

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1365/PUN/2023
निर्धारण वर्ष / Assessment Year : 2018-19

Kolhapur District Central Co-op. Bank Kanista Sevakanchi Sahakar Pat Sanstha Ltd., 1092, E Ward, Shahupuri, Dist. Kolhapur- 416001. PAN : AAAAK2427L	Vs.	ITO, Ward-2(1), Kolhapur.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Uma Shankar Prasad
Date of hearing : 01.01.2024
Date of pronouncement : 01.01.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 08.11.2023 for the assessment year 2018-19.

2. Briefly, the facts of the case are that the appellant is a Co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. It is engaged in the business of providing credit facilities to its members. The Return of Income for

the assessment year 2018-19 was filed on 25.09.2018 declaring Rs.Nil income. Against the said return of income, the assessment was completed by the Assessing Officer by disallowing the claim for deduction of interest income earned on fixed deposits of Rs.10,98,491/- made with Kolhapur D.C.C. Bank by holding it to be not a co-operative society but a co-operative bank.

3. Being aggrieved, an appeal was filed before the NFAC, who vide impugned order confirmed the action of the Assessing Officer by placing reliance on the decision of the Hon'ble Karnataka High Court in the case of PCIT vs. Totagars Co-operative Sale Society, 83 taxmann.com 140 (Karnataka) and the decision of the Hon'ble Supreme Court in the case of Totgars, Co-operative Sale Society Ltd. vs. ITO, 188 Taxman 282 (SC).

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. When the appeal was called on, none appeared on behalf of the assessee despite due service of notice of hearing. Therefore, we proceed to dispose of the matter on merits considering the material on record and after hearing the ld. Sr. DR.

6. I heard the ld. Sr. DR and perused the material on record. The only issue in the present case is as to the allowability of exemption under the provisions of section 80P(2)(d) in respect of interest income earned by a cooperative society from the cooperative bank. This issue is no longer *res integra* as the issue was decided by the Co-ordinate Bench of the this Tribunal in the case of The Ugar Sugar Works Kamgar & Dr. Shirgaokar Shaikshanik Trust Nokar Co-op Credit Society vs. ITO in ITA No.84/PAN/2018 for A.Y. 2012-13 order dated 27.05.2022 in favour of the appellant society. The relevant paragraphs of the said order of Co-ordinate Bench of the Tribunal (*supra*) is reproduced herein under :-

*“8. We heard the rival submissions and perused the material on record. The only issue in the present appeal is pertaining to the allowability of deduction under the provisions of section 80P(2)(d) of the Act. On perusal of provisions of section 80P(2)(d), it is clear that the income derived by a cooperative society from its investment held with other cooperative societies shall be exempt from the total income of a cooperative society. Therefore, what is relevant for claiming of deduction u/s 80P(2)(d) is that interest income should have been derived from the investment made by the assessee cooperative society with any other cooperative society. In the present case, the reasoning given by the lower authorities for denial of exemption u/s 80P(2)(d) of the Act is that interest was received from cooperative bank has no legs to stand as a cooperative bank is also a cooperative society. This issue was considered by the Hon’ble Karnataka High Court in the case of CIT vs. Totgars Cooperative Sale Society, 392 ITR 74 (Karn) wherein the Hon’ble High Court referring to the Hon’ble Supreme 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 applicable in respect of interest income on investment*

as same falls under the provisions of section 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act.

9. *Even the decision of Pune Bench of the Tribunal in the case of Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. vs. ITO, 120 taxmann.com 10 wherein the Tribunal after making reference to the decisions of the Hon'ble Supreme Court in the case of Totgars Co-operative 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 the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. vs. CIT, 50 taxmann.com 278, decision of the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. (supra) had not been preferred to view of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. (supra). The relevant observation of the Pune Bench of the Tribunal in the case (supra) is 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 co-operative 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.”

7. Respectfully following the decision of the Co-ordinate Bench of this Tribunal (supra), I am of the considered opinion that even the interest income earned by cooperative society on deposits made out of surplus funds with cooperative banks as well as schedule bank qualifies for deduction both under the provisions of section 80P(2)(a)(i) and section 80P(2)(d) of the Act, therefore, the reasoning given by the lower authorities on this issue cannot be accepted. Therefore, I direct the Assessing Officer to allow deduction u/s 80P(2)(a)(i) and 80P(2)(d) in respect of interest income earned from cooperative bank/scheduled bank. Thus, the ground of appeal filed by the assessee stands allowed.

8. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 01st day of January, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 01st January, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.