

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH (SMC)
KOCHI
BEFORE SHRI GEORGE GEORGE K, Judicial Member
ITA No 495/Coch/2017
(Asst Year 2013-14)**

The Mangalam Service Cooperative Bank Ltd, Mangalam PO Malappuram-676 561. PAN NO. AACAM 9758J]	Vs	The Income tax Officer Ward 1, Tirur.
Appellant		Respondent

Assessee By	Shri Amaljith P.J., CA
Revenue By	Shri A Dhanaraj, Sr DR
Date of Hearing	17/10/2017
Date of pronouncement	17 th /10/2017

ORDER

PER GEORGE GEORGE K, JM;

This appeal at the instance of the assessee is directed against the order of the CIT(A), Kozhikode dated 30/05/2017. The relevant assessment year is 2013-14.

2 Briefly stated the facts in relation to the above cases are as follows:

The assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act 1969. It is providing credit facilities to its members. The assessment was completed by denying the deduction u/s 80P(2) of the I T Act, 1961. The reason for denying the claim of deduction u/s 80P(2) of the Act was that the assessee was doing the business of banking and in view of insertion of sub section(4) to section 80P, the assessee is not entitled to the benefit of section 80P.

3 Aggrieved by the order of the Assessing Officer denying the benefit of deduction u/s 80P(2) of the Act, the assessee preferred appeal to the first appellate authority. The CIT(A), following the judgment of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd vs CIT reported in 384 ITR 490, allowed the claim of deduction u/s 80P(2) of the Act. However, with regard to interest received on deposits with Sub Treasury, the CIT(A) held the same to be income from other sources and not income from business, thereby denied the benefit of deduction u/s 80P. In taking the above view, the CIT(A) relied on the judgment of the Hon'ble Apex Court in the case of M/s Totgars Cooperative Sales Society Ltd vs ITO reported in 322 ITR 283.

4 The assessee being aggrieved by the denial of benefit of section 80P(2), interest earned on deposits with Sub-treasury, has filed the present appeal before the Tribunal. The grounds raised read as follows:

The Commissioner (Appeals) erred in holding that the interest earned on treasury deposits is not allowed as deduction u/s. 80P of the Income Tax Act 1961 and in directing that the Assessing Officer to tax this under the provisions of the Income Tax Act 1961. The decision of the Commissioner(Appeals) is against the observation made in the following judgments/Orders and CBDT Circular that the interest earned by a co-operative credit society carrying on banking business, from the investments of surplus funds, is deductible under section. 80P(2)(a)(i) of the Income Tax Act 1961:

1. *Supreme Court judgment in COMMISSIONER OF INCOME TAX VS. NAWANSHAHAR CENTRAL COOPERATIVE BANK LTD. ON 8TH APRIL, 2005.*
2. *Income Tax Appellate Tribunal, Cochin in MUTTOM SERVICE CO-OP BANK LTD. VS DEPARTMENT OF INCOME TAX on 20 January, 2012.*

3. *CBDT CIRCULAR NO.18/2015, DATED 02-11-2015.*

5. The Id counsel for the assessee submitted that the issue in question is squarely covered by the common order dated 12 July 2017 of the Tribunal, in the case of The Azhikode Service Co-operative Bank Ltd & others. (ITA No 261/Coch/2017 & others). The Id DR unable to controvert the above submissions of the Id AR.

6 I have heard the rival submissions and perused the material on record. The solitary issue for my consideration is whether interest received on investments with sub-treasury is liable to be assessed under the head 'income from other sources' or 'income from business'. If the same is to be assessed under the head 'income from business', the assessee would be entitled to deduction u/s 80P(2) of the I T Act, in respect of interest received on such investments. An identical issue was considered by the Tribunal in the case of The Azhikode Service Co-operative Bank Ltd & others. (ITA No 261/Coch/2017 & others - order dated 12th July 2017). The findings of the Tribunal read as follows:

"7 I have heard the rival submissions and perused the material on record. The solitary issue for my consideration is whether interest received on investments with sub-treasury is liable to be assessed under the head 'income from other sources' or 'income from business'. If the same is to be assessed under the head 'income from business', the assessee would be entitled to deduction u/s 80P(2) of the I T Act, in respect of interest received on such investments. The assessee admittedly is providing credit facilities to its members. Section 5(b) of the banking regulation Act 1948 defines banking as 'the accepting for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise and withdrawal by cheque, draft, order, otherwise. Now the question is whether a cooperative society or a primary agricultural society can do banking business and whether by doing such an activity, it loses the eligibility for deduction u/s 80P2(1). The Hon'ble High Court of Karnataka in the case of Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamamitha vs ITO has

clearly answered the issue. The Hon'ble High Court, after considering the amendment introduced by Finance Act 2006 w.e.f 1.4.2007 (insertion of section 80P(4)) had rendered the following findings:

"Therefore, the intention of the legislature is clear. If a cooperative bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Cooperative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary cooperative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary cooperative agricultural and rural development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society, Therefore, there was no error committed by the Assessing Authority. The said order was not prejudicial to the interest of the Revenue. The condition precedent for the commissioner to invoke the power under Section 263 is that the twin condition should be satisfied. The order should be erroneous and it should be prejudicial to the interest of the revenue."

7.1 From the above judgment of the Hon'ble Karnataka High Court, it is quite clear that a primary agricultural credit society or a primary cooperative agricultural and rural development bank who do not have license from Reserve Bank of India to carry on the business of banking, is not a cooperative bank, hit by the provisions of section 80P(4) of the Act. The judgment of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd (supra), is also in support of the assessee as regards the grant of 80P deduction.

7.2 In the instant case, the assessee do not possess any banking license from the Reserve Bank of India and is not exclusively carrying on any banking facility; but it is carrying on business of lending money to its members and therefore is covered u/s 80P(2) of the Act. The judgment of the Hon'ble Apex Court in the case of M/s Totgars Cooperative Sales Society Ltd. (supra) relied by the CIT(A) is distinguishable on facts. The Hon'ble Apex Court in the case of M/s Totgars Cooperative Sales Society Ltd (supra) was dealing with the case where the assessee apart from providing credit facilities to its members was also marketing agricultural produce grown by its members. Sale consideration received from the marketing of agricultural produce of its members was retained by the assessee in that case and was invested in short term deposits/securities. Such amount retained by assessee's society was shown as a liability in the balance sheet and therefore, to that extent interest income cannot be attributable neither to the activity mentioned in section 80P(2)(a)(i) or u/s 80P(2)(a)(iii) of the Act. This

distinguishable feature has been taken note by the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd in ITA No.307 of 2014 (judgment dated 28th Oct 2014). The Hon'ble Karnataka High Court was considering the following substantial question of law:

"Whether the Tribunal failed in law to appreciate that the interest earned on short term deposits were only investment in the course of activity or providing credit facilities to members and that the same cannot be considered as investment made for the purpose of earning interest income and consequently passed a perverse order? "

7.3 In answering the above question of law, the Hon'ble Karnataka High Court distinguished the judgment of the Apex Court in the case of Totgars Cooperative Sales Society Ltd (supra) and rendered the following findings:

"9. In this context when we look at the judgment of the Apex Court in the case of M/s Totgars Cooperative Sales society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce 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 bought, deposit/ security. was invested In a short-term 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 cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was net the liability. It was not shown as liability in their account. 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 liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME- TAX III, HYDERABAD VS. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly, it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order: Appeal is allowed."

7.4 The Cochin Bench of the Tribunal in the case of the Kizhathadiyoor Service Coop Bank Ltd., on identical facts has rendered a decision in favour of the assessee. The relevant finding of the Cochin Bench of the Tribunal in the case of Kizhathadiyoor Service Cooperative Bank (supra) in ITA No. 525/Coch/2014, read as follows:

7.2 As regards the interest from treasury and banks, we find on identical facts, the Cochin Bench of the Tribunal in the case of the Muttom Service Cooperative Bank Ltd in ITA No. 372/Coch/2010 had decided the matter in favour of the assessee. The Cochin Bench of the Tribunal in the case of Muttom Service Cooperative Bank Ltd (supra) has distinguished the judgment of the Hon'ble Apex Court in the case of Totgar's Cooperative Sale Society Ltd (supra). The relevant finding of the coordinate Bench of the Tribunal in the case of the Muttom Service Cooperative Bank Ltd (supra) read as follows:

"5. We have considered the rival submission on either side and also perused the material available on record. We have also carefully gone through the order of the lower authority. No doubt, the latest judgment in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the Apex court found that the deposit of surplus funds by the co-operative society is not eligible for deduction u/s 80P(2). In the case before the Apex Court in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the assessee co-operative society was to provide credit facility to its members and market the agricultural produce. The assessee is not in the business of banking. Therefore, this Tribunal is of the opinion that the judgment of the Apex court in Totgar's Co-operative Sale Society Ltd (supra) is not applicable in respect of the co-operative society whose business is banking. Admittedly, the assessee has invested funds in state promoted treasury small savings fixed deposit scheme. Since Government of India has withdrawn India Vikas Patra, as a small savings instrument, funds invested at the discretion of the bank is one of the activities of the banking as per the Banking Regulation Act. Since the assessee co-operative society is in the 4 ITA No.372/Coch/2010 business of banking the investment in the state promoted treasury small savings fixed deposit certificate scheme is a banking activity, therefore, the interest accrued on such investment has to be treated as business income in the course of its banking activity. Once it is a business income, the assessee is entitled for deduction u/s 80P(2)((a)(i). therefore, this Tribunal is of the opinion that the judgment of the Larger Bench of the apex Court in Karnataka State Cooperative Apex Bank (supra) is applicable to the facts of this case. By respectfully following the judgment of the Apex court in Karnataka State Co-operative Bank (supra), the order of the Commissioner of Income-tax(A) is upheld."

7.3 In the instant case, the assessee is a cooperative Bank. The investment in treasury/banks and earning interest on the same is part of the banking activity of the assessee's cooperative bank. Therefore, the said income is eligible for deduction u/s 80P(2)(a)(i) of the Act. Therefore, the Income Tax Authorities

were not justified in treating interest income received by the assessee as 'income from other source' and denying the benefit of section 80P(2) of the Act. It is ordered accordingly."

7.5 *In view of the judgment of the Hon'ble Karnataka High Court in the case of Tumkur Merchantgs Souharda Credit Coop Ltd (supra)and Cochin Bench of the Tribunal in the case of Service Coop Bank Ltd.,(supra), I am of the view that the assessee is entitled to the benefit of deduction u/s 80P(2) with regard to interest received on deposits made by the assessee with sub treasury. It is ordered accordingly.*

8 *In the result, the appeal filed by the assessee in ITA No.261/Coch/2017 is allowed.*

ITA No. 208/Coch/2017; ITA No 209/Coch/2017

ITA No. 210/Coch/2017; ITA No. 263/Coch/2017

ITA No. 268/Coch/2017 & ITA No. 269/Coch/2017

9 *The Id counsel for the assessee and the Id DR agreed that the facts involved in the above appeals are identical to the facts considered by me in the case of the Azhikode Service Cooperative Bank Ltd in ITA no.261/Coch/2017. In the case of Azhikode Service Cooperative Bank I have held that interest on deposits with sub treasury is entitled to the benefit of deduction u/s 80P(2).Therefore, I hold that assessee's in the above appeals is entitled to deduction u/s 80P(2) for interest received as investment with sub-treasury. It is ordered accordingly.*

10 *To sum-up, the appeals of the assessee's are allowed."*

7 *In view of the above order of the Tribunal, I hold that the assessee is entitled to deduction u/s 80P(2) of the Act for the interest received as investment with sub-treasury. It is ordered accordingly.*

8 *In the result, the appeal of the assessee is allowed.*

Order pronounced in the open Court on this day of 17th/10/2017.

sd/-
(**GEORGE GEORGE K**)
Judicial Member

Cochin: Dated 17th/10/2017

GJ

Copy to:

1. M/s. Mangalam Service Co-operative Bank Ltd., Mangalam PO, Tirur, Malappuram-676 561.
2. The ITO, Ward-1, Tirur.
3. CIT(A), Kozhikode
4. CIT, Kozhikode
5. DR
6. Guard File

By order

Assistant Registrar
ITAT, COCHIN