

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “SMC-B”, BANGALORE**

**Before Shri George George K, Judicial Member**

ITA No.576/Bang/2020 : Asst.Year 2016-2017

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| M/s.Bannur Rytara Seva Sahakari Sangha Limited<br>Post Bolwer, Puttur – 574 201.<br><b>PAN : AAAAB3219R.</b> | v. | The Income Tax Officer<br>Ward 1<br>Puttur. |
| (Appellant)  |    | (Respondent)                                |

Appellant by : Sri.K.Mallaha Rao, Advocate

Respondent by : Sri.Ganesh B.Ghale, Standing Counsel

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| <b>Date of Hearing : 23.03.2021</b> | <b>Date of<br/>Pronouncement : 30.03.2021</b> |
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**ORDER**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 07.01.2020. The relevant assessment year is 2016-2017.

2. Two issues are raised, namely, (i) whether the CIT(A) is justified in confirming A.O.'s action in disallowing the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act; and (ii) whether the Income Tax Authorities has erred in holding that the interest earned by the assessee from deposit made with Co-operative Banks is chargeable to tax u/s 56 of the I.T.Act.

3. The brief facts of the case are as follow:

The assessee is a Co-operative Society, registered under the Karnataka Co-operative Societies Act. It is providing credit facilities to its members. For the assessment year 2016-2017, the return of income was filed declaring `Nil' income after claiming deduction u/s 80P of the I.T.Act amounting to Rs.25,20,499. The return was selected for scrutiny and

assessment was completed u/s 143(3) of the I.T.Act vide order dated 20.12.2018. The Assessing Officer treated the interest received from other Co-operative Banks as income from other sources assessable u/s 56 of the I.T.Act by placing reliance on the judgment of the Hon'ble jurisdictional High Court in the case of Pr.CIT & Anr. v. Totagars Co-operative Sale Society reported in [(2017) 395 ITR 611 (Kar.)] . As regards the interest income earned from providing credit facilities to assessee's members, the Assessing Officer stated that the assessee is not only have regular members but also associate and nominal members who cannot be equated with regular members. The A.O. held that the principles of mutuality does not exists between regular members, nominal members and associate members, hence, the assessee-society is not eligible for deduction u/s 80P(2)(a)(i) of the I.T.Act. The A.O. in holding so, relied on the judgment of the Hon'ble Apex Court in the case of The Citizen Co-operative Society Ltd. v. ACIT [(2017) 397 ITR 1 (SC)].

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee submitted that the issue as regards the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act is covered in favour of the assessee by the latest judgment of the Hon'ble Apex Court in the case of The Mavilayi Service Co-operative Bank

Ltd. & Ors. v. CIT reported in 431 ITR 1 (SC). As regards the interest earned from deposits made with Co-operative Banks, it was submitted that the same is attributable to carrying on the business activity of the assessee, and therefore, is eligible for deduction u/s 80P(2)(a)(i) of the I.T.Act.

6. The learned Standing Counsel relied on the assessment order and the CIT(A)'s order.

7. I have heard rival submission and perused the material on record. The Hon'ble Apex Court in the case of The Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT (supra) had held that the expression "members" is not defined under the Income-tax Act. Hence, it is necessary to construe the expression "members" in section 80P(2)(a)(i) of the I.T.Act as it is contained in the respective State Co-operative Act. The Hon'ble Apex Court had held that providing credit facilities to associate or nominal members would be entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act unless they are not considered as members of co-operative under the respective State Act. The Hon'ble Apex Court has also considered the judgment in case of Citizen Co-operative Society Ltd. (supra). The A.O. has merely denied the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act for the reason that the assessee was also dealing with associate / nominal members, which is against the dictum laid down by the Hon'ble Apex Court in case of Mavilayi Service Co-operative Bank Ltd. & Ors. (supra). The Hon'ble Apex Court has settled many issues. I am of the view that the instant case needs to be examined by the A.O. in light of the principles enunciated by the Hon'ble Apex Court in case of Mavilayi

Service Co-operative Bank Ltd. & Ors. (supra). Accordingly, the CIT(A) order on this issue is set aside and the same is restored to the files of the A.O. for examination of the case in the light of the principles laid down by the Hon'ble Apex Court in the case of The Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT (supra). It is ordered accordingly.

8. The next issue relates to rejection of claim of deduction u/s 80P(2)(a)(i) of the I.T.Act with regard to interest income earned from fixed deposit kept with Co-operative Banks. The learned AR had relied on the judgment of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. v. ITO 230 taxman 309 (Kar.), wherein the Hon'ble Karnataka High Court considered the decision of the Hon'ble Apex Court in the case of The Totagar's Co-operative Sales Society (supra) and held that interest income in respect of temporary parking of own surplus funds not immediately required is eligible for deduction u/s 80P(2)(a)(i) of the Act. The learned DR relied on a subsequent decision of the Hon'ble Karnataka High Court in the case of Pr.CIT v. Totagars Co-operative Sale Society Ltd. (supra). I notice that on identical facts the co-ordinate bench of the Tribunal in the case of M/s.Raithara Seva Sahakara Sangh v. ITO in ITA No.1992 & 2596/Bang/2018 (order dated 02.01.2019) had restored the matter to the A.O. for *de novo* consideration. The relevant finding of the co-ordinate Bench order of the Tribunal in the case of M/s.Raithara Seva Sahakara Sangh v. ITO (supra) reads as follow:-

5. We have heard the rival submissions. The learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd. Vs. ITO 230 taxman 309 (Karn)* wherein the Hon'ble Karnataka High Court considered the decision of the Hon'ble Apex Court in the case of *The Totgar's Co-operative Sales Society (supra)* and held that interest income in respect of temporary parking of own surplus funds not immediately required is eligible for deduction u/s.80P(2)(a)(i) of the Act. The learned DR relied on a subsequent decision of the Hon'ble Karnataka High Court in the case of *PCIT Vs. Totgars Co-operative Sale Society Ltd. 395 ITR 611 (Karn.)*.

6. We have carefully gone through the judgment relied by the learned DR. The facts of the case before the Hon'ble Karnataka High Court in the decision cited by the learned DR was that the Hon'ble Court was considering a case relating to Assessment Years 2007-2008 to 2011- 2012. In case decided by the Hon'ble Supreme Court in the case of the very same Assessee, the Assessment years involved was AY 1991-92 to 1999- 2000. The nature of interest income for all the AYs was identical. The bone of contention of the Assessee in AY 2007-08 to 2011-12 was that the deduction under [Section 80P\(2\)](#) of the Act is claimed by the respondent assessee under [Section 80P\(2\)\(d\)](#) of the Act and not under [section 80P\(2\)\(a\)](#) of the Act which was the claim in AY 1991-92 to 1999-2000. The reason given by the Assessee was that in AY 2007-08 to 2011-12 investments and deposits after the Supreme Court's decision against the assessee *Totgar's Co-operative Sale Society Ltd. (supra)*, were shifted from Schedule Banks to Co-operative Bank. U/s.80P(2)(d) of the Act, income by way of interest or dividends derived by a Co-operative Society from its investments with any other Co-operative Society is entitled to deduction of the whole of such interest or dividend income. The claim of the Assessee was that Co-operative Bank is essentially a Co-operative Society and therefore deduction has to be allowed under Clause (d) of Sec.80P(2) of the Act. The Hon'ble Karnataka High Court followed the decision of the supreme Court in *The Totgars Co-operative Sales Society Ltd. (supra)* and held that interest earned from Schedule bank or co-operative bank is assessable under the head income from other sources and therefore the provisions of Sec.80P(2)(d) of the Act was not applicable to such interest income. It is thus clear that the source of funds out of which investments were made remained the same in AY 2007-08 to 2011- 12 and in AY 1991-92 to 1999-

*2000 decided by the Hon'ble Supreme Court. Therefore, whether the source of funds were Assessee's own funds or out of liability was not subject matter of the decision of the Hon'ble Karnataka High Court in the decision cited by the learned DR. To this extent the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Co-operative Ltd. (supra) still holds good. Hence, on this aspect, the issue should be restored back to the AO for a fresh decision after examining the facts in the light of these judgment of the Hon'ble Apex Court rendered in the case of The Totgars Co-operative Sale Society Ltd. (supra) and of Hon'ble Karnataka high Court rendered in the case of Tumukur Merchants Souharda Co-operative Ltd. (supra).*

*7. The AO will afford opportunity of being heard to the Assessee and filing appropriate evidence, if desired, by the Assessee to substantiate its case, before deciding the issue. The Assessee has also filed an application for filing additional evidence regarding its membership to show that no nominal members existed in the society. We give liberty to the Assessee to file these documents before the AO in the set aside proceedings.*

9. In view of the above co-ordinate Bench order in the case of M/s.Raithara Seva Sahakara Sangh v. ITO (supra), I restore the issue of claim of interest income received from other co-operative banks to the files of the A.O. for *de novo* consideration. The A.O. shall follow the directions of the Tribunal contained (supra). It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 30<sup>th</sup> day of March, 2021.

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 30<sup>th</sup> March, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mangaluru.
4. The Pr.CIT, Mangaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore