IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHE "B", PUNE

BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL MEMBER
AND SHRI G.S. PANNU, ACCOUNTANT MEMBER

ITA Nos.845 & 846/PN/2013
(A.Ys. : 2008-09 & 2009-10)

Hind Vijay Nagari Sahakari
Patsanstha Maryadit,
Opp : Syndicate Bank,
Talegaon-Dabhade, (St.),
Tal : Maval, Pune : 410 507.

PAN : AAAAH0897B …. Appellant

Vs.

Income Tax Officer,
Ward 9(3), Pune. …. Respondent

ITA Nos.1068 & 1069/PN/2013
(A.Ys. : 2008-09 & 2009-10)

Income Tax Officer,
Ward 9(2), Pune. …. Appellant

Vs.

Hind Vijay Nagari Sahakari
Patsanstha Maryadit,
Samarth Chhaya Bldg.,
Near Syndicate Bank Talegaon,
Chakan Road, Talegaon,
Pune – 410 507.

PAN : AAAAH0897B …. Respondent

ITA No.60/PN/2014
(Assessment Year : 2010-11)

Hind Vijay Nagari Sahakari
Patsanstha Maryadit,
Opp : Syndicate Bank,
Talegaon-Dabhade, (St.),
Tal : Maval, Pune : 410 507.

PAN : AAAAH0897B …. Appellant

Vs.

Income Tax Officer,
Ward 9(2), Pune. …. Respondent

ITA No.178/PN/2014
(Assessment Year : 2010-11)

Income Tax Officer,
Ward 9(2), Pune. …. Appellant

Vs.

Hind Vijay Nagari Sahakari
Patsanstha Maryadit,
Samarth Chhaya Bldg.,
Near Syndicate Bank Talegaon,
Chakan Road, Talegaon,
Pune – 410 507

PAN : AAAAH0897B …. Respondent

Assessee by	:	Mr. Pramod Shingte
Department by	:	Mr. S. P. Walimbe
Date of hearing	:	11-04-2014
Date of pronouncement	:	24-04-2014

ORDER

PER G. S. PANNU, AM

These are three set of cross-appeals by the assessee and the Revenue relating to the assessment years 2008-09, 2009-10 and 2010-11. Since the appeals relate to the same assessee and involve common issues they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. First, we shall take-up the appeals in ITA No.845 & 1068/PN/2013 which are cross-appeals by assessee and the Revenue arising out of the order of the Commissioner of Income Tax (Appeals)-V, Pune dated 28.02.2013 which, in turn, has arisen from an order dated 07.12.2010 passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short “the Act”) pertaining to the assessment year 2008-09.

3. The solitary issue in the appeal of the assessee relates to the action of the lower authorities in denying exemption u/s 80P(2)(a)(i) of the Act in relation to a sum of Rs.22,27,523/-.

4. The assessee before us is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 and is, inter-alia, engaged in the business of providing credit facilities to its members. For the assessment year under consideration, it filed a return of income declaring total income at Rs. Nil which, inter-alia, included a claim of exemption u/s 80P(2)(a)(i) of the Act with respect to the surplus declared by it in its Profit & Loss Account which amounted to Rs.22,27,523/-. In the course of assessment proceedings, the Assessing Officer noted that in the Profit & Loss Account assessee had credited incomes which were from activities other than the providing of credit facilities to the members, the details of which are tabulated in para 5 of the assessment order. The Assessing Officer has tabulated the amount of interest earned by the assessee from investments made in other banks. As per the Assessing Officer, primarily the surplus in the Profit and Loss Account declared by the assessee was directly attributable to interest earned on investments made with non-members, namely, banks and therefore according to him assessee was not eligible for exemption u/s 80P of the Act in relation to such income. As per the Assessing Officer such income could not be said to be attributable to the activity of providing credit facilities to the members. The Assessing Officer relied on the judgement of the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) and ultimately held that such interest income, which was earned on investments made with banks could not be said to be attributable to the activities of the assessee society, namely, the business of providing credit facilities to its members and therefore he denied exemption u/s 80P(2)(a)(i) of the Act. Accordingly, the total income was assessed at Rs.22,27,520/- after rejecting the assessee's claim for exemption u/s 80P(2)(a)(i) of the Act with

respect to the aforesaid amount of surplus declared in its Profit & Loss Account.

5. The aforesaid matter was carried in appeal before the CIT(A). The CIT(A) has concurred with the Assessing Officer and affirmed the action of denying exemption u/s 80P(2)(a)(i) of the Act with respect to the income of Rs.22,27,523/- representing interest income earned on investments made with the banks. However, the alternative plea of the assessee that interest income in question was earned from investments made with other co-operative banks and was thus eligible for exemption u/s 80P(2)(d) of the Act, was upheld by the CIT(A).

6. In the background of the aforesaid order of the CIT(A), assessee is in further appeal challenging the decision of the CIT(A) of affirming the action of the Assessing Officer in denying exemption u/s 80P(2)(a)(i) of the Act amounting to Rs.22,27,523/-, whereas the Revenue in its cross-appeal is challenging the action of the CIT(A) in holding that the interest income in question, having been earned from investments made with other co-operative banks, was entitled for exemption u/s 80P(2)(d) of the Act. In the above background, the rival counsels have been heard.

7. In so far as the appeal of the assessee is concerned, it was a common point between the parties that an identical controversy has been considered by the Pune Bench of the Tribunal in the case of another co-operative society, namely, ITO vs. Niphad Nagari Sahakari Patsanstha Ltd. vide ITA No.1336/PN/2011 dated 31.07.2013 wherein the issue has been held in favour of the assessee after considering similar objection, which has been raised by the Assessing Officer in the present case. The learned Representative for the assessee has furnished a copy of the said order of the Tribunal dated 31.07.2013 (supra) and has also pointed out that the Tribunal has duly

considered the decision of the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. (supra), which has been relied upon by the Assessing Officer in the present case. The learned Departmental Representative has neither controverted the above matrix and nor referred to any contrary decision and therefore for the sake of maintaining consistency we follow the decision of our co-ordinate bench in the case of Niphad Nagari Sahakari Patsanstha Ltd. (supra) and uphold the plea of the assessee. However, before parting, we may reproduce hereinafter the following portion of the order of the Tribunal dated 31.07.2013 (supra) which brings out the reasoning prevailing with the Tribunal to uphold the plea of the assessee :-

> *"11. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. In the instant case there is no dispute to the fact that the assessee is a cooperative society engaged in the business activity of credit cooperative society, i.e. providing credit facility to its members. According to the Revenue the income of the society on account of interest from banks other than cooperative banks, interest on mutual funds, long term and short term capital gain on sale of mutual funds etc. are not covered by the activity of providing credit facilities to its members and hence not eligible for deduction u/s.80P(2)(a)(i) of the Income Tax Act in view of the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra). We find the Ld. CIT(A) allowed the claim of the assessee on the ground that the assessee is entitled to deduction u/s.80P(2)(a)(i) on account of interest from banks other than cooperative banks, interest on mutual funds long term and short term capital gain on mutual funds etc. While doing so, he held that the decision in the case of Totagar's Cooperative Sale Society Ltd. (Supra) is not applicable to the facts of the present case since in that case the amount invested in short term deposits and securities was not out of interest bearing deposits collected from members but out of sale proceeds of agricultural produce of farmer members marketed by the society. Further, the Hon'ble Apex Court has considered only the latter part of section 80P(2)(a)(i), i.e. income of a cooperative society engaged in providing credit facilities to its members is eligible for deduction and has not considered the earlier part of section 80P(2)(a)(i), i.e. income of a cooperative society engaged in carrying on the business of banking is eligible for deduction.*
>
> *11.1 We find the Ahmedabad Bench of the Tribunal in the case of M/s. Jafari Momin Vikas Cooperative Credit Society Ltd. (Supra) after considering the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra) has observed as under :*
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>> *"17. We have carefully considered the submissions of the either party, perused the relevant records and also the case law on which the learned AR had reservation in it's applicably in the circumstances of the assessee's case.*

18. It was the stand of the learned CIT (A) that the entire income was not exempt and that it was to be examined as to whether there was any interest income on the short term bank deposits and securities included in the total income of this society which has been claimed as exempt. According to the CIT (A), a similar issue to that of the present one was dealt with by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd v. ITO (supra). The issue before the Hon'ble Court for determination was whether interest income on short term bank deposits and securities would be qualified as business income u/s 80P (2)(a)(i) of the Act.

19. The issue dealt with by the Hon'ble Supreme Court in the case of Totgars (supra) is extracted, for appreciation of facts, as under:

> *"What is sought to be taxed under section 56 of the Act is the interest income arising on the surplus invested in short term deposits and securities which surplus was not required for business purposes? The assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is-whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? in our view, such interest income would come in the category of 'income from other sources', hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer..."*

19.1 However, in the present case, on verification of the balance sheet of the assessee as on 31.3.2009, it was observed that the fixed deposits made were to maintain liquidity and that there was no surplus funds with the assessee as attributed by the Revenue. However, in regard to the case before the Hon'ble Supreme Court -

> *"(On page 286) 7............Before the assessing officer, it was argued by the assessee(s) that it had invested the funds on short term basis as the funds were not required immediately for business purposes and, consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under section 28 and not under section 56 of the Act and, consequently, the assessee(s) was entitled to deduction under section 80P(2)(a)(i) of the Act. The argument was rejected by the assessing officer as also by the Tribunal and the High Court, hence, these civil appeals have been filed by the assessee(s)."*

19.2 From the above, it emerges that –

> *(a) that assessee (issue before the Supreme Court) had admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;*
>
> *(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members;*

(c) that assessee carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and

(d) that the surplus had arisen emphatically from marketing of agricultural produces.

19.3 In the present case under consideration, the entire funds were utilized for the purposes of business and there were no surplus funds.

19.4 While comparing the state of affairs of the present assessee with that assessee (before the Supreme Court), the following clinching dissimilarities emerge, namely:

(1) in the case of the assessee, the entire funds were utilized for the purposes of business and that there were no surplus funds;

- in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present assessee, it did not carry out any activity except in providing credit facilities to its members and that the funds were of operational funds. The only fund available with the assessee was deposits from its members and, thus, there was no surplus funds as such;

- in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds;

19.5 Considering the above facts, we find that there is force in the argument of the assessee that the assessee not a co-operative Bank, but its nature of business was coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in short-term deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs.13,69,955/- [source: Balance Sheet of the assessee available on record]

19.6 In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot in any way come to the rescue of either the Ld. CIT (A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT (A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s 56 of the Act. It is ordered accordingly.

19.7 Before parting with, we would, with due regards, like to record that the ruling of the Hon'ble jurisdictional High Court in the case of CIT v. Manekbang Co-op Housing Society Ltd reported in (2012) 22 Taxmann.com 220(Guj) has been kept in view while deciding the issue."

11.2 We find the Cochin Bench of the Tribunal in the case of Muttom Service Cooperative Aplappuzha Bank Ltd. Vs. ITO (Supra) after considering the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra) and various other decisions has observed as under :

"5. We have considered the rival submission on either side and also perused the material available on record. We have also carefully

gone through the order of the lower authority. No doubt, the latest judgment in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the Apex court found that the deposit of surplus funds by the co-operative society is not eligible for deduction u/s 80P(2). In the case before the Apex Court in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the assessee co-operative society was to provide credit facility to its members and market the agricultural produce. The assessee is not in the business of banking. Therefore, this Tribunal is of the opinion that the judgment of the Apex court in Totgar's Co-operative Sale Society Ltd (supra) is not applicable in respect of the co-operative society whose business is banking. Admittedly, the assessee has invested funds in state promoted treasury small savings fixed deposit scheme. Since Government of India has withdrawn India Vikas Patra, as a small savings instrument, funds invested at the discretion of the bank is one of the activities of the banking as per the Banking Regulation Act. Since the assessee co-operative society is in the business of banking the investment in the state promoted treasury small savings fixed deposit certificate scheme is a banking activity, therefore, the interest accrued on such investment has to be treated as business income in the course of its banking activity. Once it is a business income, the assessee is entitled for deduction u/s 80P(2)((a)(i). therefore, this Tribunal is of the opinion that the judgment of the Larger Bench of the apex Court in Karnataka State Co- operative Apex Bank (supra) is applicable to the facts of this case. By respectfully following the judgment of the Apex court in Karnataka State Co-operative Bank (supra), the order of the Commissioner of Income-tax(A) is upheld.

6. In the result, the appeal of the revenue stands dismissed."

11.3 In the instant case there is no dispute to the fact that the society is a credit cooperative society authorised by the registrar of cooperative societies for accepting deposits and lending money to its members as per license granted by the registrar of cooperative societies and the main object of the society is to provide credit facility to members who can be any person of the society. We find the Pune Bench of the Tribunal in the case of Mahavir Nagari Sahakari Pat Sanstha Ltd. reported in 74 TTJ 793 (Pune) has held that the credit society which is carrying on the business of banking activity and providing credit facility to its members is eligible for deduction u/s.80P(2)(a)(i). In view of the above discussion and following the decisions of the Ahmedabad Bench of the Tribunal and Cochin Bench of the Tribunal which in turn have considered the decision of the Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra) we find no infirmity in the order of the Ld.CIT(A). Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

12. In the result, the appeal filed by the Revenue is dismissed."

8. Following the aforesaid precedent, which has been rendered in identical circumstances and for the sake of maintaining consistency, we allow the plea of the assessee. Accordingly, assessee succeeds in its appeal.

9. In so far as the cross-appeal is concerned in relates to the decision of the CIT(A) in holding that the interest income earned from the investments

made with other co-operative banks is eligible for the exemption u/s 80P(2)(d) of the Act. In this connection, the CIT(A) has referred to the details of interest income noted by the Assessing Officer in para 5 of the assessment order and noted that the same have been received from other co-operative banks/societies. For the said reason, the CIT(A) found that such income was eligible for exemption on account of the provisions of section 80P(2)(d) of the Act which reads as follows :-

> *"(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;"*

10. We find that the decision of the CIT(A) to allow exemption u/s 80P(2)(d) of the Act is expressly in accordance with the provisions of clause (d) of sub-section (2) of section 80P of the Act and no infirmity on the same has been pointed out by the learned Departmental Representative before us. Accordingly, we hereby affirm the order of the CIT(A) and the Revenue fails in its cross-appeal.

11. In the result, for assessment year 2008-09 whereas the appeal of the assessee is allowed that of the Revenue is dismissed.

12. It was common point between the parties that the issues involved in other cross-appeals relating to the assessment years 2009-10 and 2010-11 are *pari-materia* to those considered by us in the cross-appeals for assessment year 2008-09 in the earlier paragraphs and therefore our decision in the cross-appeals for assessment year 2008-09 shall apply *mutatis-mutandis* in the other cross-appeals for assessment years 2009-10 and 2010-11 also.

13. Resultantly, whereas the appeals of the assessee are allowed those of the Revenue are dismissed.

Order pronounced in the open Court on 24th April, 2014.

Sd/-	**Sd/-**
(SHAILENDRA KUMAR YADAV)	**(G. S. PANNU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Pune, Dated : 24th April, 2014

Sujeet

Copy of the order is forwarded to: -

1) The Assessee;
2) The Department;
3) The CIT(A)-V, Pune;
4) The CIT-V, Pune;
5) The DR "B" Bench, I.T.A.T., Pune;
6) Guard File.

By Order

//True Copy//

Sr. Private Secretary
I.T.A.T., Pune