IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI

BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No. 119/PAN/2025

Assessment Year : 2020-21

The Dhanashree Multipurpose
Co-operative Society, Ltd.
722/1, Angol Road, Vidya Nagar,
Belgaum-590006
PAN:AAAAD0350R .... ***Appellant***

V/s

Principal Commissioner of Income Tax,
Hubli. .... ***Respondent***

Appearances

Assessee by : Mr Pramod Vaidya ['Ld. AR']
Revenue by : Capt. Pradeep Arya ['Ld. DR']
Date of conclusive Hearing : 11/08/2025
Date of Pronouncement : 14/08/2025

ORDER

PER G. D. PADMAHSHALI, AM;

The present appeal is filed by the assessee against the DIN & Order No. 1074827049(1) dt. 21/03/2025 passed u/s 263 of the Income-tax Act, 1961 [for short 'the Act'] by the Principal Commissioner of Income Tax, Hubali, [for short 'Ld. PCIT'] which in turn set-aside the order of assessment passed u/s 143(3) of the Act by the National Faceless e-Asstt. Centre, Delhi [for short 'Ld. NFeAC'] in relation to assessment year 2020-21 [for short 'AY']

2. Briefly stated facts of the case are that; the assessee is a Cooperative Society carrying on the business of accepting deposits from members and providing credit facilities to its members. The assessee filed its return of income as required u/s 139 of the Act on 24/12/2020 declaring income of ₹13,54,350/-. The case of the assessee vide notice dt. 29/06/2021 issued u/s 143(2) of the Act was selected for complete scrutiny to verify issues like (i) high creditors/liabilities & (ii) deduction claimed u/c VI-A of the Act. In response thereto the assessee vide letter dt. 24/07/2021 filed written submission. Keeping in view with the reasons of scrutiny assessment the reply furnished by the assessee was considered and without making any addition the returned income was accepted by an order dt. 30/08/2022. Following culmination of assessment proceedings, the assessment records were called upon and perused u/s 263 of the Act wherein it was revealed to the Ld. PCIT that, for the year under consideration the assessee earned interest of ₹1,07,41,413/- on its investment held with banks including co-operative and whereas the assessee declared/retuned only ₹13,54,348/- as the income for the year under consideration. While analysing the income declared by the assessee qua interest earned Ld. PCIT noted that, the interest income is chargeable to tax as 'Income from other sources' [for short 'IOS']

irrespective of whether such interest was earned out of investment held with scheduled bank or co-operative bank. In view thereof, vide notice dt. 08/11/2024 the Ld. PCIT called upon the assessee to show cause as to why the order of assessment on the former score should not be set-aside for fresh assessment. The assessee representation made vide letter dt. 19/03/2025 when failed to inspire any confidence that, earning of interest or dividend by one co-operative society from another one co-operative society (by establishment/incorporation) is deductible u/s 80P(2)(d), the Ld. PCIT invoking clause (a) and (d) of explanation 2 to section 263 of the Act vide impugned order held the assessment as erroneous & prejudicial to the interest of revenue for Ld. AO failure to make proper inquiry regarding nature of business income declared by the assessee. While coming to such conclusion the Ld. PCIT relied upon the decision of Hon'ble Apex Court in the case of *'Totagar Co-op. Sales Society Ltd. Vs ITO'* [2010, 188 Taxman 282 (SC)] and the decision of Hon'ble Karnataka High Court in the case of *'PCIT Vs 'Totagar Co-op. Sales Society Ltd.'* [2017, 83 Taxmann.com 140 (Kar)]

3. Aggrieved by the revisionary order the assessee came in present appeal on following grounds raised in form no 36;

1. The notice issued u/s 263 and order u/s 263 passed the learned Principal Commissioner of Income Tax, Hubli is opposed to the law and facts of the case.

2. The Pr. CIT erred in law in passing order of Revision u/s 263 on a issue of entitlement of deduction u/s 80P(2)(d) of interest on deposits with co-operative bank by a co-operative society which issue is decided in favour of the assessee by jurisdictional High Court in 392 ITR 74 and jurisdictional Panaji bench and other benches of Tribunal in various decisions. The original order u/s 143(3) r.w.s 144B cannot be termed as erroneous as the issue involved is settled in favour of assessee by jurisdictional High Court and jurisdictional and various other Tribunal decisions.

3. The Pr. CIT erred in law in passing order of revision u/s 263 on an issue of entitlement of deduction u/s 80P(2)(d) of interest on deposits with co-operative bank by a co-operative society the details of which formed a part of Profit & Loss Account in which details of interest from each co-operative bank were separately stated and a view was taken.

4. The Pr. CIT erred in law in issuing notice of revision u/s. 263 contrary to the decision of Hon'ble Supreme Court in the case of Malbar Industrial Co. Ltd 243 ITR 83 (SC).

5. Without prejudice action u/s 263 for revision of original order u/s 143(3) r.w.s 144B on a debatable issue or when two legal views are possible is not justified in law as held by Supreme Court in the case of Max India reported in 295 ITR 283.Reference can also be made to CIT v Gokuldas Exports 333 ITR 214 (Kar) and CIT v Munjal Castings 303 ITR 23 (P&H).

4. In the course of hearing, the Ld. AR reiterated assessee's solitary contention & corresponding submissions as were made before the Ld. PCIT. It is the case of the appellant that, in assessment proceeding specific information through notice dt. 18/11/2021 was sought from and provided by the appellant vide written communication dt. 28/12/2021 wherein the interest on investment earned/received, interest expense & other expenditure etc., submitted were verified in detail. After such inquiry, the chargeability under the Act was tested & based upon allowability the deduction u/c VI-A (if any) was granted & residue income brought to tax as business income. It is thus claimed by the appellant that, it was neither a case of no inquiry nor insufficient inquiry, therefore the assessment is neither erroneous nor prejudicial to the interest of the Revenue. In view thereof, the Ld. PCIT had no jurisdiction to set-aside the same u/s 263 of the Act. To drive home the sole & substantive contention that, ratio laid in *'Totagars Case'* (supra) does have no application in its case the assessee strongly relied on the decision of Hon'ble Gujrat High Court in the case of *'PCIT Vs Rajkot Lodhika Sahakar Kharid Vechan Sangh Ltd.'* [176 taxmann.com 71], decision of Ld. Co-ordinate bench in the case of *'Khanapur VSS Sangh Ltd Vs PCIT* [ITA 62/PAN/2022] & *'Rana SSK Ltd. Vs PCIT'* [138 taxmann.com 532 (Pune)].

5. *Per contra* the Ld. DR Capt. Arya tried to dismantle the assessee's sole argument by placing former judicial precedents. To drum out the applicability of *'Totagars Case'* (supra) ratio in the present case, the Ld. DR submitted that, the appellant is incorporated as multipurpose society and providing credit facility is one of the predominant purpose or objects, but the appellant failed to prove that entire interest income derived by it exclusively out of activity of providing credit facility and not out of surplus investment made. By the ratio decidendi laid in *'Totgars Case' per-se*, such interest income earned on investment cannot be termed as business income but was as income from other sources and therefore taxable u/s 56 of the Act. The Ld. DR further argued that, since former facts never been actually inquired into by the Ld. AO therefore the assessment order *de-facto* rendered itself erroneous, for the reason the impugned order passed setting aside the same not to be interfered with.

6. We have heard the rival parties and; subject to rule 18 of ITAT Rules, 1963 perused material placed on records, considered the facts of the case in light of settled legal position and we note that, the solitary dispute in the present case is over inquiry into ***earning of interest income qua activities*** *and consequential determination of heads of income for taxability.*

7. In adjudicating this core issue, let us first came to ambit scope of revisionary jurisdiction through judicial precedents. The Hon'ble apex court's landmark decision in *'Malabar Industrial Co. Ltd. Vs CIT'* reported at 243 ITR 83 made it ample clear that the crucial expression 'prejudicial to the interest of the revenue' is to be read in conjunction with an 'erroneous order passed' in assessment framing the subject-matter of revision. Their Hon'ble lordships have observed that, every loss of revenue in consequence to the assessment in issue cannot be treated as prejudicial to interest of the revenue. For example, where an assessing authority adopts one of the course possible in law and it has resulted in loss of revenue or where two issues are possible and one of them has been taken in assessment and the Commissioner does not agree to same, it cannot be taken as an instance involving erroneous assessment prejudicial to interest of the revenue unless of course the Assessing Officer's view is unsustainable in law. The very view laid by the Hon'ble Apex Court (supra) stands reiterated in catena of judicial decision rendered by various hon'ble courts viz; *'CIT Vs Max India Ltd.* (2007) 295 ITR 282 (SC), CIT v. Nahar Exports Ltd. (2007) 288 ITR 494 (P&H), CIT vs Gabriel India Ltd (1993) 203 ITR 108 (Bom) Grasim Industries vs. CIT (2010) 321 ITR, 92 (Bom).

8. Keeping in mind former settled legal position now reverting back to the present impugned order under challenge at the very outset we note that, it is an admitted fact that the appellant assessee is a co-operative society registered under the State Co-operative society. The appellant for the year under consideration was engaged in the business of providing credit facilities to its members as one of its primary objects with which the registration to it was granted under the applicable state co-operative laws. In the course of carrying on its business of providing credit facilitates to its members the appellant for the year under consideration indisputably earned interest income which was admittedly accrued to or earned by it from loans extended by it to its members and from investment made/held by it with various banks including nationalised banks, scheduled banks and co-operative bank. In earning such interest income (from members on deposits as well on investment with bank) the appellant inevitably also incurred/paid corresponding interest expenditure on deposits accepted by it and other such expenditure in providing such credit facility to its member which in turn yielded revenue to it. We note that, these facts were inquired in detail during the course of assessment proceedings and replies thereto were indisputably placed on records for verification & analysis. After due perusal of material

placed on records, the Ld. AO drawn a plausible conclusion without any adverse inference. The residue income/surplus left over after meeting out interest expense & other expenditure from the interest so earned, thus found accepted by the Ld. AO as the business income and brought to tax. There is much less evidence to show or at least brought to our notice that while carrying out the assessment the Ld. AO caused no inquiry into (i) constitution of appellant assessee (ii) nature of activities carried out by it (iii) nature of interest earned on loans extended and on investment held with banks etc. & taxability thereof (iv) nature of surplus from business shown to have earned by the appellant. Insofar as the interest on investment with co-operative societies/banks and other bank is concerned, such income is earned/accrued to it during the conduct of its principal business of providing credit facilities to its members deposits therefrom are accepted and to service interest liability thereon. The net positive interest generated out of such activities without a smoke of doubt partakes the character of business income as it possess all attributes of section 28 of the Act vis-à-vis qualifies for deduction u/s 80P(2) of the Act. Resultantly we do not find any merit in the foundation formed based upon which the order of assessment set-aside by the Ld. PCIT for requiring further inquiry into subject matter.

9. ***Insofar as the taxability of such interest and its deduction u/s 80P(2) is concerned the theory of surplus funds does not apply to <u>co-operative society</u> which is primarily engaged in providing credit facilities to its members for the reasons that,*** (i) credit co-operative society owning to regulatory supervision operates with liquid funds which cannot be characterised as other than business funds and (ii) such liquid funds for the purpose of generation of income are invested into liquid assets like fixed deposits / term deposits, etc. The interest generated from such liquid investment partakes the character of business income being earned while carrying on the business of providing credit facilities to its members. The surplus fund theory as applied in '*Totagars Co-op. Sale Society'* and as binding precedents shall apply to societies other than credit co-operative societies. The appellant in the present case, undisputedly a registered co-operative society and engaged in the qualified business of providing credit facilities to its members as one of its prime objects, therefore the impugned interest earned by it out of liquid funds placed/invested with other co-operative & banks qualifies the test of business activity hence very much taxable as 'profits & gains of business profession and as much deductible u/c VI-A of the Act.

10. On the subject matter of taxability of interest we also note that, similar facts came for consideration before Hon'ble Andhra Pradesh High Court in the case of *'Vavveru Co-operative Rural Bank Ltd.* Vs CCIT [2017, 396 ITR 371 (AP&THC)] wherein their Hon'ble lordship while dealing with the deductibility of claims u/c VI-A of the Act and more precisely the allowability of 80P(2) claim in relation to interest income earned on investment held with banks including commercial/scheduled bank, it after elaborate discussion it was held as that;

> *'8. Therefore, the real controversy arising in these writ petitions is* ***as to whether the income derived by the petitioners by way of interest on the fixed deposits made by them with the banks, is to be treated as profits and gains of business attributable to any one of the activities indicated*** *in sub-clauses (i) to (vii) of clause (a) of sub- section (2) of section 80P or not.*
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> *9. While petitioners place strong reliance upon a decision of the Division Bench of this court in CIT v. Andhra Pradesh State Co-operative Bank Ltd. [2011] 12 taxmann.com 66/200 Taxman 200/336 ITR 516, the Revenue places strong reliance upon the decision of the Supreme Court in Totgar's Co-operative Sale Society Ltd. v. ITO [2010] 188 Taxman 282/322 ITR 283.*
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> *10. In order to understand the scope of the controversy, it would be better to present in simple terms, the ambit of clause (a) of sub-*

section (2) of section 80P. This clause is intended for the benefit of (1) certain types of co-operative societies but (2) confined only to the activities listed in sub-clauses (i) to (vii). In other words, clause (a) of sub-section (2) confers a benefit only upon co-operative societies, but the benefit is restricted only to some and not to all of the activities of such co-operative societies. To put it differently, an institution claiming the benefit of clause (a) of sub-section (2) of section 80P should cross 2 check-posts. In the 1st check-post, the institution will have to establish that it is a co-operative society. In the 2nd check-post, the institution has to establish that the deduction sought represents profits and gains of business attributable to one or more of the activities in sub-clauses (i) to (vii).

11. But the manner in which clause (a) is worded appears to be little clumsy. This is due to the reason that though sub-clauses (iii) to (vii) actually describe activities such as marketing, purchase, processing, collective disposal or fishing or allied activities, sub-clauses (i) and (ii) deal with the nature of the industry/business carried on by the institution. While sub-clause (i) uses the expression "business", sub-clause (ii) uses the expression "industry". Moreover, all the 7 sub-clauses are connected to the expression "co-operative society" by the words "engaged in" appearing in sub-clause (a).

12. The sheet anchor of the case of the petitioners is the expression "attributable to" appearing in the last part of clause (a) of sub-section (2) of section 80P. Since the statute does not use the

expression "derived from", but uses the expression "attributable to", the contention of the petitioners is that clause (a) should receive a wider interpretation.

13. The above contention cannot be rejected outright, for the simple reason that in many statutes and for that matter even in the Income-tax Act, the expression "attributable to" is sometimes used with the prefix "directly". The words "directly attributable" to would certainly narrow down the scope of the expression "attributable to". Therefore, the fact that the expression "attributable to" is wider in scope than the expression "derived from" cannot be denied.

14...para to para 33 . . . .

34. The case before the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) was in respect of a co-operative 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 ITA Nos.450 & 451/PUN/2024 and C.O.Nos.23 & 24/PUN/2024 Vishwakarma Sarkshan Kamgar Sahakari Patsanstha Maryadit 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."* (Emphasis supplied)

11. Thus, in substance, the Hon'ble High Court (supra) held that interest income derived on investment made with banks partakes the character of profits & gains of business profession as such interest is attributable to & is earned in the course of its regular business of accepting deposit & providing credit facilities to its members hence also eligible for deduction u/s 80P(2) of the Act. We note that, a similar plausible view has been formed & taken by the Ld. AO while assessing the appellant's income by passing a speaking order u/s 143(3) of the Act which sought to be revised by the Ld. PCIT. On the other hand the Revenue failed to show as to how the impugned interest earned on investment partakes the character of other income thus was to be taxable u/s 56 of the Act and not as business income u/s 28 of the Act.

12. Further the Revenue could hardly place any contrary decision to prove its basis for revisionary action. Therefore, placing reliance on 'Smt. Godavari devi Saraf Vs CIT' [1978, 113 ITR 589(Bom)] we in

view of the principle laid down in *'CIT Vs Gabrial India Ltd.'* & *'Malabar Industrial Co. Ltd. Vs CIT' (supra)* adjudicate the dispute in favour of assessee by holding that, while assessing the income of appellant there was much less failure on the part of the Ld. AO to verify & carryout inquiry in reaching plausible conclusion to accept that the interest income earned out of investment made in the form of deposits with banks including co-operative banks represents business income as it possess all attributes of section 28 of the Act and thus exigible to tax u/s 28 of the Act. In view therefore, the order of assessment cannot be said to be erroneous. Thus, since one of twin conditions prescribed for invocation of revisionary proceedings failed to evoke our concurrence, we in therefore quash the impugned revisionary order as devoid of merits and restore back the order of assessment. The grounds accordingly stand adjudicated.

13. **In result, the appeal of the assessee stands ALLOWED.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on the date mentioned hereinbefore.

-S/d-	**-S/d-**
PAVAN KUMAR GADALE	**G. D. PADMAHSHALI**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Panaji/Dt.: 14th August, 2025

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The AO Concerned.
4. The PCIT Concerned
5. DR, ITAT, Panaji Bench, Panaji
6. Guard File

By Order,
Sr. Private Secretary / AR ITAT, Panaji.