

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

Dated: 10th December, 2025

DB: HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

TAX APP. NO. 02 OF 2025

Sikkim State Cooperative Supply and Marketing Federation Limited, a co-operative society registered under the Sikkim State Cooperative Societies Act, 1978, having its registered office at Marketing Federation Limited, 01 Simfed Building Development Area, Gangtok, Gangtok Bazar, SO Gangtok, East Sikkim - 737101.

.....Appellant

-VERSUS-

Deputy Commissioner of Income-tax, Circle 3(2), Gangtok, having its office at Aayakar Bhawan, Bhanupath, Gangtok – 737103.

..... Respondent

Appearance:

| | | |
|----------------|---|---|
| For Appellant | : | Mr. Dhiraj Lakhotia, Mr. Abhinav Kant Jha and Ms. Radhika Agarwal, Advocates. |
| For Respondent | : | Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Sittal Balmiki, Advocate. |

J U D G E M E N T: (per the Hon'ble, the Chief Justice)

1. This is an appeal under section 260A of the Income Tax Act, 1961, filed in respect of an impugned order dated 18th June, 2025, passed by the learned Income Tax Appellate Tribunal, Kolkata 'A' Bench, Kolkata in I.T.A. Nos.: 1582/KOL/2024 in respect of the Assessment Year: 2018-19.
2. By the impugned order, the learned Tribunal allowed the Revenue's appeal with *inter alia* the following observations:-

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“

8. Therefore, considering the totality of facts and circumstances of the case and in view of the legal provisions enumerated in the preceding paras that the exemption provisions have to be strictly interpreted, the submissions of the Ld. DR and as has been elaborately discussed and brought out in the orders of the Hon'ble Karnataka High Court in the case of Bangalore Club as well as Totagars (supra) in which reliance has been placed upon the judgment of Hon'ble Supreme Court, the interest received from Cooperative banks, even though they are Cooperative Societies, is not allowable in view of the express provision of sub-section (4) of section 80P of the Act as the Cooperative Banks have been treated at par with the Scheduled Banks and the deduction u/s 80P of the Act is allowable only for the interest received from the Cooperative Society per se and not from the Cooperative Bank. The Ld. DR has amply demonstrated how the reliance on the decisions by the Ld. AR is not applicable to the facts of the case being distinguishable. Hence, the appeal of the Revenue is allowed, the order of the Ld. CIT(A) is set aside and the order of the Ld. AO is confirmed on this issue.

.....”

3. The appellant before us is Sikkim State Cooperative Supply and Marketing Federation Limited (hereinafter referred to as SIMFED), being a co-operative society registered under the Sikkim Co-operative Societies Act, 1978.

4. When we took up the matter on 12th November, 2025, the following substantial questions of law were framed:-

“1. Whether the learned Tribunal misinterpreted section 80P(4), which only bars cooperative banks from claiming deductions on their own income and wrongly applied it to deny section 80P(2)(d) deductions to the Appellant, being a non-bank cooperative society, in respect of interest received from cooperative banks?

2. Whether the learned Tribunal correctly applied the ratio in Totgars' Cooperative Sale Society Ltd. {322 ITR 283 (SC)}, which concerned section 80P(2)(a)(i) and retained members' funds shown as liability to deny deductions under section 80P(2)(d), when the facts and statutory provisions in the present case are materially different?”

5. We notice from the facts of the instant case that SIMFED is the apex co-operative society in Sikkim, registered under the Sikkim Co-operative Societies Act, 1978, with the Government of Sikkim holding 93% of its shares. SIMFED is the central body of the State of Sikkim's

co-operative infrastructure, primarily focusing on wholesale supply of consumer goods, bulk marketing and procurement of agricultural, horticulture produce and also providing storage and cold chain infrastructure. Furthermore, it appears from the records that SIMFED acts as an agent for members' societies in respect of product handling, quality assurance and facilitating credit while also undertaking procurement activities on behalf of the Government and public sector undertakings.

6. During the relevant assessment year, SIMFED, earned interest income from investments made in two co-operative banks, namely, Sikkim State Co-operative Bank Limited and Citizens Urban Co-operative Bank Limited, both registered as co-operative societies under the Sikkim Co-operative Societies Act, 1978. These investments were made from the surplus funds and statutory reserves of the federation as required under the relevant provision of the Sikkim Co-operative Societies Act, 1978, which mandates prudent management and investment of funds only in approved securities or co-operative banks approved by the Registrar.

7. SIMFED claimed deduction under section 80P(2)(d) of the Income Tax Act, 1961, on the interest income earned from such investments. The Assessing Officer disallowed the deduction on interest earned from deposits made with co-operative banks.

8. SIMFED, thereafter, preferred an appeal before the Commissioner of Income Tax (Appeal) who allowed the deduction upon finding that the interest income qualified for exemption as it was derived from the investment made in co-operative banks registered under the State Co-operative Societies Act, 1978. Thereafter, the Revenue preferred the

appeal before the learned Income Tax Appellate Tribunal, wherefrom the impugned order emanates.

9. The primary reason for allowing the Revenue's appeal has been quoted hereinbefore. A plain reading of the quoted portion of the impugned order of the learned Tribunal dated 18th June, 2025, reveals that the learned Tribunal has relied substantially on a judgment of the Karnataka High Court in Principal Commissioner of Income-tax & Another vs. Totagars Cooperative Sale Society (and vice versa), reported in (2017) 395 ITR 611, as well as the judgment of the Hon'ble Supreme Court rendered in Totgars' Cooperative Sales Society Ltd. Vs. Income Tax Officer, Karnataka, reported in (2010) 3 Supreme Court Cases 223.

10. Now, in order to answer the first substantial question of law, we need to look into section 80P(4) of the Income Tax Act, 1961 carefully, which bars only co-operative banks (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) from claiming deduction from their own income. Section 80P(4) reads as follows:-

".....
[(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.
Explanation.—For the purposes of this sub-section,—
(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);
(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]"

11. A plain reading of the above quoted provision of law reveals that the statute makes a clear distinction between a co-operative bank (other than a primary agricultural credit society or a primary co-operative

agricultural or rural development bank) and any other co-operative entity registered as a co-operative society, which SIMFED happens to be.

12. The explanation provided under section 80P(4), which has also been reproduced hereinabove, makes it further clear that a "co-operative bank" will have the same meaning, as assigned to it under Part V of the Banking Regulation Act, 1949. It is nobody's case that SIMFED is a co-operative bank, functioning within the meaning assigned to it under Part V of the Banking Regulation Act, 1949. Rather, it is clearly evident that it is a non-banking co-operative society and received interest only from some co-operative banks, that too, based on investments made from the surplus funds and statutory reserves of the federation, as required under the relevant provisions of Sikkim Co-operative Societies Act, 1978.

13. Now we must look at section 80P(2)(d), which reads as follows:-

".....

(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;

....."

14. It is a matter of record that SIMFED earned interest from investments made in two co-operative banks, namely, Sikkim State Co-operative Bank Limited and Citizens Urban Co-operative Bank Limited, both registered as co-operative societies under the Sikkim Co-operative Societies Act, 1978. As stated hereinbefore, these investments were made from the surplus funds and statutory reserves of SIMFED as required under sections under the relevant provisions of Sikkim Co-operative Societies Act, 1978, more specifically, sections 57 to 66, under Chapter V of the Sikkim Co-operative Societies Act, 1978, which mandates prudent management and investment of funds only in approved securities of co-operative banks approved by the Registrar.

15. In our view, a plain reading of the provisions of law quoted above, clearly reveals that the learned Tribunal misinterpreted the provision of section 80P(4) of the Income Tax Act, 1961, which specifically excludes co-operative banks (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) and erroneously applied it in respect of SIMFED, thereby disentitling it from claiming benefit under section 80P of the Income Tax Act, 1961. As such, the first substantial question of law is answered in favour of the assessee.

16. So far as the second substantial question of law as framed by us is concerned, we are of the view that the Hon'ble High Court of Gujarat in the case of PCIT vs. Ashwin Kumar Urban Co-operative Society Ltd. reported in (2024) 168 taxmann.com 314 (Gujarat), has squarely answered this question in favour of the assessee by observing *inter alia* that the Hon'ble Supreme Court's decision rendered in Totgars' Cooperative Sale Society Ltd. (supra) was not applicable in the facts of that case — which is identical to the instant case — as the eligibility of deduction of interest in the facts of the instant case has to be decided under section 80P(2)(d) and not under section 80P(2)(a)(i). Totgars' Cooperative Sale Society Ltd. (supra) was primarily concerned with section 80P(2)(a)(i) and retained members' funds shown as liability to deny deductions under section 80P(2)(d). The facts of the Totgars' Cooperative Sale Society Ltd (supra) — as well as the applicability of the statutory provisions insofar as in our case is concerned — are factually and materially different. As such, the second substantial question of law as framed by us is also answered in favour of the assessee.

17. Now, so far as the two judgments referred to by the learned Deputy Solicitor General of India are concerned, namely, Totgars'

Cooperative Sale Society Ltd. versus Income Tax Officer, Karnataka reported at (2010) 3 Supreme Court Cases 223 = (2010) 322 ITR 283 and the Principal Commissioner of Income-tax & Another vs. Totagars Co-operative Sale Society (and vice versa) by Karnataka High Court, reported at (2017) 395 ITR 611, we have already held earlier that the judgment of the Hon'ble Supreme Court's judgment in Totgars' Cooperative Sale Society Ltd (supra) is not applicable in the facts of our case. So far as judgment of the Karnataka High Court is concerned — which was relied upon by the learned Income Tax Appellate Tribunal, while rendering its impugned judgment and order dated 18th June, 2025 — the Gujarat High Court in Ashwin Kumar Urban Co-operative Society Ltd. (supra) has considered the said Karnataka High Court judgment and has clearly held the same to be distinguishable and not applicable in a similar fact situation as our present case.

18. We are, therefore, of the view that in the facts of the instant case, the assessee is entitled to claim deduction under section 80P(2)(d) of the Income Tax Act, 1961.

19. For reasons stated above, the impugned judgment and order dated 18th June, 2025, passed by the learned Income Tax Appellate Tribunal in I.T.A. Nos.: 1582/KOL/2024 in respect of the Assessment Year: 2018-19, is liable to be set aside and is accordingly set aside.

20. Tax Appeal No. 02 of 2025 is accordingly allowed.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice

ds/avi/ami