

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
एवं

श्री संजय अवस्थी, लेखा सदस्य
के समक्ष

Before

PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 1152/KOL/2023
Assessment Year: 2018-19

Taluk Gopalpur Samabay Krishi Unnayan Samity Limited.....Appellant
[PAN: AADAT 6430 H]

Vs.

ITO, Ward-27(3), Haldia.....Respondent

Appearances:

Assessee represented by: Siddharth Agarwal, Adv. &
Silpi Mukherjee, Adv.

Department represented by: Ranu Biswas, Addl. CIT DR.

Date of concluding the hearing : June 25th, 2024

Date of pronouncing the order : August 7th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

The appellant is a Cooperative Credit Society engaged in the business of accepting deposits and giving loans to its members. It filed its return of income for the present assessment year on 10.08.2018 at 'NIL' income. The case was picked up for scrutiny and after consideration of submissions filed by the assessee the Assessing Officer (hereinafter referred to as ld. 'AO') proceeded to add Rs. 8,40,630/- as interest income which, according to the Ld. AO, would not constitute part of deductions allowed u/s 80P(2)(d) of the Income Tax Act, 1961 (in short the 'Act'). Right at the outset, it needs to be

mentioned that the amount of Rs. 8,40,630/- (impugned amount) is actually Rs. 8,27,230/- based on the figures adopted by the ld. AO (2nd para at page 3 of the ld. AO's order) as the difference of Rs. 26,45,981/- (being total interest income as per computation) (-) Rs. 18,18,751/- (being total interest income earned from members of the Society). Clearly, the differential figure is Rs. 8,27,230/- and not Rs. 8,40,630/- as has been mentioned all along in the orders of the authorities below. It is seen that the ld. AO relied on some judicial pronouncements to distinguish the two sets of interest received and brought the impugned amount (now Rs. 8,27,230/-) as being outside the purview of Section 80P of the Act, mainly following the Hon'ble Apex Court's judgment in the case of *Totgars, Co-operative Sale Society Ltd. vs. ITO* reported in [2010] 322 ITR 283 (SC).

1.1. Aggrieved with this action, the appellant approached the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)'] and averred before him that the assessee deposits its operating funds as per the West Bengal Cooperative Societies Act, 2006, which provides that a cooperative Society may receive deposits and also provides that such Society may invest or deposit its funds in the Central Cooperative Bank of the area within which its registered office lies, along with other prescribed banks. It has been further averred that the Government of West Bengal vide order No. 495 dated 09.02.1998 had specifically directed that for ensuring the safety of deposits 70% of the total deposit mobilized must be invested with credit cooperative banks. Through detailed submissions before the ld. CIT(A), the assessee also attempted to distinguish his case from the *Totgars, Co-operative Sale Society Ltd. (supra)* by saying that the funds in question in the said case were surplus funds, as opposed to which in assessee's case they are operating funds. However, the ld. CIT(A) did not agree with the contentions raised before him and confirmed the addition not only on the basis of the *Totgars, Co-operative Sale Society Ltd. (supra)* case but also relied on some other authorities to confirm the addition so made by the ld. AO.

1.2. Once again aggrieved with the action of ld. CIT(A) the assessee has approached the ITAT initially with as many as four grounds of appeal which were later revised to two grounds of appeal which are as under:

“1. For that the Ld. CIT(A) was not justified in confirming the action of the A.O. in not granting the benefit of deduction u/s 80P to the tune of Rs. 8,40,630/- in respect of income earned from deposits with bank.

2. Without prejudice to the above, the CIT(A) ought to have directed the A.O. to grant the benefit of deduction of interest payable to members attributable to the deposits with the bank.”

1.3. The appellant also filed a paper book enclosing computation of income for the present year, assessment order of the immediately previous year in which no addition was made and the ITAT's order in the case of 1244/KOL/2015 order dated 15.12.2017. This case of the ITAT purportedly distinguishes *Totgars, Co-operative Sale Society Ltd. (supra)* case. The ld. A/R has filed written submissions which have been taken on record.

1.4. Before us, with the help of written submissions and the paper book the ld. A/R took us through the facts of the case as also the administrative conditions under which the appellant Society functions *vis-à-vis* the West Bengal Cooperative Societies Act, 2006. The ld. A/R also relied on the case of *CIT vs. South Eastern Railway Employees Co-Op Credit Society Ltd.* in ITA 484 of 2007 (which we will have occasion to advert to later) and the case of *CIT vs. Kisan Sahkari Chini Mills Ltd.* reported in [2005] 274 ITR 119 (Allahabad) to canvas the point that in case the impugned amount is held to be income from other sources then this case could guide in estimating expenses allowable to earn such income.

1.5. The ld. D/R relied on the *Totgars, Co-operative Sale Society Ltd. (supra)* case and the findings given in the orders of ld. CIT(A) and the ld. AO.

2. We have considered the rival submissions and carefully perused the documents relied upon by the ld. A/R and the relevant portions of the judgments relied upon by the assessee as also the assessing authorities. To appreciate the fact that the *Totgars, Co-operative Sale Society Ltd. (supra)* case

is absolutely binding on the facts of the present case, it would be necessary to extract some portions from the same as under:

“In the instant case, the interest held not eligible for deduction under section 80P(2)(a)(i) was not the interest received from the members for providing credit facilities to them. What was sought to be taxed under section 56 was the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. The assessee marketed the produce of its members whose sale proceeds at times were retained by it. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. Such interest income would come in the category of 'Income from other sources' and, hence, such interest income would be taxable under section 56 as rightly held by the Assessing Officer. The headnote to section 80P indicates that the said section deals with deductions in respect of income of co-operative societies. Section 80P(1), inter alia, states that where the gross total income of a co-operative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-society. An income, which is attributable to any of the specified activities in section 80P(2) would be eligible for deduction. The word 'income' has been defined under section 2(24)(i) to include profits and gains. This sub-section is an inclusive provision. The Parliament has included specifically 'business profits' into the definition of the word 'income'. Therefore, one is required to give a precise meaning to the words 'profits and gains of business' mentioned in section 80P(2). In the instant case, the assessee-society regularly invested funds not immediately required for business purposes. Interest on such investments, therefore, could not fall within the meaning of the expression 'profits and gains of business'. Such interest income could not be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. Therefore, looking to the facts and circumstances of the case, the Assessing Officer was right in taxing the interest income under section 56. [Para 10]

To say that the source of income is not relevant for deciding the applicability of section 80P would not be correct because one needs to give weightage to the words 'the whole of the amount of profits and gains of business' attributable to one of the activities specified in section 80P(2)(a). The words 'the whole of the amount of profits and gains of business' emphasise that the income, in respect of which deduction is sought, must constitute the operational income and not the other income which accrues to the society. In the instant case, the evidence showed that the assessee-society earned interest on funds which were not required for business purposes at the given point of time. Therefore, on the facts and circumstances of the instant case,

such interest income fell in the category of 'other income' which had rightly been taxed by the department under section 56. [Para 11]"

2.1. It is clear that an artificial distinction attempted to be created between idle funds and operational funds may be misconceived since the interest arising out of funds advanced as loans to the members has already been allowed by the authorities below. Such funds have been deemed to be operational funds and hence, due credit for the same has been allowed. The remaining funds, available with the assessee for whatever reason, have been treated to be the kind of funds on which the *Totgars, Co-operative Sale Society Ltd. (supra)* case has specifically ruled that they would be outside the purview of Section 80P of the Act and would constitute income from other sources. We draw considerable strength from the case of *PCIT vs. Electro Urban Co-operative Credit Society Ltd.* reported in [2020] 426 ITR 215 (Calcutta) in which a similar question arose whereby certain funds had to be considered u/s 80P of the Act where also the West Bengal Cooperative Societies Act, 2006 was applicable and the issue was required to be dealt with keeping in view the *Totgars, Co-operative Sale Society Ltd. (supra)* case by the Hon'ble Jurisdictional High Court. Some portions from the judgment deserve to be extracted to appreciate the fact that the funds deposited with Banks on which the impugned amount has been earned would be outside the purview of Section 80P of the Act:

"1. Revenue has appealed against order dated 17th November, 2017 passed by Income-tax Appellate Tribunal "D" Bench, Kolkata in ITA 144/Kol/2016 pertaining to assessment year 2012-13. The substantial question of law, on which the appeal was admitted, is set out below:—

"Was Totgar's (supra) made applicable to Co-operative Societies carrying on the business of banking or providing credit facilities to its members, by South Eastern Railway Employees Co-operative Credit Society Ltd. (supra)?"

2. Mr. Bhowmick, learned advocate appears on behalf of appellant-revenue and submits, declaration of law in Totgars Co-operative Sales Society Ltd. v. ITO [2010] 188 Taxman 282/322 ITR 283 (SC) was on the question whether interest on deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of Income-tax Act, 1961? Supreme Court said, 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. In that connection section 80P was analyzed and appellant, being a co-operative sale society, was held against as follows:

"As stated above, in this case, interest held as ineligible for deduction under section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, the assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-society, was a liability and it was shown in the balance-sheet on the liabilities-side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or in section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under section 56 of the Act."

3. He submits, Totgars Co-operative Sale Society Ltd. (supra) was made applicable to an assessee such as respondent by a Division Bench of this Court, to which one of us was party (Arindam Sinha, J.), in CIT v. Sout Eastern Railways Employees Co-Operative Credit Society Ltd. [2016] 73 taxmann.com 123/[2017] 390 ITR 524 (Cal.) . Appeal of revenue is covered by the decision and the question should be answered accordingly.

4. Mr. Majumder, learned senior advocate, Additional Advocate-General appears on behalf of assessee-respondent. He submits, his client is an existing cooperative society, on whom deeming provision in section 6 of West Bengal Co-operative Societies Act, 2006 operates. He relies on sections 79 and 82 therein for provisions relating to firstly, investment of funds by his client and secondly, on mandate to transfer, in every cooperative year, not less than 10% of its net profit to a reserve fund. Corresponding enabling procedure is as per rule 119 in West Bengal Co-operative Societies Rules, 2011. His client made investments as permitted by the Act, Rules and its existing bye-laws, the latter not being inconsistent with the provisions in the Act of 2006. Interest on these investments are profits and gains of his client, being a cooperative society, carrying on business of banking and providing credit facilities to its members. As such, the whole amount of profits and gains achieved from interest earnings on such investments, is to be deducted in computing the total income.

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9. We find that revenue's case is covered by South Eastern Railways Employees Co-operative Credit Society Ltd. (supra). The Act of 2006 and Rules thereunder mandate 10% of net profit in every cooperative year to be transferred to a reserve fund. Interest income on rest of the net profit of respondent appears to be similar income or to be similarly treated as interest income on investment of sale of agricultural produce of the assessee in Totgar's (supra), that assessee being one coming within sub-clause (a)(iv) under sub-section (2) in section 80P. Assessee being a credit society similar to assessee South Eastern Railways Employees Co-operative Credit Society Limited, Totgars Co-operative Sale Society Ltd. (supra) would apply to its such income. It follows that the question in this appeal is to be answered in the affirmative, in favour of revenue and we so answer it.”

2.2. Furthermore, again in the case of CIT vs. South Eastern Railway Employees Co-op Credit Society Ltd. reported in [2017] 390 ITR 524 (Calcutta) a similar issue arose for consideration and an operative portion of this case deserves to be extracted to appreciate the action of both the ld. AO and the ld. CIT(A):

“A co-operative bank and a co-operative society do not stand on the same footing. The whole of the income of co-operative bank is deductible whereas in the case of a society the income attributable to any one or more of the activities laid down in sub-section (2) is deductible. The caution appearing in sub-section (1) of section 80P states that only an income referred to in sub-section (2) was deductible, was not taken into account. The sub-section (2) provides for only the income attributable to the business of advancing credit facilities to its members. Income arising from any other source including investment of capital "if not immediately required to be lent to the members" was not contemplated. The assessee cannot claim any deduction which is not provided for by the section. Moreover, the judgment in the case of Totgars Co-operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 (SC) is a binding authority for the proposition that 'interest income arising on the surplus invested in short-term deposits and securities. would come in the category of income from other sources.' [Para 9]”

2.3. Incidentally, this case has also been relied upon by the ld. A/R who has fairly brought to our notice the fact that considering this case law the Revenue should consider allowing a justified amount as expense for earning the income from other sources.

3. Considering the discussions above and the authorities cited, it is held that the impugned amount of Rs. 8,40,630/- (as corrected to Rs. 8,27,230/-)

cannot be considered for relief u/s 80P of the Act. However, the alternative submission of the appellant, as per ground no. 2, deserves to be considered and for this limited purpose, the matter is restored to the file of ld. CIT(A) for allowing a reasonable expense for earning the said income. For that purpose, the ld. CIT(A) may refer to the case of *Kisan Sahkari Chini Mills Ltd. (supra)* for necessary guidance in terms of identifying the quantum of expense to be allowed as relief on the said disallowance.

3.1. In the result, the appellant fails with respect to ground no. 1 but succeeds with respect to ground no. 2.

4. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 7th August, 2024.

Sd/-

[Pradip Kumar Choubey]
Judicial Member

Sd/-

[Sanjay Awasthi]
Accountant Member

Dated: 07.08.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Taluk Gopalpur Samabay Krishi Unnayan Samity Limited, Taluk Gopalpur, Haldia, Purba Medinipur, West Bengal, 721628.**
- 2. ITO, Ward-27(3), Haldia.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata