

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B” : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA.No.421/PUN./2022
Assessment Year 2017-18

Solapur Zilha Prathamik Shikshah Sahakari Sanstha Niyamit, 1/10-11 Murarji Peth, Near Kalpana Talkies, Solapur – 413 001. Maharashtra. PAN AAAAS3721P	vs.	The PCIT, Pune-4, Bodhi Towers, Salisbury Park, Pune – 411 037. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Krishna Gujarathi
For Revenue :	Shri B. Koteswara Rao

Date of Hearing :	11.01.2023
Date of Pronouncement :	13.01.2023

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee’s appeal for assessment year 2017-2018, arises against the PCIT, Pune-4, Pune’s DIN & Order No.ITBA/REV/F/REV5/2021-22/1041925919(1) dated 29/03/22, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. It transpires during the course of hearing that the PCIT’s impugned revision order has termed the corresponding sec.143(3) regular assessment dated 26.12.2019 as an erroneous one causing prejudice to the interest of Revenue for

having accepted sec.80P(2)(a)(i) deduction claim of Rs.37,00,818/-. Mr. Koteswara Rao invited our attention to the PCIT's impugned revision directions under challenge as follows :

6. I have examined the submission made by the assessee and issues involved. I have also gone through various case laws filed and relied upon by the assessee in support of claim u/s 80P(2)(a)(i) or 80P(2)(d) of the Act. It is found that Assessing officer has arrived at decision without properly examining the eligibility of assessee to claim deduction u/s 80P of the Act. As per provisions of section 80P(2)(a)(i), the Society is required to substantiate the principle of mutuality with respect to the loans taken from members to loan advanced/ investment made by it. To come to a conclusive discussion, the AO should have verified whether the loans/ deposit taken are given back to the members as loans/ advances or not. The assessment order does not indicate whether this exercise has been done or not. The non-verification of principle of mutuality by the Assessing Officer has rendered the view taken by him regarding allowability of deduction u/s 80P of the Act is legally unsustainable. Since the view taken by the Assessing Officer is unsustainable, the assessment order passed by the Assessing Officer is liable for revision u/s 263 of the Act.
7. As per the Balance Sheet, assessee has received deposits from members of Rs 95.16 Cr, Paid up Share Capital Rs. 31.29 Cr, Reserve Fund & Surplus Rs. 8.63 Cr and other provisions including interest/dividend payable to members of Rs. 9.53 Cr. Against the same, the assessee has advanced Rs. 141.11 Cr. to its members. Thus, around Rs. 3.5 Cr. have not been utilized for the activity of lending to the members by the assessee and have been invested in time deposits with various banks. The Investment made with the bank in the form of FDs are at Rs. 2.34 Cr. Thus the deposits with Banks are made out of deposits received from the members or the surplus fund available with the society has not been verified. This aspect clearly has not been verified by the AO. The interest income of Rs. 8,04,601/- shown in the Profit & Loss account, has been received by way of interest on investments with banks. Thus, in the assessee's case, a considerable portion of its income is earned by way of interest on deposits made with other nationalized/co-operative banks. As has been held by the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd. Vs. ITO (supra) and also by Hon'ble Karnataka High Court in the case of Pr. Commissioner of Income Tax, Hubali Vs. Totgars Cooperative Sale Society (supra) this act of making deposits out of the deposits received from members cannot be considered to be attributable to the business of carrying on of the business of providing credit facilities to its members. In view of the aforesaid decisions of the Hon'ble Supreme Court & Karnataka High Court, Interest earned on such deposits kept with Scheduled Bank/Cooperative Bank

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cannot be allowed as deduction under section 80P of the Act and such interest should be brought to tax.

a. In this regard, the Assessment record has been verified in detail. The submissions made before the Assessing Officer regarding the deposits made with different bank/institution are seen to have been given without details as to when they were made and whether they were made out of the Deposits of the members or otherwise from out of the surplus generated.

8. Since the assessee's large claim of deduction under chapter VI-A was the reason of selection of its case for scrutiny; the Assessing Officer was required to conduct in-depth verification of the assessee's claim. Since the above mentioned bank is not a cooperative society, the interest earned is not eligible for deduction under Section 80P(2)(a)(i) or 80P(2)(d). Hence, allowing of the deduction by the Assessing Officer under section 80P for the above amount is not as per the provisions of the Income Tax Act, 1961.

In Para 10 of the Hon'ble Karnataka High Court decision in the case of Tumkur Merchants Souharda Credit Co-op Society Ltd V CIT (2017) 396 ITR, the Hon'ble Court has held that *"the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account."* In the case of the present assessee, it was stated that the society accepts deposits only from its members which means deposits in banks are made out of deposits made by members. These deposits are liable to be returned back to the members and hence, are to be shown as liability in the balance sheet. These deposits from members are invested in the fixed deposits and interest income is earned from them.

As per the Balance Sheet, assessee has received deposits from members of Rs 95.16 Cr, Paid up Share Capital Rs. 31.29 Cr, Reserve Fund & Surplus Rs. 8.63 Cr and other provisions including interest/dividend payable to members of Rs. 9.53 Cr. Against the same, the assessee has advanced Rs. 141.11 Cr to its members.



Loans/Advances/Deposits received from members	144.61 Cr
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by the society including paid up capital, reserve fund including other provisions for interest & dividend payable to members.	
Loans/Advances given to members by the society	141.11 Cr.
Excess of Loans/Advances/Deposits from members available with the society	3.5 Cr.

It implies that the deposits accepted from the members were not used by the society in its business of providing credit facilities to its members. Instead they are put in to deposits to earn interest.

Investments made in FDs with institutions by the society out of Loans/Advances made by members	2.34 Cr.
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This act of making deposits out of the deposits received from members cannot be considered to be attributable to the business of providing credit facilities to its members. Thus, making deposits to the bank out of the deposits received from Members is not in accordance to the principles of mutuality.

9. In the light of these facts, the Assessment Order dt 26/12/2019 is hereby set aside to the Assessing Officer for proper verification of facts and to re-examine the assessee's claim of deduction under section 80P of the Income-tax Act, 1961. However, before arriving at any conclusion, the Assessing Officer shall give reasonable opportunity to the assessee to adduce the evidence and information with regard to:

- the Source of deposits made with all institutions from which interest income is earned with specific details and nexus as to whether those deposits are made from the deposits received from the members which are returnable to the members or from out of the surplus funds arising from profits and gains.

Whether the deposits are made with institutions which are registered with RBI



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for carrying out business of Banking.

- c. Whether the Principle of Mutuality is satisfied to allow deduction u/s 80P in respect of income earned from deposits made with Co-op Banks.
- d. Based on the evidence, decide the allowability of deduction u/s 80P.

The Assessing Officer shall, accordingly, re-frame the assessment in the assessee's case in due compliance with the above directions.

3. We have given our thoughtful consideration to the vehement rival stands against and in support of the correctness of the PCIT's foregoing revision directions and find no merit therein. We make it clear that the PCIT has quoted various judicial precedents to hold that the assessee's interest income derived from parking of surplus funds in fixed deposits does not qualify u/s.80P relief. That being the case, we note that this tribunal's recent coordinate bench's order in ITA.No.1249/PUN./2018 in *Rena Sahakari Sakhar Karkhana Ltd., vs. Pr. CIT-2, Aurangabad* dated 07.01.2022 has declined the Revenue's identical stand as follows :

"3. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee. It was observed by the Pr. CIT that the assessee had during the year shown interest income from FDs with Co-operative Banks amounting to Rs.75,38,534/-, against which it had claimed deduction under Sec.80P(2)(d) of the Act. It was observed by the Pr. CIT, that the A.O while framing the assessment had allowed the aforesaid claim of deduction raised by the assessee. Observing, that as co-operative banks were commercial banks and not a co-

operative society, therefore, the Pr.CIT was of the view that the assessee was not eligible for claim of deduction under Sec.80P(2)(d). In the backdrop of his aforesaid conviction, the Pr. CIT was of the view that the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016, therein allowing the assessee's claim for deduction under Sec. 80P(2)(d), had therein rendered his order as erroneous, insofar it was prejudicial to the interest of the revenue. Accordingly, the Pr.CIT not finding favour with the reply of the assessee, wherein the latter had tried to impress upon him that it was duly eligible for claim of deduction under Sec.80P(2)(d) of the Act, therein "set aside" the order of the A.O with a direction to redetermine the issue afresh and reframe the assessment.

4. The assessee being aggrieved with the order of the Pr.CIT has carried the matter in appeal before us. As the present appeal involved a delay of 52 days, therefore, the ld. A.R took us through the reasons leading to the same. It was submitted by the ld. A.R that as the then counsel of the assessee society who was looking after its tax matters, viz. Shr. Ravikiran Pandurang Todkar, Chartered Accountant was taken unwell due to kidney failure and had undergone kidney transplant, therefore, due to his unavailability the appeal could not be filed within the stipulated time period. Our attention was drawn towards the „affidavit“ of the assessee society wherein the aforesaid facts were deposed. On the basis of the aforesaid facts, it was submitted by the ld. A.R that the delay involved in filing of the present appeal in all fairness may be condoned. Per contra, the ld. D.R did not object to the seeking of condonation of the delay in filing of the appeal by the assessee society. After giving a thoughtful

consideration, we are of the considered view, that as there were justifiable reasons leading to delay on the part of the assessee in filing of the present appeal before us, therefore, the same merits to be condoned.

5. *On merits, it was submitted by the ld. A.R, that as the A.O while framing the assessment had after making necessary verifications taken a plausible view, therefore, the Pr. CIT had exceeded his jurisdiction by seeking to review the order passed by him in the garb of the revisional powers vested with him under Sec.263 of the Act. It was submitted by the ld. A.R, that the issue as regards the eligibility of the assessee for claim of deduction under Sec.80P(2)(d) on interest income derived from investments/deposits lying with co-operative banks was squarely covered by the various orders of the coordinate benches of the Tribunal viz., (i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT “G” Bench, Mumbai); Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO-21(2)(1), Mumbai, ITA No. 6547/Mum/2017 (ITAT Mumbai); and (iii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune). On the basis of his aforesaid contentions, it was averred by the ld. A.R that as the Pr. CIT had exceeded his jurisdiction and had not only sought to review the plausible view that was taken by the A.O after necessary deliberations which was in conformity with the order of the jurisdictional bench of the Tribunal, therefore, his order may be vacated and that of the A.O be restored.*

6. *Per contra, the ld. Departmental Representative (for short „D.R”) relied on the order passed by the Pr. CIT under Sec.263 of the Act. It was submitted by the ld. D.R,*

that as the assessee was not eligible for claim of deduction under Sec.80P on the interest income received on the investments/deposits lying with the co-operative banks, therefore, the Pr. CIT finding the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016 as erroneous, insofar it was prejudicial to the interest of the revenue, had rightly „set aside” his assessment with a direction to re-adjudicate the issue therein involved. Our attention was also drawn by the ld. D.R to his written submissions and certain judicial pronouncements in support of his aforesaid contention.

7. We have heard the ld. authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether or not the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order. In our considered view, the issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with the co-operative bank, other than a Primary Agricultural Credit Society or a

Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not cooperative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.

8. *After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr. CIT. Before proceeding any further, we may herein cull out the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us.*

“80P(2)(d)

(1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2). The sums referred to in sub-section (1) shall be the following, namely:-

(a).....

..

(b).....

..

(c).....

..

(d) in respect of any income by way of interest or dividends derived by the cooperative society from its

investments with any other co-operative society, the whole of such income;”

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) to Sec. 80P of the Act, vide the Finance Act, 2006 with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardize the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term „co-operative society” had been defined under Sec. 2(19) of the Act, as under:-

“(19) “Co-operative society” means a cooperative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the

time being in force in any state for the registration of co-operative societies;”

We are of the considered view, that though the co-operative banks pursuant to the insertion of sub-section (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a cooperative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

9. In so far the judicial pronouncements that have been relied upon by the ld. A.R are concerned, we find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

(i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT “G” Bench, Mumbai);

(ii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune)

(iii). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs.

Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006 also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), as had been relied upon by the ld. D.R before us, had held, that a co-operative society would not be entitled to claim deduction under Sec. 80P(2)(d); but then, the Hon'ble High Court in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed, that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. Backed by the aforesaid conflicting judicial pronouncements, we may herein observe, that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken

against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and that of the Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

10. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and allowed the assessee's claim for deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with co-operative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 of the Act for dislodging the same. Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263 of the Act, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we set-aside his order and restore the order passed by the A.O under Sec. 143(3), dated 07.03.2016."

4. Faced with the situation, we adopt the learned coordinate bench's above extracted direction *mutatis mutandis* to reverse the PCIT's impugned revision directions. The

Assessing Officer assessment herein stands restored as the necessary corollary. Ordered accordingly.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 13.01.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 13th January, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. CIT(A) concerned.
4.	The CIT concerned
5.	D.R. ITAT, Pune "B" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches
Pune.