

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B", BANGALORE**

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

ITA No.1861/Bang/2019 : Asst.Year 2014-2015

M/s.The Bagalkot Co-operative Housing Society Limited Melligeri Complex Bagalkot -587 101. <b>PAN : AACAT6926F.</b>	v.	The Income Tax Officer Ward 1 Bagalkot.
(Appellant)		(Respondent)

Appellant by : Sri.G.S.Prashanth, CA

Respondent by : Smt.Priyadarshini Besaganni, JCIT-DR

<b>Date of Hearing : 25.11.2021</b>	<b>Date of Pronouncement : 30.11.2021</b>
-------------------------------------	---

**ORDER**

**Per George George K, JM:**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 28.06.2019. The relevant assessment year is 2014-2015.

2. The grounds raised read as follows:

*"1. In the facts and circumstances of the case, the learned CIT (Appeals), has failed to appreciate the facts and circumstances of the case that the appellant is an Co-operative housing society not carrying on the business of banking or credit facilities to its members and thus it entitled to claim deduction u/s 80P(2)(d).*

*2. In the facts and circumstances of the case, the learned CIT (Appeals) has erroneously applied the judgment of Totagar Co-operative Sale Society Limited (2017) 395 ITR 611 (Kar.) in respect of interest from Banks.*

*3. In the facts and circumstances of the case, the learned CIT(Appeals) has failed in allowing deduction u/s 80P(2)(d) on account of interest earned on deposits from Co-operative Banks whereas various judgments are in the favour of appeal's claim for deduction u/s 80P(2)(d) of the Act.*

4. *In the facts and circumstances of the case, the appellant further prays to allow deduction u/s 80P(2)(d) the interest received from Co-operative Bank amounting to Rs.11,10,790.00.*

5. *The assessee prays to add, alter or amend any of the foregoing grounds of appeal at the time of hearing.”*

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

The assessee is a co-operative society housing society registered under the Karnataka Co-operative Societies Act, 1959. Consequent to an order passed u/s 263 of the I.T.Act by the Commissioner, the assessment was completed by the A.O. vide order dated 30.1.2019. In the said assessment order the claim of deduction u/s 80P(2)(d) of the I.T.Act was denied for the reason that the assessee has received interest income / dividend from investments made with Co-operative Banks. It was held by the A.O. that only interest income received from co-operative Societies alone would be entitled to deduction u/s 80P(2)(d) of the I.T.Act. In this context, the A.O. relied on the judgment of the Hon'ble jurisdictional High Court in the case of Tatagars Co-operative Sale Society Ltd. v. ITO reported in 395 ITR 611 (Kar.).

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 filed this appeal before the Tribunal. The learned Counsel for the assessee has filed two sets of paper book. The first set of paper book is comprising of 67 pages, enclosing therein the financial statement of the assessee, bye-laws, the notice

issued u/s 263 of the I.T.Act and the original assessment completed on 31.05.2016. The second set of paper book has 79 pages, enclosing therein the judicial pronouncements relied on by the assessee. The learned AR's limited prayer is that investment with BDCC bank and other co-operative Banks is only on account of statutory compulsions and is in compliance with section 58 of the Karnataka Co-operative Societies Act, 1959. Therefore, it was submitted that the receipt of interest income on such investments ought to have been allowed as a deduction u/s 80P(2)(a)(i) of the I.T.Act. The learned AR in support of his submission, relied on the ITAT's order in the case of M/s.Aletty Co-operative Agricultural Bank Ltd. v. ITO in ITA No.469/Bang/2020 (order dated 31.08.2021). Alternatively, it was submitted that assuming interest income is to be assessed as income from other sources, the expenditure incurred for earning such income ought to be allowed as a deduction u/s 57 of the I.T.Act. In this context, the learned AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of Totagars Co-operative Sale Society Ltd. v. ITO reported in (2015) 58 Taxmann.com 35 (Kar.) (judgment dated 25.03.2015).

6. The learned Departmental Representative, on the other hand, strongly supported the orders of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. The main contention of the assessee is that the interest income received from co-operative banks ought to be granted deduction u/s 80P(2)(a)(i) of the I.T.Act.

The instant case arises out of the order passed u/s 143(3) r.w.s. 263 of the I.T.Act. The assessee has not raised the plea before the lower authorities that investments are made with co-operative banks out of statutory compulsion, and therefore, interest income arising from such investments are to be assessed as business income. The assessee before the Tribunal also has not furnished the details of investments. Therefore, we are not in a position to examine whether the investments are made to maintain the statutory liquidity reserve. The assessee without furnishing the necessary details cannot expect the Tribunal to restore the issue to the A.O. for *de novo* consideration, especially when this case as its origin from the order of the CIT passed u/s 263 of the I.T.Act. As mentioned earlier, the assessee's prayer before the Income Tax Authorities as well as the ground raised before the Tribunal is only regarding non-granting of deduction u/s 80P(2)(d) of the I.T.Act and not u/s 80P(2)(a)(i) of the I.T.Act. Therefore, the main contention of the assessee (without raising any ground before the Tribunal) that it is entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act is rejected.

7.1 The assessee has raised an alternate submission, namely, if interest income is to be assessed as income from other sources, necessarily, the cost incurred for earning such interest income ought to be allowed as deduction u/s 57 of the I.T.Act. We find an identical issue was considered by the Hon'ble jurisdictional High Court in the case of Totagars Co-operative Sale Society Ltd. v. ITO reported in [2015] 58 Taxmann.com 35 (Karnataka) (judgment dated 25.03.2015).

The relevant findings of the Hon'ble High Court, read as follows:-

*“11. Having heard the learned counsel for the parties and perusing the records and in the light of the finding recorded by the Hon'ble Supreme Court that the interest income earned by the appellant falls within the category of “other income” what falls for consideration is to answer the question as to whether the Tribunal was right in law in holding that the income by way of interest was chargeable to tax under Section 56 of the Income Tax Act without allowing deduction in respect of proportionate costs incurred as permissible under Section 57.*

*12. It is no doubt true that the appellant did initially claim deduction under Section 80P(2). Upon the pronouncement of the order by the Apex Court, in these appeals referred to supra, the income earned on the interest is declared as “other income” falling under Section 56 of the Income Tax Act. Then the next immediate question that follows is as to whether the entire fund i.e., in deposit with the Bank is taxable or the proportionate expenditure incurred by the appellant requires deduction. It is logical that when the Revenue is permitted to assess and recover taxes from assessee under Section 56 by treating the income earned by interest as income from “other sources”, the appellant shall be entitled for proportionate expenditure cost incurred in mobilizing the deposit placed in the Bank/s. What can be taxed is only the net income which the appellant earns after deducting cost and expenditure incurred and administrative expenses incurred by the assessee.*

*13. Accordingly, we answer the question of law and hold that the Tribunal was not right in coming to the conclusion that the interest earned by the appellant is an income from other sources without allowing deduction in respect of the proportionate costs, administrative expenses incurred in respect of such deposits.”*

7.2 The assessee has not raised the plea before the Income Tax Authorities that it has to be given deduction u/s 57 of the I.T.Act, in respect of expenditure for earning the interest income. However, inspite of such plea not being raised before the lower authorities, we are of the view that since the Act prescribes for taxing only the net income (i.e. total income minus the expenses incurred for earning such income), this plea of the assessee has to be necessarily entertained, especially in the light of the judgment of the Hon'ble jurisdictional High Court in the case of Totagars Sale Co-

operative Society v. ITO [2015] 58 taxmann.com 35 (Karnataka). Accordingly, the case is restored to the files of the A.O. The A.O. is directed to examine whether assessee has incurred any expenditure for earning interest income, which is assessed under the head 'income from other sources'. If so, the same shall be allowed as deduction u/s 57 of the I.T.Act. The assessee is directed to co-operate with the department and furnish the necessary evidence for expeditious disposal of the matter. It is ordered accordingly.

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

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

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

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

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

Copy to :

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

Asst.Registrar/ITAT, Bangalore