

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA Nos.3692 & 3693/Del/2023
[Assessment Years : 2018-19 & 2020-21]**

The Janta Adarsh Co-operative Thrift & Credit Society Ltd., Chamber No.2, Ground Floor, Tax Building, Eastern Court Compound, Janpath, New Delhi-110001. PAN-AAABT3458M	vs	ITO, Ward -52(1), Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Rajiv Kumar Jain, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	06.06.2024	
Date of Pronouncement	28.06.2024	

ORDER

PER KUL BHARAT, JM :

These two appeals filed by the assessee are directed against separate orders passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi, both dated 20.10.2023 for the assessment years 2018-19 & 2020-21 respectively. Since the similar grounds have been raised except figures, both the appeals of the assessee are taken up together for hearing and are being decided by way of this consolidated order for the sake of brevity.

ITA No.3692/Del/2023 [Assessment Year : 2018-19]

2. First, I take up the appeal of the assessee for the Assessment Year 2018-19 i.e. ITA No.3692/Del/2023. The assessee has raised following grounds of appeal:-

1. *“That on the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'Ld. CIT(A), NFAC') has grossly erred on facts and in law in confirming the addition Rs.7,60,197/- by not allowing deduction u/s.80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), despite the fact that the appellant is a Co-operative Thrift & Credit Society and the income of Rs. 7,60, 197/- is attributable to the activities mentioned in section 80P(2)(a)(i) of the Act.*
2. *That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.7,60,197/- by not allowing deduction u/s.80P(2)(a)(i) of the Act by not following the 'principle of judicial precedence' as the jurisdictional judicial pronouncements are in favour of the appellant.*
3. *That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.7,60,197/- by not allowing deduction u/s.80P(2)(a) (i) of the Act by not appreciating and accepting various judicial pronouncements in favour of the appellant relied upon.*
4. *That, without prejudice to ground No. 1 to 3, on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.7,60,197/- by not allowing deduction u/s.80P(2)(d) of the Act, despite the fact that the appellant being a Co-operative Thrift & Credit Society had earned the income of Rs. 7,60, 197/- from the Delhi State Co-operative Bank Ltd, who is a Co-operative Society in terms of section 2(19) of the Act.*
5. *That, without prejudice to ground No. 1 to 3, on the facts and in the circumstances of the case the case the Ld. CIT(A), NFAC has grossly erred both on facts and in law in confirming the addition Rs.7,60,197/- by not allowing deduction u/s.80P(2)(d) of the Act, by erroneously relying upon the decision of Hon'ble Delhi High Court in*

the case of Mantola Co-operative Thrift & Credit Society Ltd. vs. CIT (2014), which is very clearly distinguishable.

6. *That, without prejudice to ground No. 1 to 3, on the facts and in the circumstances of the case the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.7,60,197/- by not allowing deduction u/s.80P(2)(d) of the Act, by erroneously relying upon the decision of Hon'ble Karnatka High Court in the case of M/s. Totgar's Co-operative Sales Society (2017).*
7. *That, without prejudice to ground No. 1 to 3, on the facts the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.7,60,197/- by not allowing deduction u/s.80P(2)(d) of the Act by not following the 'principle of judicial precedence' as the jurisdictional judicial pronouncements are in favour of the appellant.*
8. *That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has erred in law in allowing Ground No. 10 pertaining to charging of Interest Rs. 85,766/- u/s 234B of the Act without any direction.*
9. *That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has erred in law in allowing Ground No. 11 pertaining to charging of Interest Rs. 67,408/- u/s 234C of the Act without any direction.*
10. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3. Facts giving rise to the present appeal are that the case of the assessee was selected for limited scrutiny under E-assessment Scheme, 2019 on the following issues:-

- [i]. Deductions from income from other sources;
- [ii]. Investments/Advances/Loans; and
- [iii]. Deduction from total income under Chapter VI-A.

3.1. The assessee is a Co-operative Credit Society Ltd. and filed its return of income under the status of "AOP" for the year under consideration on 31.08.2018, declaring total income at Rs. NIL. The return of income was processed by Centralized Processing Centre ("CPC") u/s 143(1) of the Income Tax Act, 1961 ("the Act"). Therefore, statutory notices were issued to the assessee. In response to the notices, the assessee submitted its reply alongwith details as called for. It was noticed by the Assessing Authority that the assessee had claimed deduction of INR 43,29,747/- u/s 80P of the Act. The Assessing Officer ("AO") further noticed that the amount of INR 7,60,197/- is interest income derived from deposits in banks/Co-operative banks. The Assessing Authority was of the view that such deduction is not allowable as the income is not from the business activities of the assessee. But in this case, the assessee had deposited its surplus fund with banks and earned interest income thereon which in the opinion of the Assessing Authority, from other sources. The Assessing Authority did not accept the submissions of the assessee and proceeded to make addition. Hence, the AO made addition of INR 7,60,197/- and assessed the income of the assessee at INR 7,60,197/- u/s 143(3) r.w.s 143(3B) of the Act vide assessment order dated 08.04.2021, after making disallowance of deduction claimed u/s 80P(2)(a)(i) of the Act.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, sustained this addition and dismissed the appeal of the assessee on this issue.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. The assessee has raised multiple grounds. In support of these grounds, the assessee has made a short synopsis. For the sake of clarity, the synopsis filed by the assessee is reproduced as under:-

1. *“Interest and dividend income from*

The Delhi State Co-operative Bank Ltd, Delhi.

{Admitted by CIT(A)} {Para 5.1 at Page 5 of CIT(A) Order}

(i) Interest on fixed deposits 6,05,897/- (Page 21 of PB)

(ii) Interest in Savings Bank Account 1,52,274/- (Page 20 of PB)

(iii) Dividend 2,026/-

Total 7,60,197

Ground No. 1, 2 and 3 pertains to following issue

2. *Deduction of Rs. 7,60,197/- u/s 80P(2)(a)(i), being interest and dividend income derived from "The Delhi State Co-operative Bank Ltd, Delhi" is attributable to the activity of carrying on business of providing credit facilities to its members.*

<i>SN</i>	<i>Nature of Income</i>	<i>Amount (Rs.)</i>	<i>Amount of Fixed Deposits on which Interest has been earned</i>	<i>Amount of Reserve Fund as on 01.04.2017, which was not available for distribution to members</i>	<i>% of Fund</i>	<i>Interest income in relation to surplus fund, which is not allowable under section 80P(2)(a)(i)</i>	<i>Interest income which is allowable under section 80P(2)(a)(i)</i>
1.	<i>Interest on Fixed deposits</i>	6,05,897	1,05,00,000	27,08,502	25.79	1,56,260	4,49,637
2.	<i>Interest in saving bank</i>	1,52,274	-	-	-	-	1,52,274
3.	<i>Dividend</i>	2,026	-	-	-	-	2,026
Total		7,60,197				1,56,260	6,03,937

Ground No. 4, 5, 6, 7 and 8 pertains to following issue

3. *Alternatively, deduction of Rs. 7,60,197/- u/s 80P(2)(d), being interest and dividend income derived by "co-operative society" from*

its investments with any other "co-operative society" (The Delhi State Co-operative Bank Ltd, Delhi).

Ground No. 9 & 10 pertains to interest u/s 234B & 234C

4. *Allowing Ground No. 10 pertaining to charging of Interest Rs. 85,766/- u/s 234B of the Act without any direction.*
5. *Allowing Ground No. 11 pertaining to charging of Interest Rs. 67,408/- u/s 234C of the Act without any direction.”*
7. Ld. Counsel for the assessee re-iterated the submissions as made in the synopsis. He further submitted that under the identical facts, the Tribunal has allowed the deduction claimed similarly situated the assessee. In support of this contention, the assessee has placed reliance on the decision of the Tribunal in ***ITA No.4078 & 2036/Del/2019 and ITA No.6935/Del/2018*** in the case of ***The Mantola Cooperative Thrift & Credit Society Ltd. vs ITO*** vide order dated ***27.07.2020***. Further, reliance is placed on the decision of Hon'ble Delhi High Court in the case of ***Mantola Co-operative Thrift & Credit Society Ltd. vs CIT in ITA No.569/2013*** vide order dated ***27.08.2014*** (Delhi) had restored the issue to Ld.CIT(A) in respect of expenses. Ld. Counsel for the assessee also relied on the decision of the Tribunal in the case of ***ITO vs The Jwala Cooperative Urban Thrift and Credit Society Ltd. in ITA No.2982/Del/2018***. Ld. Counsel for the assessee also placed reliance on the decision of the Tribunal in the case of ***Reserve Bank Staff & Officers Co-op Credit Society Ltd. vs ITO in ITA No.3114 to 3118/Mum/2023 & Others***. Further, Ld. Counsel for the assessee placed reliance on the decision of Co-ordinate Bench of the Tribunal in the case of ***The Balduhak Co-operative Agriculture Services Society Ltd. vs ITO in ITA***

No. 703/Chd/2022 vide order dated **16.02.2024** in support of his contention that the deduction so claimed by the assessee are allowable.

8. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He contended that the issue of chargeability of interest has been decided by the Hon'ble Supreme Court in the case of ***Totgar's Co-operative Sale Society Ltd. vs ITO [2010] 322 ITR 283 (SC)***.

9. I have heard the Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The short question that arises out of the multiple grounds Nos.1 to 8 whether the AO was justified in declining the claim of deduction in respect of the interest on fixed deposits amounting to INR 6,05,897/-, interest in Saving Bank Account of INR 1,52,274/- and dividend income of INR 2026/-, received from Delhi State Co-operative Bank Ltd. .

10. The undisputed facts are that the interest on term deposits was received by the assessee from Delhi State Co-operative Bank Ltd, Janpath Branch and interest from Saving Bank was also received from Delhi State Co-operative Bank Ltd, Janpath Branch. The AO taxed this amount on the basis that the amount was not out of business income whereas this income was derived from other sources. Ld.CIT(A) sustained the findings of the AO. He relied upon the judgement of Hon'ble Supreme Court rendered in the case of *Totgar's Co-operative Sale Society Ltd. vs ITO* (supra).

11. During the course of hearing, Ld. Sr. DR for the Revenue submitted that section 80P(2)(d) of the Act would not be applicable in view of the provision of section 80P(4) of the Act. He submitted that section 80P(4) specifically prohibits application of section 80P(4) qua the Co-operative Banks.

12. On the other hand, Ld. Counsel for the assessee heavily relied upon the decision of the Co-ordinate Bench of the Tribunal in the case of *The Mantola Cooperative Thrift & Credit Society Ltd. vs ITO* (supra). For the sake of clarity, the relevant contents of the decision of Division Bench of the Tribunal are reproduced as under:-

16. *“We have given a thought to consider whether the cooperative bank wherein the assessee made deposits out of this surplus fund be considered as a co-operative society, for if a co-operative bank is considered to be a co-operative society than only the interest earned by the assessee on the deposits would be eligible for deduction u/s 80P(2)(d). We find that cooperative society is a broad and larger umbrella under which the co-operative banks do perform. All co-operative societies may not be banks but all co-operative banks are deemed to be co-operative societies. According to banking Regulations Act, a co-operative society bank as the same meaning of the cooperative society.*

17. *Further, we have also given a thought as to the interest earned by the surplus funds. As per the Income Tax Act, there is no such stipulation or prerequisite as to the nature of the funds . So far as the principles of interpretation to a taxing statute is concerned, we derive it from Cape Brandy Syndicate Vs IRC 1 KB 64 as quoted by the Hon’ble High Court of Punjab & Haryana, Hon’ble J Iqbal Singh that*

“In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in , nothing is to be implied . One can only look fairly at the language used.”

18. *Thus, 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. The revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise.*
19. *We have also considered the case of Totgars Co-operative Sale Society Ltd. 322 ITR 283 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.*
20. *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 assessee is eligible for deduction u/s 80P(2)(d) on the income earned by the way of interest from the co-operative societies.*

Expenditure - u/s 57:

21. *The assessee has taken a plea that the expenditure incurred in earning of interest from the commercial banks be allowed while computing the taxable income . The provision of Section 57 reads as under:*

*“Section 57: The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:— (i) in the case of [dividends, 94[other than dividends referred to in section 115-O ,]] [or interest on securities], any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend [or interest] on behalf of the assessee; [(ia) in the case of income of the nature referred to in sub-clause (x) of clause (24) of section 2 which is chargeable to income-tax under the head "Income from other sources", deductions , so far as may be, in accordance with the provisions of clause (va) of sub-section (1) of section 36 ;] (ii) in the case of income of the nature referred to in clauses (ii) and (iii) of sub-section (2) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of section 30, section 31 and [sub-sections (1) [***] and (2)] of section 32 and subject to the provisions of [section 38]; [(ia) in the case of income in the nature of family pension , a deduction of a sum equal to thirty-three and one-third per cent of such income or [fifteen] thousand rupees, whichever is less.*

Explanation .—For the purposes of this clause, " family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death ;] (iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income; [(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section .]”

22. *Having heard the arguments, we hereby direct that the Assessing Officer shall allow the expenditure incurred in relation to earning of interest from the commercial banks.*

23. *In conclusion,*

a. The assessee being a co-operative society not involved in banking operation is not eligible for deduction u/s 80P(2)(a)(i).

b. The assessee being a co-operative society is eligible for deduction u/s 80P(2)(d) on the interest earned from other co-operative societies. c. The assessee is eligible for the expenditure u/s 57 incurred in earning the interest income which is taxable under the head "income from other sources" as per Section 56."

13. In the present case, the interest and dividend income has been earned by the assessee from Delhi State Co-operative Bank Ltd. There is no dispute that the assessee is a Co-operative society and it has earned interest and dividend income by making deposits with the Delhi State Co-operative Bank Ltd. which is registered under Co-operative Societies Act and the Division Bench of this Tribunal after considering the binding precedents, held that Co-operative Bank is primarily a Co-operative Society. Therefore, for the purpose of section 80P(2)(d) of the Act, the assessee would be entitled for deduction u/s 80P(2)(d) of the Act. In the light of the decision of the Co-ordinate Bench of the Tribunal wherein it has been held that the Co-operative Bank is a society. Therefore, the deduction would be allowable u/s 80P(2)(d) of the Act. The judgement of Hon'ble Supreme Court rendered in the case of *Totgar's Co-operative Sale Society Ltd. vs ITO* (supra), would not be applicable since the facts are clearly distinguishable wherein surplus of the funds was not deposited with any Co-operative Society but were deposited to the Commercial banks. Therefore,

authorities below mis-directed itself in applying the ratio of the Hon'ble Supreme Court in the case of *Totgar's Co-operative Sale Society Ltd. vs ITO* (supra). I therefore, hold that the assessee would be eligible for deduction u/s 80P(2)(d) of the Act. The grounds raised are allowed in terms indicated herein above.

14. Now, coming to Ground Nos. 8 & 9 raised by the assessee which relate to levy of interest u/s 234B & 234C of the Act. The levy of interest is consequential in nature hence, I hold accordingly.

15. Ground No.10 raised by the assessee is general in nature, needs no separate adjudication hence, dismissed.

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

ITA No.3693/Del/2023 [Assessment Year : 2020-21]

17. Now, I take up the appeal of the assessee in the Assessment Year 2020-21 i.e. ITA No.3693/Del/2023. The assessee has raised following grounds of appeal:-

1. *“That on the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'Ld. CIT(A), NFAC') has grossly erred on facts and in law in confirming the addition Rs.5,42,880/- by not allowing deduction u/s.80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), despite the fact that the appellant is a Co-operative Thrift & Credit Society and the income of Rs. 5,42,880/- is attributable to the activities mentioned in section 80P(2)(a)(i) of the Act.*

2. *That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.5,42,880/- by not allowing deduction u/s.80P(2)(a)(i) of the Act by not following the 'principle of judicial precedence', as the jurisdictional judicial pronouncements are in favour of the appellant.*
3. *That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.5,42,880/- by not allowing deduction u/s.80P(2)(a)(i) of the Act by not appreciating and accepting various judicial pronouncements in favour of the appellant relied upon.*
4. *That, without prejudice to ground No. 1 to 3, on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.5,42,880/- by not allowing deduction u/s.80P(2)(d) of the Act, despite the fact that the appellant being a Co-operative Thrift & Credit Society had earned the income of Rs. 5,42,880/- from the Delhi State Co-operative Bank Ltd, who is a Co-operative Society in terms of section 2(19) of the Act.*
5. *That, without prejudice to ground No. 1 to 3, on the facts and in the circumstances of the case the case the Ld. CIT(A), NFAC has grossly erred both on facts and in law in confirming the addition Rs.5,42,880/- by not allowing deduction u/s.80P(2)(d) of the Act, by erroneously relying upon various decisions, including the decision of Hon'ble Delhi High Court in the case of Mantola Co-operative Thrift & Credit Society Ltd. vs. CIT (2014), which are very clearly distinguishable.*
6. *That, without prejudice to ground No. 1 to 3, on the facts and in the circumstances of the case the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs. 5,42,880/- by not allowing deduction u/s.80P(2)(d) of the Act, by erroneously relying upon the decision of Hon'ble Karnatka High Court in the case*

of Pr. CIT, Hubballi vs. M/s. Totgar's Co-operative Sales Society (2017).

7. That, without prejudice to ground No. 1 to 3, on the facts the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs. 5,42,880/- by not allowing deduction u/s.80P(2)(d) of the Act by not following the 'principle of judicial precedence' as the jurisdictional judicial pronouncements are in favour of the appellant.

8. That, without prejudice to ground No. 1 to 3, on the facts, the case the Ld. CIT(A), NFAC has grossly erred in law in not disposing of following Ground No. 7:

"That on the facts and in the circumstances of the case the AU has grossly erred in determining Rs. 25,28,856/- the sum payable u/s 156 of the Act in consequence of the impugned assessment, in as much as the tax has been computed on Rs. 57,76,910/- whereas the total income has been assessed at Rs. 5,42,880/-. Without prejudice, prayed that the demands deserves to be modified and cancelled."

9. That, without prejudice to ground No. 1 to 3, on the facts, the case the Ld. CIT(A), NFAC has grossly erred on facts and in law in confirming the addition Rs.5,42,880/- by not allowing deduction u/s.80P(2) (d) of the Act by not appreciating and accepting various judicial pronouncements in favour of the appellant relied upon.

10. That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has erred in law in allowing Ground No. 8 pertaining to charging of Interest Rs. 89,960/- u/s 234A of the Act without any direction and without disposing the ground specifically.

11. That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has erred in law in allowing Ground No. 9 pertaining to charging of Interest Rs. 5,39,760/- u/s 234B of the Act without any direction and without disposing the ground specifically.

12. *That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC has erred in law in allowing Ground No. 10 pertaining to charging of Interest Rs. 90,860/- u/s 234C of the Act without any direction and without disposing the ground specifically.*

13. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

18. Facts in this case are also identical and similar as in ITA No.3692/Del/2023 [AY 2018-19] except figures.

19. I have heard Ld. Authorized Representatives of both the parties and perused the material available on record. I find that the facts and grounds are similar and identical to the **ITA No.3692/Del/2023 [AY 2018-19]** except figures. Ld. Authorized Representatives of both the parties have adopted the same arguments in respect of grounds of appeal. My decision in **ITA No.3692/Del/2023 [AY 2018-19]** would apply *Mutatis Mutandi* in this appeal filed by the assessee as well.

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

21. In the final result, both appeals of the assessee in **ITA Nos.3692 & 3693/Del/2023** for the **Assessment Years 2018-19 & 2020-21** are partly allowed.

Order pronounced in the open Court on 28th June, 2024.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

* Amit Kumar *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI