

**IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM**

आयकर अपील सं. / ITA No.30/PAN/2018
निर्धारण वर्ष / Assessment Year : 2012-13

The Hukkeri Taluk Agri Produce
Co-operative Marketing Society Ltd.,
94, TAPCMS Ltd., RC Market,
S. G. Road, Sankeshwar,
Taluk : Hukkeri, Dist. Balagavi.

PAN : AAAAT4615M

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(1),
Belagavi.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Sourabh Nayak

सुनवाई की तारीख / Date of Hearing : 09.11.2021
घोषणा की तारीख / Date of Pronouncement : 16.11.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals), Gulbarga ('CIT(A)' for short) dated 29.12.2017 for the assessment year 2012-13.

2. Briefly, the facts of the case are that the appellant is a cooperative society engaged in the business of marketing of agricultural produce, etc.. The return of income for the assessment year 2012-13 was filed on 27.09.2012 declaring total income of Rs.Nil after claiming deduction u/s 80P(2)(d) of the Income Tax Act, 1961 ('the Act') amounting to Rs.1,80,144/- being interest and dividend earned on Reserve Funds and Shares. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-1(1), Belgaum ('the Assessing Officer') vide order dated 24.10.2014 passed u/s

143(3) of the Act at a total income of Rs.1,81,360/- after denying the claim of deduction by holding that the provisions of section 80P(2)(d) of the Act are not applicable to the facts of the present case of the assessee.

3. Being aggrieved by the above action of the Assessing Officer, an appeal was filed before the ld. CIT(A), who vide impugned order denied the benefit of deduction u/s 80P(2)(d) of the Act placing reliance on the decision of the Hon'ble Supreme Court in the case of Totagars Co-operative Sales Society Ltd. vs. ITO, 188 taxmann.com 282 (SC)

4. Being aggrieved by the above decision of the ld. CIT(A), the assessee is in appeal before us in the present appeal.

5. The ld. AR for the assessee society submits that it is a purely cooperative credit society and not granting any bank licence to carry out any banking business. It is further submitted that the appellant is a cooperative society and received interest income of Rs.1,80,144/- from other cooperative society. The case of the assessee clearly falls under the provisions of section 80P(2)(d) of the Act.

6. On the other hand, ld. DR submits that the appellant is not entitled for deduction u/s 80P(2)(d) of the Act as the parties from whom the interest was received is a cooperative bank placing reliance on the order of the ld. CIT(A).

7. We heard the rival submissions and perused the material on record. The only issue in the present appeal is pertaining to the allowability of deduction under the provisions of section 80(2)(d) of the Act. On perusal of provisions of

section 80P(2)(d), it is clear that the income derived by a cooperative society from its investment held with other cooperative societies shall be exempt from the total income of a cooperative society. Therefore, what is relevant for claiming of deduction u/s 80P(2)(d) is that interest income should have been derived from the investment made by the assessee cooperative society with any other cooperative society. In the present case, the reasoning given by the lower authorities for denial of exemption u/s 80P(2)(d) of the Act is that interest was received from cooperative bank has no legs to stand as a cooperative bank is also a cooperative society. This issue was considered by the Hon'ble Karnataka High Court in the case of CIT vs. Totagars Cooperative Sale Society, 392 ITR 74 (Karn) wherein the Hon'ble High Court referring to the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd. (supra) held that the ratio of decision of the Hon'ble Supreme Court in the aforesaid case (supra) not to be applicable in respect of interest income on investment as same falls under the provisions of section 80P(2)(d) and not u/s 80P(2)(a)(i) of the Act.

8. Even the decision of Pune Bench of the Tribunal in the case of Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. vs. ITO, 120 taxmann.com 10 wherein the Tribunal after making reference to the decisions of the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd. (supra) and having noticed the divergent views of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. vs. ITO, 55 taxmann.com 447 and the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. vs. CIT, 50 taxmann.com 278, decision of the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift Credit Society Ltd. (supra) had not been preferred to view of the Hon'ble Karnataka

High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. (supra). The relevant observation of the Pune Bench of the Tribunal in the case (supra) is as under :-

“9. The Pune Benches of the Tribunal in Sureshdada Jain Nagari Sahakari Patsanstha Maryadit Vs. The Pr.CIT (ITA No.713/PUN/2016, dated 9-4-2019) decided the question of availability of deduction u/s 80P on interest income by noticing that the Pune Bench in an earlier case of Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO (ITA No.604/PN/2014, dated 19-8-2015) has allowed similar deduction. In the said case, the Tribunal discussed the contrary views expressed by the Hon'ble Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 Taxman 309 (Kar.) allowing deduction u/s. 80P on interest income and that of the Hon'ble Delhi High Court in Mantola Cooperative Thrift Credit Society Ltd. Vs. CIT (2014) 110 DTR 89 (Delhi) not allowing deduction u/s.80P on interest income earned from banks. Both the Hon'ble High Courts took into consideration the ratio laid down in the case of Totgar's Cooperative Sale Society Ltd. (2010) 322 ITR 283 (SC). There being no direct judgment from the Hon'ble jurisdictional High Court on the point, the Tribunal in Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit (supra) preferred to go with the view in favour of the assessee by the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra).

10. Insofar as the reliance of the ld. DR on the case of Pr. CIT and Another Vs. Totagars Cooperative Sales Society (2017) 395 ITR 611 (Kar.) is concerned, we find that the issue in that case was the eligibility of deduction u/s.80P(2)(d) of the Act on interest earned by the assessee co-operative society on investments made in co-operative banks. In that case, the assessee was engaged in the activity of marketing agricultural produce by its members; accepting deposits from its members and providing credit facility to its members; running stores, rice mills, live stocks, van section, medical shops, lodging, plying and hiring of goods and carriage etc. It was in that background of the facts that the Hon'ble High Court held that the assessee could not claim deduction u/s.80P(2)(d) of the Act. When we consider the impact of this decision, it turns out that the same is not germane to case under consideration in view of the position that the claim of the instant assessee is directly about the eligibility of deduction u/s.80P(2)(a)(i) of the Act and not u/s.80P(2)(d). Moreover, so many decisions relied on by the ld. AR amply go to prove that the view taken by the AO, cannot by any standard, be construed as not a possible view. We, therefore, hold that the ld. Pr. CIT was not justified in exercising the revisional power anent to interest income of Rs.22,34,270/- earned on investments made with co-operative banks.”

9. In the light of the above legal position of law and the reasoning adopted by the Assessing Officer as well as the ld. CIT(A) cannot be accepted. However, from material on record it is not clear that whether the entire interest income was received from cooperative bank or other bank?. In the circumstances, we remit the matter to the file of the Assessing Officer for the purpose of verifying

whether entire interest income of Rs.1,80,144/- was received from other cooperative bank, if so, allow the same or otherwise restricted the exemption to the extent of income received from other cooperative banks. Thus, the grounds raised by the assessee are partly allowed for statistical purposes.

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

Order pronounced on this 16th day of November, 2021.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 16th November, 2021.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Gulbarga.
4. The Pr. CIT, Belgavi.
5. DR, ITAT, Panaji.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.