

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.435/Coch/2018 : Asst.Year 2015-2016

The Income Tax Officer, Ward - 5 Alappuzha.	Vs.	M/s.The Muttom Service Co-operative Bank Ltd. No.1165, Main Road, Cherthala P.O. Alappuzha - 688524. PAN : AACFT8176C.
(Appellant)		(Respondent)

Appellant by : Smt. A.S.Bindhu
Respondent by : Sri. C.A.Jojo

ITA No.499/Coch/2018 : Asst.Year 2015-2016

The Income Tax Officer, Ward - 2 Thiruvalla.	Vs.	M/s.Mylapra Service Co- operative Bank Limited No.639, Mylapra Town PO Pathanamthitta - 689678. PAN : AADAM8917E.
(Appellant)		(Respondent)

Appellant by : Smt. A.S.Bindhu
Respondent by : Sri.M.K.Kuruvilla

Date of Hearing : 15.01.2019	Date of Pronouncement : 16.01.2019
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ORDER

Per George George K. (JM)

These appeals at the instance of the Revenue are directed against separate orders of the CIT(A). Since common issue is raised in these appeals, they were heard together and are being disposed off by this consolidated order.

2. The solitary issue that is raised in these appeals is whether the CIT(A) is justified in directing the Assessing Officer to grant deduction u/s 80P(2)(a)(i) of the I.T.Act in respect of interest income received by the assessee on investments made with Sub-Treasuries, Banks etc.

3. Brief facts of the case are as follows:-

The assesseees are primary agricultural credit societies, registered under the Kerala Co-operative Societies Act, 1969. It is carrying on the business of banking / providing credit facilities to its members. For the assessment years under consideration, the assessments were completed by treating interest income received from investment with treasury and bank as income from other sources; thereby denying the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act.

4. Aggrieved by the assessment orders completed, the assesseees preferred appeal to the first appellate authority. The CIT(A) following the order of the Cochin Bench of the Tribunal in the case of Kizhathadiyoor Service Co-operative Bank Ltd. for assessment year 2009-2010 in ITA No.525/Coch/2014 (order dated 20.07.2016) decided the issue in favour of the assessee. The CIT(A) held that interest income earned on investment made with Treasury and Banks are part of the banking activity of assessee and therefore the said income was eligible for deduction u/s 80P(2)(a)(i) of the I.T.Act.

5. The Revenue being aggrieved by the orders of the CIT(A) directing the A.O. to grant the benefit of deduction u/s

80P(2)(a)(i) of the I.T.Act in respect of interest income received on investments made with sub-treasuries and Bank has filed these appeals before the Tribunal. Identical grounds have been raised in all these appeals and they read as follows:-

"The order of the learned Commissioner of Income tax (Appeals), Kottayam in so far as the points stated below are concerned, is opposed to law on the facts and in the circumstances of the case.

2. The Ld. Commissioner of Income Tax (Appeals) erred in holding that interest earned by the assessee from the investment in treasury and banks is part of banking activity eligible for deduction U/S 80P (2)(a)(i) of the income tax Act relying on the decision of the Hon'ble ITAT, Cochin, in the case of Kizhathadiyoor Service Co-operative Bank Ltd. for AY 2009-10, in ITA No. 525/ Coch/2014 dated 20/07/ 2016. However, the department has not challenged the decision only because of low tax effect prescribed for filing further appeal in that case.

3. The Ld. CIT (A) ought to have considered the decision of Hon'ble SC in the case of Totgar's Co-operative Sale Society Ltd. (2010) reported in 322 ITR 283 where Hon'ble Supreme court was of the view that such interest income earned by assessee would come in category of 'income from other sources' taxable U/S 56 of the income tax act and would not qualify for deduction as business income 80P (2)(i).

4. The Ld. CIT (A) ought to have noticed that, in a communication received from the office of the PCCIT, Kochi on 13/12/2016, it has been informed that the department has filed SLP before SC in the case of M/s Karakulam Service Co-operative Bank Ltd., and the judgment is awaited.

5. For these and other grounds that may be advanced at the time of hearing, the order of the learned Commissioner of Income tax (Appeals) on the above points may be set aside and that of the Assessing Officer restored."

6. The learned Departmental Representative relied on the grounds raised in the memorandum of appeal. The learned ARs, on the other hand, submitted that the issue in question

is squarely covered in favour of the assessee by the following judicial pronouncements :-

- (i) CIT v. Karnataka State Co-operative Bank
[251 ITR 194 (SC)]
- (ii) Vaveru Co-operative Rural Bank Ltd. v CIT
[(2017) 396 ITR 371 (The Telungana And Andhra Pradesh High Court)]
- (iii) Muttom Service Co-operative Bank Ltd.
(ITA No.372/Coch/2010)
- (iv) Mundakkayam Service Co-operative Bank Ltd.
(ITA No.106/Coch/2016).
- (v) The Mangalam Service Co-operative Bank Ltd. v. ITO
(ITA No.495/Coch/2017 – order dated 17.10.2017)

7. We have heard the rival submissions and perused the material on record. The solitary issue for our consideration is whether interest income received by the assessee on investments with sub-treasuries and banks was 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)(a)(i) of the I.T.Act. We noticed that an identical issue was considered by the Cochin Bench of 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 Tribunal after considering the judicial pronouncement, decided the issue in favour of the assessee. The Relevant finding of the Tribunal reads 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 excursively 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 cooperative 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 cooperative society is in the 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."

7.1 In view of the above orders of the Tribunal, we are of the view that the assesseees are entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act in respect of interest income received on investments made with sub-treasuries and banks.

7.2 Before concluding, it is to be mentioned that the order of the Cochin Bench of the Tribunal in the case of *M/s.Mutholy SCB Ltd. v. ITO [ITA No.11/Coch/2014 order dated 24.09.2014]* which was relied on by the learned AO, was set aside by the Hon'ble High Court and was remitted to the Tribunal for *de novo* consideration. Subsequent to the remand, the Tribunal vide its order dated 23.03.2017 decided the issue in favour of the assessee by holding that interest income received on investments with sub-treasuries and co-operative banks was entitled to the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act. The relevant finding of the Tribunal subsequent to the remand by the Hon'ble High Court (order dated 23.03.2017) reads as follows:-

"4. We have considered the rival contentions and perused the orders of the authorities below. Hon'ble Jurisdictional High Court had remitted the appeal back to us with a clear direction to consider circular No.18/2015, dated 02.11.2015 and judgment of their lordship in the case of Chirakkal Service Co-operative Bank Ltd. vs. CIT 384 ITR 490. Circular No.18/2015, dated 02.11.2015 is reproduced hereunder:-

"Subject Interest from Non-SLR securities of Banks-reg. It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, "expenses relatable to investment in non-SLR securities need to be disallowed under section 57(i) of the Act as interest on non-SLR securities is income from other sources".

2. Clause (id) of sub-section (1) of section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from other sources", if, the income is not chargeable to income-tax under the head "Profits and gains of business and profession" .

3. The matter has been examined in light of the judicial decisions on this issue. In the case of CIT v. Nawanshahar Central Co-operative Bank Ltd. [2007] 160 Taxman 48 (SC),

the apex court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and gains of business and profession".

3.2 Even though the abovementioned decision was in the context of co-operative societies/Banks claiming deduction under section 80P(2)(a)(i) of the Act, the principle is equally applicable to all banks/ commercial banks, to which Banking Regulation Act, 1949 applies.

4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned".

It may be true that for application of Sec. 80P(2)(a)(i) of the Act assessee was considered as a primary agricultural credit society based on certificate issued by Joint Registrar, Kottayam. In our opinion para 3.2 of the circular reproduced above has accepted the judgment of Hon'ble Apex Court in the case of CIT vs. Nawanshahar Central Cooperative Bank Ltd 289 ITR 6, as correct for cooperative societies /banks claiming deduction u/s. 80P(2)(a)(i) of the Act. In other words, the Board has taken a view that interest earnings of a cooperative society which was having as its primary business, providing credit facilities to its members who were agriculturists, could be considered under the head income from business and not from income from other sources. Similar view was taken by the Co-ordinate Bench in the case of The Kizathadiyoor Service Cooperative Bank Ltd vs. ITO (in ITA No.525/Coch/2014) dated 20.07.2016. In the circumstances, we are of the opinion that assessee has to succeed in this appeal. Interest earned by the assessee from its deposits placed in Sub-Treasury and banks are eligible for deduction u/s. 80P(2)(a)(i) of the Act. Ordered accordingly.

*5. In the result, the appeal of the assessee stands allowed.
Order pronounced in the open court on 23-03-2017."*

7.3 The latest judgment of the Hon'ble Telangana & Andhra Pradesh High Court in the case of Vaveru Co-operative Rural

Bank Ltd. v CIT (supra) had also decided on identical issue in favour of the assesseees. The Hon'ble High Court had held that co-operative societies engaged in providing credit facilities to its members had in course of business made investments with treasury, bank etc. and earned interest income, such income was eligible for deduction u/s 80P(2)(a)(i) of the I.T.Act. The relevant finding of the Hon'ble High Court reads as follows:-

"32. In simple terms, the position can be summarized like this. If there is a Co-operative Society, which is carrying on several activities including those activities listed in sub- Clauses (i) to (vii) of Clause (a), the benefit under Clause (a) will be limited only to the profits and gains of business attributable to anyone or more of such activities. But, in case the same Co-operative Society has an income not attributable to anyone or more of the activities listed in sub-Clauses (i) to (vii) of Clause (a), the same may go out of the purview of Clause (a), but still, the Co-operative Society may claim the benefit of Clause (d) or (e) either by investing the income in another Cooperative Society or investing the income in the construction of a godown or warehouse and letting out the same.

33. In other words, the benefit conferred by Clause (d) upon all types of Co-operative Societies is restricted only to the investments made in other Co-operative Societies. Such a restriction cannot be read into Clause (a), as the temporary parking of the profits and gains of business in nationalized Banks and the earning of interest income therefrom is only one of the methods of multiplying the same income. To accept the stand of the Department would mean that Co-operative Societies carrying on the activities listed in Clauses (i) to (vii), which invest their profits and gains of business either in other Co-operative Societies or in the construction of godowns and warehouses, may benefit in terms of Clause (d) or (e), but the very same Societies will not be entitled to any benefit, if they invest the very same funds in Banks. Such an understanding of section 80P(2) is impermissible for one simple reason. The benefits under Clauses (d) and (e) are available in general to all Co-operative Societies, including Societies engaged in the activities listed in Clause (a). Section 80P(2) is not intended to place all types of co-operative societies on the same pedestal.

The section confers different types of benefits to different types of societies. Special types of societies are conferred a special benefit.

34. The case before the Supreme Court in Totgars was in respect of a Co-operative Credit Society, which was also marketing the agricultural produce of its members. As seen from the facts disclosed in the decision of the Karnataka High Court in Totgars, from out of which the decision of the Supreme Court arose, the assessee was carrying on the business of marketing agricultural produce of the members of the Society. It is also found from Paragraph-3 of the decision of the Karnataka High Court in Totgars that the business activity other than marketing of the agricultural produce actually resulted in net loss to the Society. Therefore, it appears that the assessee in Totgars was carrying on some of the activities listed in Clause (a) along with other activities. This is perhaps the reason that the assessee did not pay to its members the proceeds of the sale of their produce, but invested the same in banks. As a consequence, the investments were shown as liabilities, as they represented the money belonging to the members. The income derived from the investments made by retaining the monies belonging to the members cannot certainly be termed as profits and gains of business. This is why Totgars struck a different note.

35. But, as rightly contended by the learned senior counsel for the petitioners, the investment made by the petitioners in fixed deposits in nationalised banks, were of their own monies. If the petitioners had invested those amounts in fixed deposits in other Co-operative Societies or in the construction of godowns and warehouses, the respondents would have granted the benefit of deduction under Clause (d) or (e), as the case may be."

7.4 In the instant case the assessees had made investments with sub-treasuries and banks in the course of its business of banking / providing credit facilities to its members. Therefore, it was entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act in respect of interest income that was received on such investments in view of the above judicial pronouncements. It is ordered accordingly.

8. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced on this 16th day of January, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 16th January, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT (Appeals)-Kottayam.
4. The Pr.CIT Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin