

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2352/Bang/2019
Assessment Year : 2016-17

M/s. Nagini Co-operative Credit Society Ltd., No.569, 3 rd Stage, 4 th Block, 80 Ft. Road, Basaveswara Nagar, Bengaluru – 560 079. PAN : AACAN 5552 H	Vs.	ITO, Ward – 6[2][1], Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. V. Srinivasan, Advocate
Respondent by	:	Shri. Kannan Narayanan, JCIT(DR)(ITAT), Bengaluru

Date of hearing	:	04.08.2021
Date of Pronouncement	:	10.08.2021

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 30.08.2019 of CIT(A), Bengaluru-6, Bengaluru, relating to Assessment Year 2016-17.

2. The assessee is a society registered under the Karnataka State Co-operative Societies Act, 1959. For Assessment Year 2016-17, the assessee filed return of income and claimed deduction of a sum of Rs.1,70,31,095/- under section 80P(2)(1)(i) of the Income Tax Act, 1961 (hereinafter called 'the Act').

3. In the course of assessment proceedings, the AO noticed that the assessee had claimed a sum of Rs.1,00,93,101/- being interest received from investment of surplus funds in deposits and securities with

nationalized banks (Punjab National Bank and Syndicate Bank), Co-operative Banks and others. According to the assessee, the aforesaid interest income is also eligible for deduction under section 80P(2)(a)(i) of the Act. The AO held that since the interest income was earned from non-members, the deduction claimed cannot be allowed. The AO also examined whether the interest income would be eligible for deduction under section 80P(2)(a)(i) of the Act and he came to the conclusion that interest income earned on deposits would be in the nature of income from other sources and therefore would not be eligible for deduction under section 80P(2)(a)(i) of the Act. In coming to the aforesaid conclusion, the AO has made reference to the following decision:

“5.3 Hon. Supreme court in Civil Appeal Nos 1622/2010 to 1629/2010 and by order dated 08.02.2010 in Totgars Co-operative Sale society Ltd Vs ITO(2010) 322 ITR 283/188 Taxman 282(SC) has held as under :

"The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. In this particular case the evidence shows that the assessee society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department u/s 56 of the Act"

5.4 Subsequently, the Karnataka High Court, following the binding precedent set by the Hon. Supreme Court, by its later day order in the case of PCIT Vs Totgars Cooperative Society reported in (2017) 395 ITR 611(Kar) held as under :

- Character and nature of income viz. interest on investment remains same as in case of 322ITR283(SC).*
- 80P section applies only when the income is from business or operational income and not assessable under some other head.*

- *Section 80P(4) excludes the applicability of section 80P of IT Act altogether to any co-operative Bank and the term used is "relation to".*
- *194A(3)(v) of IT Act also amended to make TDS provisions applicable to Cooperative Banks, thus it made the legislative intent very clear that Co-operative bank is not a specie of Co-operative society.*
- *Deduction provision needs to be strictly construed.*
- *Merely because the investments have been shifted to Co-operative Bank does not mean the Hon. SC decision would not apply.*
- *Distinguished the judgement of the earlier Kar High Court judgment in the case of the same assessee on the ground that they failed to consider the SC decision.*

5.5 This order of the Karnataka High court is the latest decision on this issue being dated 16.06.2017 and has set a binding precedent on the issue under consideration. Hence the interest earned from Deposit with Co-operative Bank also is ineligible for deduction u/s 80P(2)(d) of IT Act."

4. On appeal by the assessee, the CIT(A) confirmed the order of the AO. Hence, this appeal by the assessee before the Tribunal. The grounds of appeal raised by the assessee reads as follows:

- 1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned CIT[A] is not justified in upholding the assessment of interest income of Rs. 1,00,93,101/- earned by the appellant from investment of funds in cooperative banks on the ground that the said interest income was liable for assessment under the head "Other Sources" and hence, the same did not form part of the income from business of providing credit facilities to the members that alone was entitled to deduction u/s. 80P[2][a][i] of the Act, under the facts and in the circumstances of the appellant's case.*
- 3. The learned CIT[A] ought to have appreciated that the appellant had earned the interest income of Rs. 1,00,93,101/-*

from investments statutorily required to be maintained under the Karnataka Co-operative Societies Act from out of the profits besides 25% of the total deposits as SLR with co-operative banks and 3% of the total deposits towards CRR and thus, the income earned therefrom ought to have been assessed as part of the business of the providing credit facilities to its members and not under the head 'Other Sources' under the facts and in the circumstances of the appellant's case.

4. *Without prejudice to the above, the learned CIT[A] ought to have appreciated that the investment made by the appellant in co-operative banks would qualify for deduction u/s. 80P[4] and the same ought to have been allowed under the facts and in the circumstances of the appellant's case.*

5. *Without prejudice to the above, the learned CIT[A] ought to have appreciated that the cost of funds ought to have been allowed u/s. 57[iii] of the Act while assessing the interest income under the head "Other Sources" under the facts and in the circumstances of the appellant's case.*

6. *Without prejudice to the above and without prejudice to the right of the appellant to seek for waiver of the interest levied, the appellant denies itself liable to be charged to interest under Section 234B and 234C of the Income Tax Act, which levy, under the facts and in the circumstances of the appellant's case, deserves to be cancelled.*

7. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

5. On the issue of deduction u/s.80P(2)(a)(i) of the Act, the learned Counsel for the assessee filed before us a decision of the Hon'ble ITAT, Bengaluru Bench in the case of Puttur Primary Co-operative Agriculture and Rural Development Bank Ltd., Vs. ITO in ITA No.1449/Bang/2019, order dated 14.06.2021 for Assessment Year 2016-17. According to the

learned Counsel for the assessee, the Tribunal has decided identical issue that arises for consideration in this appeal and has remanded the issue for consideration with the following observation:

“4. We heard Ld D.R and perused the record. The first issue relates to the claim of deduction u/s 80P(2)(a)(i) of the Act. We notice that an identical issue has been considered by the co-ordinate bench in the case of Karkala Co-op S Bank Ltd (supra), wherein an identical issue has been restored to the file of AO for examining it afresh. For the sake of convenience, we extract below the relevant observations made by the co-ordinate bench:-

"4. The Ld. A.R. submitted that the law on deduction of 80P(2)(a)(i) of the Act available to credit co-operative societies has since been settled by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs.CIT (2021) 123 taxmann.com 161 (SC). He submitted that the Hon'ble Supreme Court has held that the expression "Members" is not defined in the [Income-tax Act](#). Hence, it is necessary to construe the expression "Members" in [section 80P\(2\)\(a\)\(i\)](#) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. The Ld. A.R. submitted that the Hon'ble Supreme Court has considered the decision rendered by it in the case of Citizen Co-operative Society Ltd. (supra) and observed that the ratio decidendi of Citizen Co-operative Society Ltd. must be given effect to. Accordingly, he submitted that the assessee should be allowed deduction u/s 80P(2)(a)(i) of the Act.

5. The Ld. D.R., on the contrary, submitted that the issue of deduction needs to be examined afresh in the light of decision rendered by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. (supra). Accordingly, he submitted that this issue may be restored to the file of the A.O.

6. We heard the parties on this issue and perused the record. We find merit in the submission made by Ld. D.R. Since the Hon'ble Supreme Court has settled many issues in the decision rendered by it in the case of Mavilayi Service Co-operative Bank Ltd. (supra) and since the facts prevailing in the instant case needs to be examined afresh in the light of the principles enunciated by

Hon'ble Supreme Court in the above said case, we are of the view that the issue of deduction u/s 80P(2)(a)(i) of the Act requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in both the years under consideration and restore them to the file of the A.O. in both the years for examining it afresh as discussed above."

5. Since the facts are identical, following the decision rendered by the co-ordinate bench, we restore this issue to the file of the AO with similar directions."

6. The learned DR relied on the order of the CIT(A). We have considered the rival submissions.

7. As the issues involved in the present appeal are identical to the issues decided by the Tribunal cited by the learned Counsel for the assessee, we restore the issue to the AO to examine the claim of the assessee afresh as directed by the Tribunal in the aforesaid order. We also notice that the assessee has raised a specific plea that the investments which yielded interest income were all investments that are statutorily required to be maintained under the Karnataka Co-operative Societies Act and therefore interest income has to be regarded as business income. The AO can examine this aspect also in the set aside proceedings.

8. 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 in the set aside proceedings.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 10.08.2021.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.