

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH

BEFORE
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI BALAKRISHNAN S., ACCOUNTANT MEMBER

आ.अपी.सं / ITA No.534 /Viz/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

The Visakhapatnam Port Trust Employees Credit Co-operative Society
Visakhapatnam
[PAN : AACAT5960B]

Vs. ACIT
Circle-1(1)
Visakhapatnam

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Billapati & Co., AR
राजस्व द्वारा/Revenue by: Dr. Aparna Villuri, Sr DR

सुनवाई की तारीख/Date of hearing: 12/02/2025
घोषणा की तारीख/Pronouncement on: 04/03/2025

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 30/10/2024 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of The Visakhapatnam Port Trust Employees Cooperative Society ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Assessee is an employee cooperative society. While processing return of income filed by the assessee for the assessment year 2017-18, claim for deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 ('the Act') in respect of the interest derived by the assessee on deposits with banks/institutions was denied by the learned Assessing Officer on the ground

that the scheduled bank from which the assessee derived such interest is not a co-operative bank.

3. Learned CIT(A) also was of the opinion that any interest income from investment with nationalized bank/scheduled bank which is not attributable to the activities specified in section 80P(2)(a) of the Act has to be necessarily assessed under the head 'income from other sources'. To reach this conclusion, the learned CIT(A) placed reliance on the decision of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO [2010] 188 Taxman 282 (SC) and SBI, Gujrat 3CM reported in (2016) 72 Taxmann.com 64 (Guj.). Learned CIT(A) accordingly upheld the disallowance.

4. Submission of the learned AR is that the assessee is an employees' Cooperative Society as is evident from the registration of the society, funds deposited are the own funds of the assessee, namely, the surplus funds which are not to be utilised in the near future in the nationalised bank and, therefore, such deposit has nexus with the business of the assessee. Assessee placed reliance on the decisions reported in The Vavveru Co-operative Rural Bank Ltd. vs. CCIT (2017) [396 ITR 371] (AP).

5. Per contra, learned DR argued that insofar as the deduction under section 80P(2)(a)(i) of the Act is concerned, it is available only to primary agricultural co-operative society but not to all the co-operative societies and, therefore, this fact needs verification. Secondly, he submitted that whether or not the deposited amount is the exclusive amount of the assessee and not the amount if any, withheld and payable to the members.

6. We have gone through the record in the light of the submissions made on either side. It could be seen from the name of the assessee that it is an employee's cooperative society. It earned some interest income by depositing certain amounts in a scheduled bank. Though the assessee places claim before the learned CIT(A) on cooperative rural Bank (supra), learned CIT(A) did not refer to the facts of this decision not to comment on the applicability of this decision to the facts of the case. Issue relating to the interest accrued from investment with a scheduled/commercial bank whether or not attributable to

the activities specified in section 80P(2)(a) of the Act, is concerned, this issue is no longer res integra. Hon'ble jurisdictional High Court considered the same in extenso in The Vavveru Co-operative Rural Bank Ltd. (supra). On a threadbare analysis of the provisions under section 80P of the Act in the light of various decisions including the decision of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. (supra) and jurisdictional High Court in the case of CIT vs. Andhra Pradesh State Co-operative Bank Ltd [2011] 12 taxmann.com 66 (Andhra Pradesh), the Hon'ble High Court reached a conclusion that if the investment is made in fixed deposits in nationalised banks from out of the own funds of the assessee, the interest derived from such investment would be from the activities listed in clause (i) to (vii) of section 80P(2)(a) of the Act and would be eligible for deduction. For the sake of completeness, we deem it necessary to extract the relevant observations of the Hon'ble High Court hereunder,-

"28. Before considering the effect of the various decisions cited on both sides, we think it would be ideal to look at the statutory prescription in pure and simple form. As we have indicated earlier, section 80P(2) is actually divided into six parts, categorised under clauses (a), (b), (c), (d), (e) and (f). Each one of these clauses deal with different types of co-operative societies engaged in different types of activities. The benefit made available to each one of them is also different from the other. Therefore, it may be useful to present a tabular form, the six categories of co-operative societies covered by clauses (a) to (f) and the nature and extent of the benefit available to each one of them, as follows :

...
...

30. Therefore, what follows is that when a co-operative society engaged in any one of the activities stipulated in sub-clauses (i) to (vii) of clause (a) makes profits and gains out of business attributable to anyone of those activities, the case would fall under clause (a). The moment the income derived from one of those activities is invested in another co-operative society and an interest or dividend is derived therefrom, the case would be covered by clause (e). In case the profits and gains of business arising out of the activities listed in sub-clauses (i) to (vii) of clause (a) is invested in immovable properties, such as, godowns or warehouses and an income is derived therefrom, the case would be covered by clause (e) of section 80P(2).

31. The only area of distinction between clause (a) on the one hand and clauses (d) and (e) on the other hand is that the benefit under clause (a) is

restricted only to those activities of a co-operative society enlisted in sub-clauses (i) to (vii) of clause (a). On the other hand, the benefit under clauses (d) and (e) are available to all co-operative societies, without any restriction as to the nature of the activities carried on by them.

32. In simple terms, the position can be summarised like this. If there is a co-operative society, which is carrying on several activities including those activities listed in sub-clauses (i) to (vii) of clause (a), the benefit under clause (a) will be limited only to the profits and gains of business attributable to any one or more of such activities. But, in case the same cooperative society has an income not attributable to any one or more of the 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 co-operative society may claim the benefit of clause (d) or (e) either by investing the income in another cooperative society or investing the income in the construction of a godown or warehouse and letting out the same.

33. In other words, the benefit conferred by clause (d) upon all types of co-operative societies is restricted only to the investments made in other co-operative societies. Such a restriction cannot be read into clause (a), as the temporary parking of the profits and gains of business in nationalised banks and the earning of interest income therefrom is only one of the methods of multiplying the same income. To accept the stand of the Department would mean that co-operative societies carrying on the activities listed in clauses (i) to (vii), which invest their profits and gains of business either in other co-operative societies or in the construction of godowns and warehouses, may benefit in terms of clause (d) or (e), but the very same societies will not be entitled to any benefit, if they invest the very same funds in banks. Such an understanding of section 80P(2) is impermissible for one simple reason. The benefits under clauses (d) and (e) are available in general to all co-operative societies, including societies engaged in the activities listed in clause (a). Section 80P(2) is not intended to place all types of co-operative societies on the same pedestal. The section confers different types of benefits to different types of societies. Special types of societies are conferred a special benefit.

34. The case before the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) was in respect of a cooperative 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".

7. It is therefore, clear that the assessee being an employees' co-operative society invested the own surplus funds with a scheduled bank and, therefore, the assessee is entitled to claim the deduction under section 80P(2)(a)(i) of the Act. With this view of the matter, we direct the learned Assessing Officer to delete the addition made by disallowing the deduction claimed under section 80P(2)(a)(i) of the Act.

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

Order pronounced in the open court on this the 4th day of March, 2025.

Sd/-
(S. BALAKRISHNAN)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,

Dated: 04/03/2025

L.Rama, SPS

Copy forwarded to:

1. The Visakhapatnam Port Trust Employees Cooperative Society, 35, Port Area, Visakhapatnam
2. ACIT, Circle-1(1), Visakhapatnam
3. The Pr.CIT, Visakhapatnam
4. The Ld. DR, ITAT, Visakhapatnam
5. GUARD File

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