IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA No.122/Nag./2023
(Assessment Year : 2018-19)

The Ismailia Urban Co-Op
Society, Yavatmal ……. Appellant
PAN – AAAAT1437F

v/s

Income Tax Officer
Ward-1 ……. Respondent

Assessee by : Shri Naresh Jakhotia, CA
Revenue by : Shri Surjit Kumar Saha, Sr.DR

Date of Hearing – 18/06/2024	Date of Order – 18/06/2024

O R D E R

PER K.M.ROY, A.M.

The present appeal has been preferred by the assessee challenging the impugned order dated 12/02/2021, passed under section 143(3) of the Income Tax Act, 1961 (*"the Act"*) by the learned AO, National E-Assessment Centre, [*"learned ITO, NEAC"*], for the assessment year 2018-19.

2. The assessee has raised following grounds of appeal:–

"1] Whether on the facts and circumstances of the case and in law, income earned by the Appellant is income arising in the course of business of banking or not?

2] Whether on the facts and circumstances of the case and in law, income from the investment of the Appellant is income from business or income from other source?

3] Whether on the facts and circumstances of the case, learned assessing officer is right in holding that the Appellant is not entitled for deduction u/s 80P of the Income Tax Act-1961?

4] Appellant pray to kindly allow to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal."

3. The appellant is a credit co-operative society engaged in the business of banking ONLY.

The Appellate society is not carrying out any other activities except the banking business activities. During the relevant year, Assessment proceedings were carried out u/s 143(3) wherein the learned Assessing Officer observed that the Appellate has earned interest income of Rs.99,94,363/- on its investment with other banks as under;

Sr.No.	Name of the bank	Rs.
1.	Yavatmal Urban Co-operative Bank –FDR	54,20,823
2	Nagpur District Co-operative Bank – Reserve Fund	56,957
3	Nagpur District Co-operative Bank – FDR	26,67,183
4	Dharampeth Mahila Bank – FDR	5,04,650
5	Pusad Urban Co-operative Bank – FDR	13,44,339
	TOTAL Rs.	99,94,952

Net surplus of the Assessee society was of Rs.74,00,363/- which was claimed as deduction u/s 80P.

Assessee claimed deduction u/s 70P of Rs.74,00,363 under Section 80P(2)(a)(i) and u/s 80P(2)(a)(ii) as under :

Sr.No.	Section under which the deduction is claimed	Rs.
1.	80P(2)(a)(i)	73,64,124
2	u/s 80P(2)(c)(ii)	36,239
	TOTAL Rs.	74,00,363

During the course of the Assessment proceeding, Learned Assessing Officer disallowed the claim of deduction u/s 8-P with the following observation at Page No. 11/12 of the Assessment Order :

> "*The assesse has included its interest income of bank FD for its computation of deduction u/s 80P purpose. The assessee cannot claim deduction on interest income earned on FD with Bank which is a surplus fund and doesn't accrued out of co-operative activity. Therefore in view of above discussion, the deduction u/s 80P(2)(a)(i) and u/s 80P(2)(c)(ii) of the Act of Rs.74,00,363/- claimed by the assessee is not allowed and therefore added to the total income of the assessee."*

4. During the course of the Appellate proceeding before CIT(A), Appellant submitted that the assessee is a credit co-operative society providing credit facilities to its members and prayed to grant deduction u/s 80P. However, CIT(A) upheld the order of AO holding that interest income is not eligible for deduction.

5. It appears that there is a delay of 62 days in filing the appeal. The condonation petition along with the supporting affidavit has been perused. Being satisfied, we condone the delay and proceed for adjudication.

6. Before us, the appellant has submitted the detailed submissions contained in page 6 to 21 of paper book, which are reproduced below for clear understanding of the gamut of the dispute.

6.1 With above short summary of the case, Appellant would humbly like to submit the following for your kind consideration :

Sr.No.	Grounds of Appeal	Appellant Submission
1.	Whether on the facts and circumstances of the case and in law, income earned by the Appellant is income arising in the course of business of banking or not?	Appellant is not having any other activities or business except the business of banking. Appellant only source of income was banking business only. Investment in the Term Deposit was done in the course of the business of banking only.
2.	Whether on the facts and circumstances of the case and in law, income from the investment of the Appellant is income from business or income from other source?	Hon'ble ITAT Nagpur in ITA No.30/Nag/2015, has dismissed the appeal filed by the revenue. It was held that the interest income of the Appellant is eligible for deduction u/s 80P(2)(a)(i). Since the investment is done in the course of the business of banking only, the same is liable to be taxed as business income only.
3.	Whether on the facts and circumstances of the case, learned assessing officer is right in holding that the Appellant is not entitled for	Appellant is eligible for deduction not only Section 80P(2)(a)(i), but also Section 80P(2)(d).

	deduction u/s 80P of the Income Tax Act-1961?	The issue has been decided in various judicial pronouncements.

6.2 Deduction u/s 80P(2)(a)(i) :

(a) That, the Appellant is a credit co-operative society engaged in the business of banking and also providing credit facilities to its members, which is eligible for deduction u/s 80P.

Scope of Section 80P :

a) The relevant part of section 80P is reproduced herewith:

80P. Deduction in respect of income of co-operative societies.

(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) in the case of a co-operative society engaged in --

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

The above reading may enable your kind honour to appreciate that the deduction is available to credit co-operative society, if any of the two conditions are satisfied:

First condition : carrying on the business of banking

Or

Second condition : providing credit facilities to its members.

If any of the two conditions are satisfied, the deduction u/s 80P is allowable

Appellant is satisfying both the conditions as against its eligibility on satisfaction of even one single condition.

First Condition vs. Appellant

The first part of the section 80P allows deduction to co-operative society engaged in the business of banking. Neither the status of co-operative society is disputed nor is the business of banking being carried out by the Appellant questionable.

Having accepted the undisputed fact in the earlier years & current year as well as that the Appellant is in the business of banking, no disallowance u/s 80P is warranted for any of its income whatsoever.

Second Condition vs. Appellant

In the present case of the Appellant, Appellant is a credit co-operative society and is engaged in the business of banking, thereby satisfying the condition is totality of deduction u/s 80P. In the present case, Appellant would like to submit that it do not have any other business except the activity of banking.

Appellant humbly beg to submit that, since both the conditions (as against permissible single condition) stipulated by section 80P is fulfilled, deduction u/s 80P towards income may be allowed.

6.3 DISTINGUISHING TOTGARS CO-OPERATIVE SALES SOCIETY LTD VS ITO (2010) 188 TAXMAN 282 (SC);

(a) The facts of the case of Totgars Co-operative Sales Society Ltd Vs ITO (2010) 188 Taxman 282 (SC) were totally different and need not be applied here. Supreme Court in this case has made the following observation which is verbatim produced hereunder for your kind consideration:

"At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. 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.

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 retention was not Assessing Officer was right in taxing the interest income, indicated above, under Section 56 of the Act.

……

…..

In this particular case, the evidence shows that the assessee Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances

of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act."

(b) With above factual position of the case, it is respectfully submitted that the case of Totgars Co-operative Sales Ltd. Vs ITO (2010) 188 Taxman 282 (SC) was the case of investment of surplus funds. In Totgars Co-operative Sales Ltd. Vs ITO (2010) 188 Taxman 282 (SC), Assessee was having some other business activities which is not there in the case of Assessee.

(c) It is respectfully submitted that the appellant society was not having any SURPLUS or IDLE funds as such.

(d) The investment is required to be done pursuant to the statutory requirements. The appellant society is not allowed to lend entire amount and has to keep the amount in the Bank as FD pursuant to the requirement of the Registrar of Co-operative Societies.

(e) It is very respectfully submitted that the investment done by the appellant society is not of "SURPLUS FUND" as such for investment in the Bank FDR of other bank. The investment has to be done primarily due to the statutory requirements by the Registrar of the co-operative society, which requires the every society registered in the State of Maharashtra to keep certain amount of deposits in the bank.

In short, the appellant society was not allowed to lend its entire amount of deposits to the members but to keep certain amount as "Investment" for security purposes. Investment is further necessitated by business consideration, as the funds has to be kept in liquid forms considering the requirement of the members in near future.

(f) The statutory requirement is further back by the commercial principle as the society has to repay the amount to the depositor member as and when the same is demanded back. This could be by way of withdrawals by such member or by way of pre-mature withdrawals of FD by such member. If all the deposit amount received by the appellant is given as loan then it may not be possible for the appellant the repayment obligation of the customers. Needless to say, this would result in the reputation and credential of the appellant. One can just imagine the consequences of refusing the repayment of the deposit amount by the bank or the societies by saying that "There is no fund presently and will make repayment later". The newspaper, social media, competitors, etc., would ensure that such an institutions die instantly in such a situation no matter howsoever fundamentally strong it may be. In short, some fund is required to be kept from the perspective of the prudence besides statutory requirements.

(g) The society has to maintain a CD ratio (Current Assets vs. Deposit Ratio) i.e., ratio of Loans to Deposit as per the guidelines of the Registrar of the Societies which is the regulating authorities for the societies in Maharashtra. CD Ratio means how much a society lends out of the deposits it has mobilized and remaining amount is to

be kept ready to cater the needs of the depositor who may withdraw their deposits at the maturity term or on Demand basis. The CD Ratio plays an important role in deciding the "Credit Rating" of the society also and the depositors often make the investment by checking the Rating of the societies.

Hence, liquidity is maintained either by keeping in invested in Deposit or in saving account with any other bank, thus it is part of working capital of the society. Appellant society is only engaged in the activity of banking only. There is no other activity or business in which the Appellant society is engaged except the business of banking.

(h) Since, the Appellant society is not engaged in any other activities or business, entire income is taxable as "Income from Business & Profession" only. There is no reason to treat the income from bank FDR as "Income from Other Source". Your kind honour will appreciate that the investment in the bank FDR is done in the course of the business of banking. There is no other reason for making investment in the Bank FDR.

(i) The case before the Supreme Court in Totgars was in respect of a Co-operative Credit Society, which was also marketing the agricultural produce of its members i.e., the society was engaged in other business also. In the present case of the appellant, the only activity is the activity of banking and no other activity/business is there.

(j) Appellant would humbly like to submit that the judgment by Hon'ble Apex Court cannot applied to the Appellant Society. The case before the Supreme Court in Totgars was in respect of a Co-operative Credit Society, which was also marketing the agricultural produce of its members. As may be 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 Totgars that the business activity other than marketing of the agricultural produce actually resulted in net loss to the society. Therefore, it appears that the Appellant in Totgars was carrying on some of the activities listed in Clause (a) along with other activities. This is perhaps the reason that 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 Totgars struck a different note.

(k) Even Totgars case has taxed the income from Interest as "Business Income only" :

In above judgment, Division Bench of Karnataka High Court held that when a society not carrying on any banking business had invested

its surplus funds in security term deposit, the interest accrued from such securities and deposits should be taken as relatable profits and gains of the society.

(l) The case of Totgars Co-operative Sale Society Ltd., v. ITO was well distinguished by Telangana & AP High Court in the case of Vavveru Co-operative Rural Bank Ltd vs CCIT, Buchireddy Palem Co-operative Rural Bank Ltd vs CCIT. It was also distinguished by the Pune ITAT in the case of Sindhudurg Zilla Madhyamik Adhyapak Sahakari Patpedhi Maryadit, Sindhudurg vs. ITO.

All this judgment observed that in Totgars Co Operative Society, Assessee was carrying two businesses viz. Trading and giving finance to members. The surplus funds from which activity is invested in bank deposit were not possible to be known and hence, the same may be treated as income from other source.

In the present case, the Appellant society is engaged only in one business activity of providing finance to its members and hence, the decision of Totgars is not at all applicable.

6.4 CBDT CIRCULAR ON TAXATION OF INTEREST INCOME :

Interest income from the Bank FDR has been accrued in the "course of the Business of Banking" and is "Attributable to" the business of banking as per the stipulation of Section 80P. Appellant would humbly like to submit that the word "attributable to" is certainly wider

in import than the expression 'derived from'. Whenever the Legislature wanted to give a restricted meaning, they have used the expression 'derived from'. The expression "attributable to" being of wider import, the said expression is used by the Legislature whenever they intended to gather receipts from source other than the actual conduct of the business.

A co-operative society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under section 80P of the Act.

The interest out of investment of the fund in other bank is also eligible for deduction u/s 80P. The same conclusion can well be drawn from the CBDT Circular No. 18/2015 Dated 02.11.2015 wherein it is rightly opined that investment is attributable to the business of banking falling under the head "Profit and gains of business and profession".

For ease of reference, the copy of circular is enclosed herewith.

It may be appreciated that Hon'ble Apex Body CBDT itself has clarified affirmed the view of the Supreme Court in the case of CIT Vs. Nawanshahar Central Co-op Bank Ltd (2007) 160 Taxman 48 (SC) and has categorically reproduce that;

"Investment made by a banking concern" are part of the business of banking.
CBDT has very clearly and in explicit terms have concluded that, "Therefore, the income arising from such investment is attributable to the business of banking falling under the head "Profit and Gains of Business and Profession"."

6.5 Deduction u/s 80P(2)(d):

(a) It is respectfully submitted that Appellant has also received interest from co-operative societies which are operating as a bank duly authorized by the RBI. The said interest is eligible for deduction u/s 80P(2)(d) as well. The relevant part of section which provides for deduction from Gross Total income offers the deduction for the following.

(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;

It is very respectfully submitted that there is no specific or general exclusion to the co-operative bank from section 80P(2)(d) of the Income Tax Act-1961.

The appellant may be granted deduction u/s 80P(2)(d) as it is not dependent on the heads of income and categorically provides deduction towards interest received from other co-operative societies.

It is most humbly submitted that the specific exclusion was provided in the year 2006 only for the purpose of section 80P(4) to the co-operative bank. As a result of amendment in 2006, Co-operative society working as a bank are not eligible for deduction u/s 80P.

Further, another amendment was carried out in the year 2015 in Section 194A whereby interest paid by the co-operative bank to its members was excluded from the purview of TDS exclusion and the members of the co-operative bank. As a result, the interest payment by co-operative society working as a bank is required to do TDS on interest payment. It may humbly be noted that other co-operative societies in the business of banking are not required to do the TDS post 2015 amendment also.

It may be noted that despite two amendment in the Income Tax Act-1961 in 2006 & 2015, no amendment has been ever done in section 80P(2)(d). It would obviously mean that any interest received by the recipient society from another co-operative society (which may be a bank as per RBI License) would be eligible for deduction u/s 80P(2)(d). Without any specific exclusion like the amendment done

in 2006 & 2015, no further exclusion may be considered in section 80P(2)(d). In Appellant humbly submission, the interest received by Appellant from co-operative society (which may be working as a bank pursuant to RBI license) will be eligible for deduction u/s 80P(2)(d).

(b) For the sake of convenience, even if it is accepted that the amount is disallowable by virtue of idle fund theory laid down by SC in Totgars Case, the deduction cannot be denied u/s 80P(2)(d). [Even Totgars also allowed deduction u/s 80P(2)(d)].

(c) It may be appreciated that the income of the society on Bank FDR is mainly from another credit society only and the same is eligible for deduction u/s 80P(2)(d). In the Mantoal Cooperative Thrift & Credit society Limited V. Income Tax Officer (ITA No. 4078/Del/2019) dated 27.07.2020, the Delhi ITAT has held as under:

"We also find that Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the investment because this section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society.

<u>The revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise.</u>

We have also considered the case of Totgars Co-operative Sale Society Ltd. 322 ITR 282 relied upon by the ld. DR and find that the Hon'ble Supreme Court has deliberated on the issue of deduction u/s 80P(2)(a)(i) but not on Section 80P(2)(d).

We also observed that in the case of Totgars Co-operative Sale Society Ltd., itself the Hon'ble High Court of Karnataka has allowed the claim of deduction u/s 80P(2)(d) vide order dated 05.01.2017.

Hence, keeping in view the provisions of the Act and the judgments of the Hon'ble High Court and Supreme Court in the case of Totgars Co-operative Sale Society Ltd., we hereby hold that the Appellant is eligible for deduction u/s 80P(2)(d) on the income earned by way of interest from the co-operative societies". [Para 18, 19 and 20]

(d) The same view has been affirmed in the following cases as well :

(i) M/s Solitaire CHSA Ltd vs. Pr.CIT-26, Mumbai, ITA No. 3155/Mum/ 2019, dated 29.11.2019.

(ii) Land and Cooperative Housing Society Ltd. Vs. ITO (2017 46 CCH 52 (Mum)

(iii) M/s. C. Green Cooperative Housing and Society Ltd Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017).

(iv) Marvwanjee Cama Park Cooperative Housing Society Ltd Vs. ITO-Range 20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017).

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

(vi) M/s Petit Powers Co-op. Housing Society Ltd vs ITO (ITA No. 549/MUM/2021)

(vii) Jai Hind Co-operative Housing Society Ltd vs. ACIT-25(2) (ITA No. 1762 & 1763/Mum/2020)

(viii) M/s Vadasinor Pragati Samaj Co-operative Credit Society Ltd vs PCIT-18 (ITA No. 2539/Mum/2019)

(ix) M/s Doshi Palace Co-operative Hsg Soc. Ltd vs ACIT-19(1) (ITA No. 2510/MUM/2019)

(x) The Salsette Catholic Co-operative Housing Ltd vs. ACIT Circle-23(3) (ITA No. 3870 & 3871/Mum/2019).

(e) Mumbai ITAT in the case of Palm Court M Premises Co-operative Society Limited vs. PCIT-30, Mumbai, ITA 561/Mum/2021 has again decided the issue of deduction u/s 80P(2)(d) in favour of the appellant. Hon'ble ITAT has analysed various judicial pronouncements on the issue to come to the conclusion that Interest received by Cooperative Society from Cooperative Bank is eligible for deduction u/s 80P.

(f) Nagpur ITAT in Navodaya Nagri Pat Sanstha vs. ITO, Ward 3, Amravati [ITA No. 66/NAG/2019 Decided on 07.11.2022]

(g) Nagpur ITAT in Ashtavinayak Nagari Sahakari Pat Sanstha vs ITO, Ward 1, Amravati – [ITA NO. 54/Nagpur/2023, Decided on 16.04.2024

(h) Pune ITAT in Subordinate Engineers Ass. MSEB Co-op Society vrs. ITO, Ward 2(2), Kolhapur - [ITA No. 261/Pun/2023, decided on 16.05.2023]

7. The Assessee has also placed reliance on the following judgments;

1] Nagpur ITAT in Navodaya Nagri Pat Sanstha vs. ITO, Ward 3, Amravati [ITA No. 66/NAG/2019 Decided on 07.11.2022]

2] Nagpur ITAT in Ashtavinayak Nagari Sahakari Pat Sanstha vs ITO, Ward 1, Amravati – [ITA NO. 54/Nagpur/2023, Decided on 06.04.2024.

3] ITAT, Nagpur Bench order in Utkranti Nagri Sahakari Pat Sanstha [ITA no. 30/Nag/2015, Dated 02.06.2016]

4] Mumbai ITAT in the case of Palm Court M Premises Co-operative Society Limited vs. PCIT-30, Mumbai, ITA 561/Mum/2021, Dated 09.09.2022.

5] Pune ITAT in Subordinate Engineers Ass. MSEB Co-op Society vrs. ITO, Ward 2(2), Kolhapur - [ITA No. 261/Pun/2023, decided on 16.05.2023]

8. The learned authorized representative vehemently submitted that both the lower authorities have seriously misapplied upon law and facts in denying the deduction under Section 80P(2)(a)(i). Even submitted before us

the assessment order for the Assessment Year 2016-17, wherein in the course of assessment under Section 143(3), deduction under Section 80P(2)(a)(i) was allowed. There being no change in the underlying facts and circumstances. He pleaded, the similar deduction should be allowed in the current year also. Upon confronting these facts before the departmental representative, he pleaded that reliance may be made upon the orders of the lower authorities in view of the fact that interest from fund not required immediate for business purposes is not eligible for deduction under Section 80P.

9. Upon hearing both the counsel and perusing the record, we find that the issue involved is covered in favour of the assessee by a catena of decisions from ITAT as well as a decision of jurisdictional High Court. In this regard we may gainfully refer the Hon'ble Jurisdictional High Court decision in the case of ***CIT vs. Solapur Nagri Audyogik Sahakari Bank Ltd. 182 Taxman 231*** wherein the following question was raised.

> *"Whether the interest income received by a Co-operative Bank from investments made in Kisan Vikas Patra ('KVP' for short) and Indira Vikas Patra ('IVP' for short) out of voluntary reserves is income from banking business exempt under Section 80P(2)(a)(i) of the Income Tax Act, 1961?"*

After considering the issue, the Hon'ble Jurisdictional High Court has concluded as under :

> "12. Therefore, in all these cases, where the surplus funds not immediately required for day-to-day banking were kept in voluntary reserves and invested in KVP/IVP, the interest income received from

KVP/IVP would be income from banking business eligible for deduction under section 80P(2)(i) of the Act.

13. In the result, there being no dispute that the funds in the voluntary reserves which were utilized for investment in KVP/IVP by the co-operative banks were the funds generated from the banking business, we hold that in all these cases the Tribunal was justified in holding that the interest income received by the co-operative banks from the investments in KVP/IVP made out of the funds in the voluntary reserves were eligible for deduction under section 80P(2)(a)(i) of the Act."

The above case law fully supports the assessee's case. Here also surplus funds not immediately required for day to day banking were kept in Bank deposits. The income earned there from thus would be income from banking business eligible for deduction u/s 80P(2)(a)(i).

10. Similarly we find that similar issue was considered by this Tribunal on similar grounds raised by the Revenue in the case of MSEB Engineers Co-Op. Credit Society Ltd., wherein the ITAT, Nagpur Bench, vide order dated 05/05/2016 held as under :

Upon hearing both the counsel and perusing the records, we find that the above issue is covered in favour of the assessee by the decision of this ITA, referred by the Ld. CIT(A) in his appellate order. The distinction mentioned in the grounds of appeal is not at all sustainable. We further find that this Tribunal again in the case of Chattisgarh Urban Sahakari Sanstha Maryadit Vs. ITO in ITA No. 371/Nag/2012 vide order dated 27.05.2015 has adjudicated similar issue as under:-

"11. Upon careful consideration, we not that identical issue was the subject matter of consideration by ITAT, Ahmedabad Bench decision in the case of Dhanlaxmi Credit Cooperative Society Ltd (supra), in which one of us, learned Judicial

Member, was a party. The concluding portion of the Tribunal's decision is as under:

> *"4. With this brief background, we have heard both the sides. It was explained that the Co-operative Society is maintaining "operations funds" and to meet any eventuality towards repayment of deposit, the Co-operative society is maintaining some liquidated funds as a short term deposit with the banks. This issue was thoroughly discussed by the ITAT "B" Bench Ahmedabad in the case of The Income Tax Officer vs. M/s.Jafari Momin Vikas Co-op Credit Society Ltd., bearing ITA No. 1491/Ahd/2012 (for A.Y. 2009-10) and CO No. 138/Ahd/2012 (by Assessee) order dated 31/10/2012. The relevant portion is reproduced below :-*
>
> > *"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 interest income arising on the surplus invested in short term deposits and securities, which surplus was not required for business purposes? The assesse(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 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 assesse(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 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 had 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."

5. Respectfully following the above decision of the Co-ordinate Bench, we hereby hold that the benefit of deduction u/s 80P(2)(a)(i) was rightly granted by ld. CIT(A), however, he has wrongly held that the interest income is taxable u/s 56 of the Act so do not fall under the category of exempted income u/s 80P of the Act. The adverse portion of the view, which is against the assessee, of ld. CIT(A) is hereby reversed following the decision of the Tribunal cited supra, resultantly ground is allowed.

8. We find that the ratio of above case also applies to the present case. As observed in the above case law, in this case also the submissions of the assessee's counsel is that the assessee society is maintaining operational funds and to meet any eventuality towards repayment of deposit the cooperative society is maintaining some liquidated funds as short term deposits with banks. Hence adhering to the doctrine stair desises, we hold that the assessee should be granted benefit of deduction under section 80P(2)(a)(i). Accordingly, the interest on deposits would qualify for deduction under the said section. Accordingly, we set aside the order of authorities below and decide the issue in favour of assessee. "

4. We further find that batch of similar appeals decided by the ITAT in favour of the assessee has also been considered by the Jurisdictional High Court. The Hon'ble Jurisdictional High Court has duly affirmed of this Tribunal. Accordingly, in the background aforesaid

discussion, we do not find infirmity in the order of Ld. CIT(A).”

11. In the background of aforesaid discussion and decisions, we find that CIT (A) has erred in upholding the assessment order. The Appellant Co-operative society is entitled for deduction u/s 80P as claimed in the return.

12. In the result, assessee’s appeal is allowed.

Order pronounced in the open Court on 18/06/2024

Sd/-	**Sd/-**
V. DURGA RAO	**K.M. ROY**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 18/06/2024

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Nagpur; and

(5) Guard file.

True Copy
By Order

Rajesh V. Jalit
PS (on contract)

Sr.Private Secretary
ITAT, Nagpur