara Mutually Aided Cooperative Society Limited D.No. 49-12-33 Lalitha Temple Street Lalitha Nagar, Akkayyapalem Visakhapatnam – 530016 Andhra Pradesh [PAN: AADAS2078L]	v.	Income Tax officer – Ward – 1(1) Income Tax Office Pratyakshakar Bhavan MVP Colony, Visakhapatnam – 530017 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Smt A. Aruna, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	06.02.2025
घोषणा की तारीख/Date of Pronouncement	:	20.02.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No.

ITBA/NFAC/S/250/2022-23/1050015961(1) dated 22.02.2023 for the A.Y.2018-19 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 23.04.2021.

2. At the outset, it is noticed from the appeal record that there is a delay of 346 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the petition which is as under:

“1. The learned Commissioner of Income Tax (Appeals) passed the order in the case of the appellant on 22.02.2023. As such, the appeal against this order ought to have been filed on or before 23.04.2023. However, the appeal could be filed only on 03.04.2024 resulting in a delay of 346 days in filing the appeal.

2. The appellant is a cooperative society engaged in providing credit facilities to its members. The appellant is a small society and engaged an accountant to work on part time basis for maintenance of its books of account, for maintaining the account in the income tax portal, for keeping track of the notices /orders and for coordinating with the tax consultant for necessary action. With the help of this part time accountant, the appellant complied with all the notices during the assessment proceedings as well as during the appeal proceedings before the NFAC. The learned Commissioner of Income Tax (Appeals) passed the order on 22.02.2023. The part time accountant was asked to coordinate with the Tax consultant for taking necessary action against the order of the learned CIT(Appeals). The appellant believed that the matter would be attended to.

3. The appellant received a phone call on 28.03.2024 from the Income Tax officer regarding the payment of outstanding demand. It was only at this point of time that the appellant came to know that the part time accountant did not inform the tax consultant regarding the order dt. 22.02.2023 of the learned Commissioner of Income Tax (Appeals) and the appeal was not filed against this order.

4. The appellant complied with all the notices issued during the assessment proceedings. The assessment order was passed on 23.04.2021 and the appellant filed appeal on 26.04.2021 i.e. within 4 days. Even during the appeal proceedings, as soon as the communication window was

enabled, the appellant requested the learned CIT(A) to issue hearing notice. The hearing notice was issued on 25.01.2023 and the appellant filed written submissions on 31.01.2023. All the above shows that the appellant is vigilant enough.

5. The appeal before the hon'ble ITAT could not be filed in time due to the reasons explained above which were beyond the control of the appellant. The delay is neither intentional nor deliberate. Therefore, the appellant prays the hon'ble ITAT to condone the delay of 346 days in filing the appeal and pass appropriate order in the interest of rendering substantial justice.”

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR, we find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 346 days. Therefore, we hereby condone the delay of 346 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Brief facts of the case are that, assessee is a cooperative society registered under AP State Mutually Aided Co-operative Societies Act 1995 and has been carrying the business of credit among the members of the society. The case was selected for limited scrutiny assessment under the E-assessment scheme, 2019 on the following issues: -

- i. Investments / advances / Loans
- ii. Deductions from Total Income under Chapter VI-A.

5. Subsequently, notice under section 142(1) of the Act was issued to the assessee on 28.11.2020 and 15.03.2021 along with the questionnaire. In

response, assessee furnished the information as called for. On verification of the details furnished by the assessee, Ld. Assessing Officer [hereinafter in short "Ld.AO"] noticed that during the previous year under consideration, assessee has earned an interest income and claimed deduction under section 80P(2)(a)(i) of Rs. 85,21,036/- out of which earned interest income of Rs. 6,30,267/- and claimed the entire interest income as deduction under section 80P(2)(a)(i) of the Act. Ld.AO, thereafter, issued show-cause notice requesting the assessee to show-cause why should not disallow the interest income of Rs. 6,30,267/- on the surplus fund from the Banks and claimed deduction under section 80P(2)(a)(i) of the Act. Assessee submitted its reply and submitted that the claim is admissible as per section 80P of the Act. Ld. AO on considering the provisions of section 80P(2) of the Act concluded that, this section only envisages interest from cooperative society and not a cooperative bank. Therefore, Ld. AO disallowed the claim of Rs.6,30,267/- claimed by the assessee under section 80P of the Act.

6. Aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld.CIT(A), NFAC, Delhi. Assessee submitted similar information before Ld.CIT(A). Ld. CIT(A) after considering the submissions made by the assessee dismissed the appeal of the assessee.

7. Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising the following revised grounds of appeal: -

“1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.6,30,267 made by the assessing officer towards disallowance of deduction u/s 80P in respect of interest received from SBI.

3. Any other grounds may be urged at the time of hearing.”

8. The only issue contested by the assessee is with respect to disallowance of interest under section 80P(2)(a)(i) of the Act considering the interest received from State Bank of India is not eligible for deduction u/s 80P(2)(a)(i) of the Act. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] relied on the Coordinate Bench decision in the case of ITO v. The Kakateeya Mutually Aided Thrift and Credit Co-op. Society Limited in ITA NO. 107/VIZ/2022. She therefore, pleaded that the deduction claimed by the assessee under section 80P(2)(a)(i) of the Act be allowed.

9. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully supported the orders of the revenue authorities.

10. We have heard both the sides and perused the material available on record. The main grievance of the assessee is with respect to denial of deduction under section 80P(2)(a)(i) of the Act in respect of interest income received from State Bank of India. In the case relied on by the Ld.AR this bench has already taken a view as held in Para Nos. 10 & 11, which is reproduced below:

“10. From the bare reading of section 80P(2)(a) 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) are available 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 case, 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-(a), 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 cannot be lost, 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 in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another [2017] 396 ITR 0371 (AP) 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 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.”

11. 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 and Telengana 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.

11. Judicially following the decision of the coordinate Bench as stated in the aforesaid paragraphs, we direct the Ld.AO to allow the deduction claimed by the assessee under section 80P(2)(a)(i) of the Act for Rs. 6,30,267/-. Accordingly, Ground No. 2 raised by the assessee is allowed.

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

Order pronounced in the open court on 20th February, 2025.

Sd/-

(के.नरसिम्हा चारी)

(K.NARASIMHA CHARY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated:20.02.2025

Giridhar, Sr.PS

Sd/-

(एसबालाकृष्णन)

(S. BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Sri Lakshmi Venkateswara Mutually Aided Cooperative Society Limited**
D.No. 49-12-33
Lalitha Temple Street
Lalitha Nagar, Akkayyapalem
Visakhapatnam – 530016
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax officer – Ward – 1(1)**
Income Tax Office
Pratyakshakar Bhavan
MVP Colony, Visakhapatnam – 530017
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam