

IN THE INCOME TAX APPELLATE TRIBUNAL “(SMC)” BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.527/Kol/2022
Assessment Year: 2016-17**

Central Bank National Employees Co-operative Credit Society Ltd. 111, C. R. Avenue, 1 st Floor, Room No. 3, Raja Bhawan, Kolkata- 700073. (PAN: AAAAC3483E)	Vs.	Income-tax Officer, Ward- 34(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sunil Surana, AR
Respondent by : Shri Avijit Adhikari, JCIT

Date of Hearing : 16.08.2023
Date of Pronouncement : 02.11.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2022-23/1044145200(1) dated 27.07.2022 passed against the assessment order by ITO, Ward-34(3), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 06.12.2018, for AY 2016-17.

2. Assessee has raised two grounds of appeal, first relating to disallowance of deduction claimed u/s. 80P of Rs.31,99,554/- in respect of income from interest received on fixed deposits with bank by treating it as income from other sources. The second one is in respect of disallowance of payment made as contribution towards Provident

Fund and Gratuity Fund amounting to Rs.5,54,572/-. Ground no. 2 is not pressed by the assessee in the course of hearing. Accordingly, the same is dismissed as not pressed.

3. Brief facts of the case are that assessee is a Multi-state Cooperative Credit Society, duly registered with Ministry of Agriculture, Government of India. Its membership is restricted to serving employees of the Central Bank of India. The principal business of the assessee is garnering deposits from member-shareholders under various deposits and savings mobilisation schemes and lending the same to its members.

3.1. Assessee filed its return of income on 28.03.2017 reporting total income at nil. In the return, assessee had claimed deduction of its entire profit of Rs.38,61,336/- u/s. 80P(2)(a)(i) of the Act. From the examination of accounts of the assessee, Ld. AO had noted that assessee derived income mainly as interest on loan given to the members under various schemes and interest from fixed deposits. He also noted that assessee garnered deposits from its member under two schemes i.e. Thirft Fund and Guarantee Fund. He noted that on the investments side, assessee primarily invests in lending to its members. There are certain other loans like house building loan etc. which are also given to its employees. Assessee also invests in fixed deposits with banks. Assessee is required under the Co-operative Societies Act to appropriate certain amount of profit as reserve like Reserve Fund, Bad Debt Fund and Co-operative Education Fund.

3.2. He also noted that assessee is running holiday homes and that income from holiday homes is Rs.3,05,700/-. By referring and placing reliance on the decision of Hon'ble Supreme Court in the case of M/s. Totgars Co-operative & Sale Society Ltd. Vs. ITO (2010) 188

taxmann.com 285 (SC) arrived at a conclusion that interest earned on term deposits is not a business income but an income from other sources, not eligible for deduction u/s. 80P. He observed that facts and circumstances of the case of the assessee are identical with that of the decision of Hon'ble Supreme Court in the case of M/s. Totgars Co-operative & Sale Society Ltd. (supra). Therefore, the investment made in term deposits out of funds not required for lending business and giving rise to interest income is not an income from the operations of lending. Such income cannot be termed as earning from lending business. He also held that earning from holiday homes is an income from other sources. Thus, Rs. 31,99,554/- was added to the assessed total income.

3.3. Aggrieved, assessee went in appeal before the Ld. CIT(A) upholding the disallowance made by the Ld. AO. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel emphasized that since the sole basis of disallowance made by the Ld. AO is the decision of Hon'ble Supreme Court in the case of M/s. Totgars Co-operative & Sale Society Ltd. (supra), he invited the attention of the Bench to the issue which was dealt with by the Hon'ble Supreme Court in the said judgment. The same is extracted as under:

"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? 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 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... "

In this regard, Hon'ble Supreme Court observed that –

"(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)."

4.1. Explaining the case before the Hon'ble Supreme Court, Ld. Counsel submitted that it was a case where the Co-operative Society apart from providing credit facilities to the members was also in the business of marketing of agricultural produces, grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was paid, was invested in a short term deposit/security. Such an amount which was retained by the assessee society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent such interest income could not be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) or section 80P(2)(a)(iii) of the Act. According to Ld. Counsel, therefore, in these set of facts, the Hon'ble Court held that AO was right in taxing the interest income u/s. 56 of the Act. Ld. Counsel also pointed out to the observation made by the Hon'ble Supreme Court wherein it was made clear by the Hon'ble Court that it is confining the said judgment to the facts of that case. Thus, this decision of the Hon'ble Supreme Court does not lay down any law.

4.2. Ld. Counsel further submitted that the amount which was invested in banks to earn interest was not an amount due to any members. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is eligible to be deducted in terms of Section 80P(1) of the Act.

4.3. In respect of component of income from holiday homes which has been disallowed in the claim of deduction u/s. 80P, Ld. Counsel submitted that this claim is not pressed.

5. Per contra, Ld. DR placed reliance on the order of the authorities below wherein decision of the Hon'ble Supreme Court has been dealt with effectively.

6. Considering the facts of the present case and the submissions made before us, we find force in the arguments of the Ld. Counsel for the assessee. We note that assessee is engaged in the business of providing credit facilities to its members for which it accepts deposits from and lend the same to its members. While accepting deposits, assessee promises to pay interest at a specified rate. When money is lent to the members, interest is recovered which is also at a specified rate. Difference between the two rates is the income of the assessee. However, there are periods when entire deposit received from the members cannot be lent owing to demand for loan not there from the members. In such a situation, whether the money is lent or not, assessee continues to be liable for payment of interest to its members who have made deposit with it. To cover up this liability for payment

of interest, these funds are invested with banks in fixed deposit/term deposit which earned certain interest income to be set off against the interest payable to the member/depositors. Parking of funds by the assessee with banks in the form of fixed deposits to earn interest income is part and parcel of the business of providing credit facilities to its members. Assessee has received the deposits from its members only which are subjected to interest charge.

6.1. We note that while sustaining the disallowance, Id. CIT(A) has referred to the interest income in a general sense and not specific to the facts of the case of the assessee. He has noted that *“the word ‘Profit and Gain of Business’ means Business Income and not Income from Other Sources. Interest, in general, arising out of surplus investment in short term deposit are not related to the business activity of the appellant and cannot be attributed to have been on account of providing credit facilities to its members. Such income, primarily interest, can therefore, not be seen to be attributable to the business activity of the appellant and is accessible as ‘Income from Other Sources’.”*

6.2. In the case of Totgars Co-operative Sale Society Ltd. (supra), an important fact which has been noted is that assessee had invested the fund on short term basis since they were not required immediately for business purposes. In the present case, the funds available are for the business purpose of providing credit facilities to its members. It is only because in a given point of time, there is no demand for loan that they have been parked with the banks as fixed deposit. The only fund available with the assessee are out of deposits from its members and there is no surplus funds as such. This fund of the assessee is the operational fund.

6.3. Considering the facts and circumstances of the case and the decision referred above, we are of the considered view that assessee is entitled for deduction of interest income earned from deposits made by it with banks which has arisen out of deposits received from its members pursuant to conduct of business of providing credit facilities to its members. Accordingly, deduction of Rs.30,93,854/- towards interest income earned from deposits with the banks is allowed for deduction u/s. 80P of the Act. Ground taken by the assessee in this respect is thus partly allowed. Since the portion of claim in respect of income from holiday home has not been pressed is, therefore, upheld to that extent.

7. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 02 November, 2023

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 02 November, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata