

IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'SMC' BENCH, PUNE

BEFORE HON'BLE PARTHA SARATHI CHOUDHURY, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 046 & 047/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19 & 2020-21

Konkan Education Society Sevak Sahakari Patpedhi Ltd.

Flat No. 3, Chinmay Apt., Braman Ali,

Alibag, Raigarh.

Raigad-402201

PAN: AAAAK4098F

..... अपीलार्थी / Appellant

बनाम / V/s

Income Tax Officer,

Ward-(3), Panvel

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Giteesh Kalyani through virtual ['Ld. AR']

Revenue by : Mr Gaurav Singh ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 20/02/2024

घोषणा की तारीख / Date of Pronouncement : 20/02/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

These twin appeals of the assessee are assailed against the impugned DIN & Order No. ITBA/NFAC/S/250/2023-24/1057854312(1) & 1057854663(1) both dt. 09/11/2023 passed u/s 250 of Income-tax Act, 1961 ['the Act' hereafter] by National Faceless Appeal Centre, Delhi ['NFAC' hereafter] arising out of respective order of assessment passed u/s 143(3) r.w.s. 143(3A)/144B of the Act for assessment year 2018-19 & 2020-21 ['AY' hereinafter].



2. During the course of hybrid hearing, a common threadbare issue of disallowance u/s 80P(2) of the Act in these twin appeals brought to the attention of the bench. On rival parties' request, these are taken up together for the sake of brevity and for a common & consolidated order. In adjudicating these matters together, first appeal ITA No. 046/PUN/2024 is taken as lead case; resultantly adjudication laid in succeeding paragraphs shall *mutatis-mutandis* apply to ITA No 047/PUN/2024.

3. Concisely stated common facts born out of case records are;

3.1 The appellant assessee is a credit co-operative society registered under the provisions of Maharashtra State Co-op. Societies Act and is engaged in the business of providing credit facilities to its members. For the year under consideration the assessee earned net profit of ₹23,97,862/- from its business activities of providing credit facilities to its member and ₹15,98,301/- as interest and dividend from investment made with RDCC bank against which it has claimed a deduction u/s 80P(2)(a)(i) & 80P(2)(d) of the Act respectively. Accordingly the society filed its return of income ['ITR' hereinafter] declaring NIL income after claiming a deduction of ₹39,96,163/- u/c VI-A of the Act.

3.2 The case of the assessee was subjected to scrutiny. During the course of assessment the Ld. AO sought documentary evidences supporting the claim of profit earned and deduction claimed. After verification of submission



and explanation, the Ld. AO accepted claim of deduction made u/s 80P(2)(a)(i) of the Act, however denied the claim for deduction against the interest income of ₹15,43,941/- and dividend income of ₹54,360/- both accrued/earned form investment made with RDCC bank.

3.3 Insofar as ITA No 047/PUN/2024 i.e. AY 2020-21 is concerned, the assessment was framed denying the deduction u/s 80P(2)(d) of the Act claimed against interest income of ₹29,08,880/- accrued/earned form investment made with RDCC bank.

3.4 Aggrieved by the aforestated denial of deduction the assessee filed separate appeals before first appellate authority. The submission of the assessee failed to inspire any confidence, in the event the Ld. NFAC echoed the view of Ld. AO and countenanced the denial by placing strong reliance on the decision of the Hon'ble High Court of Karnataka rendered in 'PCIT Vs Totagars Co-op. Sale Society' reported in 83 taxmann.com 140 [Equi: 395 ITR 611]

3.5 Aggrieved by the aforestated denial and the appellant assessee came in appeal alleging that both the tax authorities erred in law and facts in denying the assessee society the claim of deduction made u/s 80P(2)(d) of the Act in-spite of catena of binding judicial precedents of this Tribunal.



4. At the hybrid hearing, Ld. AR appearing virtually reiterated appellant's version of submission as was laid before tax authorities and adverting paper book vehemently submitted that, no portion of interest is earned from nationalised bank but from RDCC banks which is registered credit co-operative societies. In the facts and circumstances, the assessee is entitled to 100% deduction of u/s 80P(2)(d) of the Act. *Per Contra*, the Ld. DR could hardly controvert the factual position and judicial precedents relied upon by the appellant, however strongly relied on orders of tax authorities below.

5. Heard rival common contentions; and subject to provision of rule 18 of ITAT-Rules, 1963 perused material placed on record, case laws relied upon by both the rival parties and considered the facts in light of settled legal position which are forewarned to parties present.

6. The solitary issue in these appeals hinges around allowability of deduction u/s 80P(2)(d) of the Act. On perusal of section 80P(2)(d), it is ostensibly clear that interest & dividend income derived by one cooperative society from its investment held with other cooperative societies is eligible for deduction u/s 80P(2)(d) of the Act. For the purpose the chief determinant factor entitling a claim of deduction u/s 80P(2)(d) in the hands of assessee society is that, interest & dividend income should have been earned by it from an investment made with any other cooperative society registered under the provisions of law, irrespective of its nomenclature with which such paying society i.e. the payer is known for.



7. In the present case, the reasoning given by the lower tax authorities in denying the claim for deduction u/s 80P(2)(d) of the Act is that interest and dividend was received from RDCC a cooperative bank, however this reasoning has no legs to stand as a cooperative bank is principally a cooperative society and holds a banking license to operate on a larger scale under the guidelines of RBI. This issue was came to consider by Hon'ble Karnataka High Court in '*CIT Vs Totagars Cooperative Sale Society*', finds reported in 392 ITR 74 wherein their lordships referring to the decision of Hon'ble Apex Court in the case of *Totgars Co-operative Sales Society Ltd.* (supra) held that the ratio of decision of the Hon'ble Supreme Court in the aforesaid case (supra) not to be applied in respect of interest income on investment as same falls u/s 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act. We further note that, the co-ordinate bench in '*Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. vs. ITO*', reported in 120 taxmann.com 10, after making reference to the decisions of the Hon'ble Supreme Court in the case of *Totgars Cooperative Sales Society Ltd.* (supra) and having noticed the divergent views of the Hon'ble Karnataka High Court in the case of '*Tumkur Merchants Souharda Credit Co-op. Ltd. Vs ITO*', 55 taxmann.com 447 and decision of Hon'ble Delhi High Court in '*Mantola Cooperative Thrift Credit Society Ltd. Vs CIT*', reported at 50 taxmann.com 278, the decision rendered in '*Mantola Cooperative Thrift Credit Society Ltd.* (supra) had not been preferred to ratio laid in '*Tumkur Merchants Souharda*



Credit Co-op. Ltd. (supra), the relevant observation of the co-ordinate bench are placed as under;

*“9. The Pune Benches of the Tribunal in Sureshdada Jain Nagari Sahakari Patsanstha Maryadit Vs. The Pr.CIT (ITA No.713/PUN/2016, dated 9-4-2019) decided the question of availability of deduction u/s 80P on interest income by noticing that the Pune Bench in an earlier case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO (ITA No.604/PN/2014, dated 19-8-2015) has allowed similar deduction. In the said case, the Tribunal discussed the contrary views expressed by the Hon'ble Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 Taxman 309 (Kar.) allowing deduction u/s. 80P on interest income and that of the Hon'ble Delhi High Court in Mantola Cooperative Thrift Credit Society Ltd. Vs. CIT (2014) 110 DTR 89 (Delhi) not allowing deduction u/s.80P on interest income earned from banks. Both the Hon'ble High Courts took into consideration the ratio laid down in the case of Totgar's Cooperative Sale Society Ltd. (2010) 322 ITR 283 (SC). There being no direct judgment from the Hon'ble jurisdictional High Court on the point, the Tribunal in Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit (supra) preferred to go with the view in favour of the assessee by the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra). 10. Insofar as the reliance of the ld. DR on the case of Pr. CIT and Another Vs. Totagars Cooperative Sales Society (2017) 395 ITR 611 (Kar.) is concerned, **we find that the issue in that case was the eligibility of deduction u/s.80P(2)(d) of the Act on interest earned by the assessee cooperative society on investments made in co-operative banks.** In that case, the assessee was engaged in the activity of marketing agricultural produce by its members; accepting deposits from its members and providing credit facility to its members; running stores, rice mills, live stocks, van section, medical shops, lodging, plying and hiring of goods and carriage etc. It was in that background of the facts that the Hon'ble High Court held that the assessee could not claim deduction u/s.80P(2)(d) of the Act. When we consider the impact of this decision, it turns out that the same is not*



germane to case under consideration in view of the position that the claim of the instant assessee is directly about the eligibility of deduction u/s.80P(2)(a)(i) of the Act and not u/s.80P(2)(d). Moreover, so many decisions relied on by the ld. AR amply go to prove that the view taken by the AO, cannot by any standard, be construed as not a possible view. We, therefore, hold that the ld. Pr. CIT was not justified in exercising the revisional power anent to interest income of Rs.22,34,270/- earned on investments made with co-operative banks.” (Emphasis supplied)

8. Without multiplying judicial precedents on the aforesaid issue, maintaining same parity we adopt equi reasoning and hold that, the interest and dividend earned by the appellant society from its investment held with co-operative banks namely RDCC, being a registered co-operative society under respective state laws, qualifies for deductions u/s 80P(2)(d) of the Act. Consequently the views adopted by the tax authorities below are not in conformity with legal position and binding judicial precedents, hence deserves to be vacated. Resultantly, we set-aside the impugned order and reverse the denial of deduction.

9. In result, both the appeals of the assessee are ALLOWED.

In terms of rule 34 of ITAT Rules, order pronounced in open court on this Tuesday 20th day of February, 2024.

-S/d-

PARTHA SARATHI CHOUDHURY
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 20th day of February, 2024.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr.CIT, -Concerned

4. The NFAC, Delhi, New Delhi

5. DR, ITAT, SMC Bench, Pune

6. गार्डफ़ाइल / Guard File.

Ashwini

आदेशानुसार / By Order
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलार्थी न्यायाधिकरण, पुणे / ITAT, Pune.

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER