

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.243/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2018-19)**

Income Tax Officer
Ward-1
Bhimavaram

(अपीलार्थी/ Appellant)

Vs. M/s Yendagandhi Large Sized
Co-operative Society Ltd.
D.No.4-13, K.K.Road
Yendagandi,
West Godavari Dist
[PAN : AACAT0967G]

(प्रत्यर्थी/ Respondent)

**Cross Objection No.01/Viz/2023
(Arising out of I.T.A.No.243/Viz/2022)
(निर्धारण वर्ष / Assessment Year : 2018-19)**

M/s Yendagandhi Large Sized Co-
operative Society Ltd.
D.No.4-13, K.K.Road
Yendagandi, West Godavari Dist
[PAN : AACAT0967G]

(अपीलार्थी/ Appellant)

Income Tax Officer
Ward-1
Bhimavaram

(प्रत्यर्थी/ Respondent)

Assessee by
Revenue by

: Shri G.V.N.Hari, AR
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 10.10.2023

घोषणा की तारीख/Date of Pronouncement

: 22.11.2023

आदेश / O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the revenue against the order of
Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless

Appeal Centre (NFAC), Delhi vide DIN & Order No.ITBA/NFAC/S/250/2021-22/1046341784(1) dated 17.10.2022, arising out of assessment order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 17.10.2022 for the Assessment Year (A.Y.) 2018-19 and the cross objections filed by the assessee in support of the order of the Ld.CIT(A).

2. Brief facts of the case are that the assessee, a Primary Agricultural Co-operative Credit Society engaged in the business of providing credit facilities, supply of agricultural inputs and consumer goods to its members filed its return of income for the A.Y.2018-19 on 18.08.2018, admitting "Nil" income, after claiming deduction of Rs.2,91,39,357/- u/s 80P(2) of the Act. The return was processed u/s 143(1) and vide intimation dated 12.07.2019 the total income was computed at Rs.3,70,370/-. The increase in income was on account of disallowance of deduction claimed u/s 80P in respect of dividend of Rs.3,70,365/-. The assessee's case was selected for scrutiny under CASS to verify the investments / advances / loans made by the assessee and the deductions claimed under Chapter VI A of the Act and a notice u/s 143(2) was issued. In response, the assessee furnished details of its receipts and the deduction claimed u/s 80P(2) of the Act as under :

Head of Income	Gross Receipts (Rs.)	Net Income (Rs.)	Deduction claimed (Rs.)
Credit facilities to members	4,07,38,473	2,87,52,592	2,87,52,592
Agricultural inputs	53,40,280	4,229	4229
Consumer goods	1,31,93,265	7,171	7171
Dividends		3,70,365	3,70,365
		2,91,39,357	2,91,39,357

The Assessing Officer(AO) noticed that a part of the above income aggregating to Rs.2,59,54,906/- admitted to have been received from extending credit facilities to members was interest income received from the following :

- i) Interest on term deposits with District Central Cooperative Bank – Rs.2,54,61,500
- ii) Interest on FD with AP Cooperative bank -Rs.40,096
- iii) Interest on FD with Andhra Bank - Rs.3,23,815
- iv) Interest on SB Account - Rs.1,29,495

The AO was of the view that the investments with the above said banks were made from surplus funds which is not attributable to the activity of the assessee in providing credit facilities to it's members. Therefore, the AO issued a show cause letter dated 01.02.2021 and a draft assessment order proposing to disallow the deduction to the extent

of interest income received from institutions other than cooperative societies. Further, it was also proposed to disallow the deduction u/s 80P of the Act towards dividend income of Rs.3,70,365/-. The AO proposed to bring to tax the interest income and the dividend income under the head income from other sources u/s 56 of the Act. In response to the show cause letter and the draft assessment order, the assessee furnished it's objections vide letter dated 01.02.2021, submitting that the District Central Cooperative Bank Ltd. is also formed under the State Cooperative Societies Registration Act and all the primary agricultural cooperative credit societies like the assessee only are the members of the DCCB. The assessee further submitted that as per the Cooperative Societies Rules the assessee is required to make investment with DCCB and such investment constitutes the capital fund of the DCCB and that the DCCB advances the same to various primary cooperative credit societies as per their requirements, hence, the interest income received from DCCB on share capital is eligible for deduction u/s 80P of the Act. The assessee also submitted that the interest income received from other banks is also eligible for deduction u/s 80P of the Act. The AO completed the assessment vide order dated 16.02.2021 u/s 143(3) of the Act by disallowing to the extent of Rs.2,59,54,906/-, the deduction claimed u/s

80P(2) of the Act towards interest income received from District Central Cooperative Bank, Andhra Bank, AP Cooperative bank and interest received on savings account and disallowance of dividend income of Rs.3,70,365/-, aggregating to 2,63,25,271/- and the tax payable was computed at Rs.1,22,77,993/- including the interests of Rs.31,82,165/- u/s 234B and Rs.4852/- u/s 234C of the Act.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A), relying on the decision of Hon'ble Supreme Court in the case of The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors dated 12.01.2021, allowed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), revenue preferred an appeal before the Tribunal by raising the following grounds of appeal :

1. *The learned Commissioner of Income Tax (Appeals) is not justified in deleting the addition of Rs.2,59,54,906/- made by the AO on account of disallowance of deduction claimed by the assessee u/s 80P(2)(a)(i) of the Act.*

2. *The learned Commissioner of Income Tax (Appeals) is not justified in deleting the addition of Rs.3,70,365/- made by the AO on account of disallowance of deduction claimed by the assessee u/s 80P(2)(a)(i) of the Act.*

3. *The learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the facts of the case relied upon by him while adjudicating the appeal in the present case i.e. The*

Mavilayi Service Co-operative Bank Ltd. Vs.Ors Vs. CIT, Calicut [SC] dated 12.01.2021 are distinguishable from the facts of the present case.

4. Any other ground that may be urged at the time of hearing of the Appeal.

5. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal.

5. Ground No.4 and 5 are general in nature, which do not require specific adjudication.

6. Ground No.1 to 3 are related to disallowance of deduction claimed u/s 80P(2)(a)(i) of the Act. The Ld.DR submitted that the Ld.CIT(A) is not justified in deleting the addition of Rs.2,59,54,906/- and Rs.3,70,365/- made by the AO on account of disallowance of deduction claimed by the assessee u/s 80P(2)(a)(i). The Ld.CIT(A) relied on the decision of Hon'ble Supreme Court in the case of The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors. dated 12.01.2021, the facts of which are distinguishable from the facts of the present case. Thus, the order passed by the Ld.CIT(A) dated 17.10.2022 is erroneous and prejudicial to the interest of the revenue. The Ld.DR further contended that the AO is justified in making addition of Rs.2,59,54,906/- and Rs.3,70,365/- towards disallowance of deduction claimed by the assessee u/s 80P(2)(a)(i) of the Act by relying on the decision of Hon'ble Supreme

Court in the case of Totgars Co-operative Sale Society Ltd. Vs. Income Tax Officer (2010) 311 ITR 283 (SC) dated 08.02.2010, holding that interest income earned by the assessee society from fixed deposits pertaining to reserve fund kept with nationalized (schedule) banks / cooperative banks is not eligible for deduction u/s 80(P)(2)(a) and 80P(2)(d) of the Act. He, therefore, pleaded to quash the order passed by the Ld.CIT(A) and uphold the addition made by the AO.

7. Per contra, the Ld.AR filed paper book before us and contended that the Ld.CIT(A) is justified in deleting the addition made by the AO since the assessee society, being a cooperative society, make deposits in its regular course of business and accordingly the deposits were made in DCC bank as usual, but not with any intention to gain any benefit from other sources. The Ld.AR further submitted that the facts relied on by the revenue authorities in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) are entirely different from that of the instant case. The Ld. AR also submitted that as per Para-11 of the judgment in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) it is clearly mentioned that *“this judgment is confined to the facts of the present case”* and therefore it cannot be applied in the assessee’s case, hence, eligible for deduction u/s 80P of the Act.

He, therefore, pleaded to quash the order passed by the Ld.CIT(A) and allow deduction u/s 80P of the Act.

8. We have heard both the parties and perused the material placed on record. Now the question before us is to decide whether the revenue is correct in disallowing deduction claimed by the assessee u/s 80P on interest earned on deposits pertaining to reserve fund with DCC Bank which is a cooperative bank and other nationalised banks, or not. It is an admitted fact that the assessee has claimed deduction u/s 80P of the Act. The contention of the AO is that interest accrued on Reserve Fund Deposits is not eligible for deduction u/s 80P. He relied on the decision of Hon'ble Supreme Court of India in Civil Appeal No.1622 of 2010 in the case of M/s Totgars Cooperative Sale Society Ltd., which held that *“investment of surplus on hand not immediately required in Short Term deposits and securities by a co-operative society providing credit facilities to members or marketing agriculture produce to member”*. However, in the instant case, the facts are distinguishable. The coordinate bench of the Tribunal, on similar set of facts dismissed the appeal of the revenue in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society Ltd. in I.T.A.No.107/Viz/2022 dated 30.08.2023 and the same ratio was

followed by the coordinate bench of the Tribunal in the case of Rangaraya Large Sized Cooperative Society in I.T.A.No.160/Viz/2023 dated 14.09.2023. For the sake of clarity and convenience, we extract relevant part of the order of the Tribunal in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society Ltd.(supra) as follows :

“8. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. It is an admitted fact that the assessee has claimed deduction U/s. 80P(2)(a)(i) of the Act on the interest accrued and received by the assessee U/s. 80P(2)(a)(i) of the Act. The contention of the Ld. AO is that as per section 80P(2)(d), the assessee is eligible to claim deduction U/s. 80P(2)(a)(i) of the Act only when it is invested with any other cooperative society. The Ld. AO also placed heavy reliance in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) while disallowing the claim made by the assessee U/s. 80P(2)(a)(i) of the Act. We have perused the ratio laid down by the Hon’ble Apex Court in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) and found that in that case the society is engaged in marketing of the agricultural produce by its members as per section 80P(2)(a)(iii) while carrying on the business of banking or providing credit facilities to its members U/s. 80P(2)(a)(i) of the Act. In that case, the Society retained the sale proceeds which was otherwise payable to its members from whom the produce was bought which was invested in short term deposits / securities. It is also found that the amount payable to its members realized from sale proceeds of the agricultural produce of its members was retained by the society and was shown as liability on the balance sheet. Therefore, the Hon’ble Apex Court has held that interest earned from retaining the amount payable to its members shall not be considered as income from other sources. However, in the instant case the facts are distinguishable and hence in our view the ratio laid down in the case of M/s. Totgars Cooperative Sale Society Ltd (supra) shall not be applied. Section 80P(1) of the Act entitles the Cooperative Societies to deduct the sums specified in sub-section (2) from its gross total income while computing the total income. Sub-section (2) of section 80P, in the sub-clause (a) allows deduction to cooperative society which is engaged in the following activities:

“(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
 - [(iii) the marketing of agricultural produce grown by its members, or]
 - (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
 - (v) the processing, without the aid of power, of the agricultural produce of its members, [or]
 - [(vi) the collective disposal of the labour of its members, or
 - (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,]
- the whole of the amount of profits and gains of business attributable to any one or more of such activities:"

9. Further, we also extract below the provisions of section 80P2(d) and (e) of the Act for reference:

- "(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;
- (e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;"

10. From the plain reading of section 80P(2)(a)(i) of the Act, the whole of amount of profits and gains of the business attributable to one or more of such activities shall be allowed as a deduction. Further, section 80P(2)(d) and 80P(2)(e) of the Act also allows similar deductions. It is clear that the deductions available under clauses (a) to (e) of section 80P(2) are activity based whereas clauses (d) and (e) are investment based. The distinction between clauses (a) and clauses (d) & (e) on the other hand is that the benefit under clause (a) is restricted to only into those activities of a cooperative society enlisted in sub-clause (a) whereas the benefit of clauses (d) & (e) are available to all cooperative societies without any restriction on the activities carried on by them. In simple terms, the benefit under clause (a) will be limited only to the profits & gains of the business attributable to any one or more of such activities. But in case, if the cooperative society has an income not attributable to any one or more of such activities listed in sub-clauses (i) to (vii) of clause-(a), the same may go out of the purview of clause (a) but still the cooperative society may claim the benefit of clause (d) or (e) as per the conditions laid down therein. In the instant case, the original source of investments made by the assessee in Nationalized Banks is admittedly the income of the assessee derived from the activities listed in sub-clauses (i) to

(vii) of clause (a). The character of such income must be last, especially when the statute uses the expression “attributable to” and not any one of the expressions viz., “derived from” or “directly attributable to”. The Hon’ble jurisdictional High Court of Andhra Pradesh and Telangana in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another [2017] 396 ITR 0371 (AP) in para 34 has discussed about the decision of the Hon’ble Supreme Court in the case of Totgar’s Cooperative Sale Society Ltd (supra) and distinguished the facts while deciding the case. For the sake of brevity, we extract the relevant para 34 of the judgment of the Hon’ble Andhra Pradesh and Telangana High Court herein below:

“34. The case before the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) was in respect of a co operative credit society, which was also marketing the agricultural produce of its members. As 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 Totgar's Co-operative Sale Society Ltd.'s case (supra) that the business activity other than marketing of the agricultural produce actually resulted in net loss to the society. Therefore, it appears that the assessee 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 Totgar's struck a different note.”

11. Further, the Hon’ble jurisdictional High Court of Andhra Pradesh and Telangana in the case of Vavveru Cooperative Rural Bank Ltd vs. Chief Commissioner of Income Tax and Another (supra) held that the cooperative society is eligible for deduction U/s. 80P(2)(a)(i) of the Act on the interest income received from investment in banks. The Hon’ble High Court in paras 35 to 37 of its judgment held as under:

35. But, as rightly contended by the learned senior counsel for the petitioners, the investment made by the petitioners in fixed deposits in nationalised banks, were of their own monies. If the petitioners had invested those amounts in fixed deposits in other co-operative societies or in the construction of godowns and

warehouses, the respondents would have granted the benefit of deduction under clause (d) or (e), as the case may be.

36. The original source of the investments made by the petitioners in nationalised banks is admittedly the income that the petitioners derived from the activities listed in sub-clauses (i) to (vii) of clause (a). The character of such income may not be lost, especially when the statute uses the expression "attributable to" and not any one of the two expressions, namely, "derived from" or "directly attributable to".

37. Therefore, we are of the considered view that the petitioners are entitled to succeed. Hence, the writ petitions are allowed, and the order of the Assessing Officer, in so far as it relates to treating the interest income as something not allowable as a deduction under section 80P(2)(a), is set aside."

12. Further, the Coordinate Bench of Hyderabad in Tirumala Tirupati Devasthanams Employees Coop. Credit Society vs. ITO also affirmed the same view by following the decision of the Hon'ble AP High Court in the case of Vavveru Cooperative Rural Bank Ltd (supra). In the instant case also, the assessee has invested surplus funds out of the activities carried out as per the provisions of section 80P(2)(a) of the Act. We therefore by respectfully following the jurisdictional High Court are of the view that interest income should be allowed as deduction U/s. 80P(2)(a)(i) of the Act and thereby the Ld. CIT(A)-NFAC has rightly held by deleting the addition made by the Ld. AO and hence we find no infirmity in the order of the Ld. CIT(A)-NFAC.

13. In the result, appeal of the Revenue is dismissed."

Respectfully following the decision of the Hon'ble High Court of Andhra Pradesh in the case of Vavveru Cooperative Rural Bank Ltd.(supra) and the ratio laid down by the coordinate bench of the Tribunal in the case of Kakateeya Mutually Aided Thrift and Credit Co-op Society Limited (supra), we are inclined to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the revenue. Hence, all the grounds raised by the revenue are dismissed.

12. The assessee filed cross objections in support of the order of the Ld.CIT(A). Since the grounds raised by the revenue are dismissed, the cross objections filed by the assessee becomes infructuous, hence, dismissed.

13. In the result, appeal of the revenue as well as the cross objections filed by the assessee are dismissed.

Order pronounced in the open court on 22nd November, 2023.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 22.11.2023

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Yendagandhi Large Sized Co-operative Society Ltd., D.No.4-13, K.K.Road, Yendagandi, West Godavari Dist
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, J.P.Road, Bhimavaram
3. The Principal Commissioner of Income Tax, Rajahmundry
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam