

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.497/Nag./2024
(Assessment Year : 2018-19)

Madhuban Urban Credit
Co-operative Society Ltd.
Awaze Building, Sataranjipura
Itwari, Nagpur 440 002
PAN – AAAAM2045E

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4, Nagpur

..... Respondent

Assessee by : Shri Naresh Jakhotia
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 01/04/2025

Date of Order – 14/05/2025

ORDER

PER K.M. ROY, A.M.

By way of this appeal, the assessee has challenged the impugned order dated 15/07/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2018-19.

2. The assessee has raised following grounds:-

"1. On the facts and circumstances of the case and in law, whether the order passed by the CIT as well as by Assessing Officer is in accordance with the principle of natural justice?"

2. On the facts and circumstances of the case and in law, whether learned Assessing Officer is right in right in treating & CIT(A) is right in confirming the amount of Rs.773,69,751 as unexplained investment?"

3. On the facts and circumstances of the case and in law, whether learned Assessing Officer is right in disallowing & CIT(A) is right in confirming the disallowance of Rs.78,87,998/- towards commission expenses?

4. On the facts and circumstances of the case and in law, whether learned Assessing Officer is right in treating the entire income as "Income from Other Source" despite the fact the investment as well as commission expenses is done in the course of business of banking?

5. On the facts and circumstances of the case and in law, whether learned Assessing Officer is right in not allowing the benefit of set off of business loss of current year and earlier years?

6. On the facts and circumstances of the case and in law, whether learned Assessing Officer is right in not allowing the benefit of deduction U/s 80P to the Appellant?

7. On the facts and circumstances of the case and in law, the order passed by Learned AO as well as by Learned CIT(A) is improper, illegal and unjustifiable.

8. Appellate crave 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. Grounds no.1, 7 and 8, being general in nature hence no separate adjudication is required.

4. Insofar as on the issue relating to unexplained investment, the learned CIT(A) upheld the assessment order passed by the Assessing Officer by dismissing the ground raised by the assessee holding as under:-

"4.3.0 I have gone through the grounds of appeal, assessment order and statement of facts submitted by the appellant. Madhuban Urban Credit Co-operative society is registered under section 5 of the Maharashtra State Cooperative Societies Act, 1960. The organization has been looking after the interests of the members. It is seen from the letter dtd. 12.6.2022 addressed to the Deputy Commissioner of Police-3. Nagpur that since last two years the financial transactions of the organization have been affected due to the outbreak of corona. And also due to the non-recovery of the loans distributed by the organization from the members, there has been a serious financial impact on the organisation. The deposits owned by the institution in March 2020 was around 19 crores of which the institution has returned 10 crores till March, 2022. A total of approximately 9 crores is owned as of today. Also out of the loan disbursed by the organization to the members, 9.50 crores loans are outstanding as of March 2020 and the organization has to recovery 5.91 crore

from the members as of today. In order to recover this amount, claims have been filed in the court under Article 101, 91 and 138 against the defaulting borrowers.

4.3.1 It is seen from the assessment order that the appellant is having income from running credit cooperative society activity of other financial intermediation services and income under the head business and profession. The case was selected for scrutiny to verify investments / advances/ loans and business expenses'. During the assessment proceedings, the appellant had not filed any reply to the show cause notices issued by the AO from time to time. In the appellate proceedings, burden of proof lies on the appellant to prove that facts and findings of the AO are incorrect. The appellant had not filed any supporting documents which could prove that the above referred transactions were reported by the appellant in the ROI. Even during the course of appellate proceedings also, the appellant has not furnished any letter from the Bank to establish that these deposits are renewed from the matured amount of earlier years. If the appellant fails to disprove or rebut with cogent evidence such facts and findings, no interference is required against the assessment order. As the assessee had not offered any explanation with regard to investment in bank accounts and genuineness of transactions and therefore the same remained un-established. Assessee contested in appeal that the assessment order is totally arbitrary and not proper and justified. The appellant has to prove or rebut with cogent evidence against the facts and findings of the AO in the assessment order. It is the duty of the appellant to file the return with all the relevant facts and supporting documents. The appellant had not filed the information so submitted during the appellate proceedings before the AO. In view of the above reasons, I am of the firm opinion that the AO had rightly made the addition for the deposits appearing in the books of the appellant as unexplained investment. Considering the gamut of issues dealt with in the assessment order with which the undersigned concurs, the decision of the assessing officer is upheld. Hence the Ground No.1 of the appeal is dismissed."

5. All the investments which have been added while passing the assessment order, is already reflected in the Balance Sheet. Thus, there can be no addition as unexplained investment. Ground no.2, is thus allowed.

6. As regard commission expenses of ₹ 78,87,998, as per ground no.3, is concerned, the learned CIT(A) dismissed the ground of the assessee by confirming the assessment order passed by the Assessing Officer and the observations of the learned CIT(A) are as under:-

"5.3 I have gone through the submission of the appellant. It is seen from the Form 3CD that the appellant had shown the total amount of payment or

receipt of the nature specified in column (3) under 194H at Rs. 87,33,305/- whereas the AO has observed from the P & L account that the appellant had debited Rs. 78,87,998/-towards commission expenditure. The appellant had not filed any reconciliation in this regard. Further, the appellant needs to file the list of the persons to whom the commission income was paid and the nature of commission etc. Further, the appellant had not filed any confirmation from the recipients. Deduction of the TDS and filing the return u/s. 26Q is not enough to establish the genuinity of the commission payment. When the AO has requested to give the clarification for the large commission expenses with low net profit, the appellant had not filed any submissions. In these circumstances and in view of the foregoing facts, I am of the opinion that no interference is required in the assessment order. Hence, the addition is upheld. Ground No. 2 is dismissed.”

7. The Assessing Officer has not conducted any enquiry about the genuineness of commission and addition is made on surmises. He had all the details of payees before him. The addition is not sustainable without pointing out any defects. Ground no.3, is allowed.

8. Before us, during the course of hearing, both the learned Counsel appearing for the parties are in agreement with us that grounds no.4 and 6, are squarely covered by the decision of the Co-ordinate Bench of the Tribunal (the very same Bench was a party to that order), rendered in The Ismailia Urban Co-operative Society v/s ITO, ITA no.122/Nag./2023, order dated 18/06/2024, wherein the Tribunal has considered this issue in detail and held that interest income earned by the assessee trust is eligible for deduction under section 80P(2)(a)(i) / 80P2(d) of the Act. The relevant portion of the order reproduced below:-

“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 note 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 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 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 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 Id. 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 Id. 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."

9. In the above decision, the Co-ordinate Bench has already considered the judgment of the Hon'ble Supreme Court in The Totgars' Co-operative Sale Society Ltd. v/s ACIT, [2017] 395 ITR 611 (Kar.) and held that the facts of this case is distinguishable and not applicable to the facts of the present case. The interest income earned by the assessee Co-operative Society by providing credit facilities to its members. The interest income derived by the assessee on bank deposit from its business activities is assessable under the head "*Income From Business*" and not under the head "*Income From Other Sources*". We, therefore, respectfully following the decision of the Co-ordinate Bench in The Ismailia Urban Co-operative Society v/s ITO, ITA no.122/Nag./2023, order dated 18/06/2024, set aside the impugned order passed by the learned CIT(A) and allow the grounds raised by the assessee.

10. Since ground no.2, is allowed, the Assessing Officer is directed to give benefit of brought forward losses subject to verification. Ground no.5, is partly allowed.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 14/05/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 14/05/2025

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.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur