IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.56/Bang/2021 : Asst.Year 2015-2016

M/s.Bilikere Primary Agricultural Credit Co-operative Society Ltd., Mysuru-Mangaluru Road Bilikere, Hunsur Taluk Mysore – 571 103. **PAN : AAABB0200H.**	v.	The Pr.Commissioner of Income-tax, Mysore.
(Appellant)		(Respondent)

Appellant by : Sri.S.V.Ravishankar, Advocate
Respondent by : Sri.Sumer Singh Meena, CIT (OSD)-DR

Date of Hearing : 06.12.2021		**Date of Pronouncement : 08.12.2021**

O R D E R

Per George George K, JM:

This appeal at the instance of the assessee is directed against CIT's order dated 08.03.2020, passed u/s 263 of the I.T.Act. The relevant assessment year is 2015-2016.

2. The grounds raised read as follows:

"1. The order of the learned Principal Commissioner of Income Tax, Mysore, passed under section 263 of the Act in so far as it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.

2. The notice issued for intimation of proceedings under section 263 of the Act, was bad in law.

3. The learned CIT is not justified in law in invoking the jurisdiction under section 263 of the Act and setting aside the order of the AO, as being "erroneous and prejudicial to the interest of the revenue", which is contrary to fact, on the facts and circumstances of the case.

4. The learned CIT is not justified in law in holding that the order passed by the Assessing Officer is bad in law,

without appreciating that there was no error in the order passed, much less prejudicial to the interest of revenue, on the facts and circumstances of the case.

5. The learned CIT was not justified in appreciating that the provision of section 263 of the Act shall be attracted only when the order is both erroneous and prejudicial to the interest of revenue and since the order passed under section 143(3) of the Act was not erroneous, much less prejudicial, the invoking of section 263 was not warranted, on the facts and circumstances of the case.

6. The learned CIT was not justified in appreciating that the claim of deduction under section 80P(2)(d) of the Act, was allowed after a proper appreciation of facts, on the facts and circumstances of the case.

7. The learned CIT was not justified in appreciating that the interest income on fixed deposits, when considered under the head other sources, the interest paid was also required to be set off against the income, on the facts and circumstances of the case.

8. The CIT was not justified in holding that the claim of deduction under section 80P(2)(c) of the Act, was not in order and was to be disallowed, which is contrary to fact, on the facts and circumstances of the case.

9. The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

10. For these grounds that may be urged at the time of hearing of appeal, the appellant prays that appeal may be allowed for the advancement of substantial cause of justice and equity."

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

The assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. It is engaged in providing credit facilities to its members and accepting deposits from its members. For the assessment year 2015-2016, return of income was filed on 09.03.2016 declaring \`NIL' income after claiming deduction u/s 80P(2) of the Act amounting to Rs.15,17,065. The assessment was selected for

scrutiny and assessment u/s 143(3) of the Act was completed on 18.12.2017. The A.O. had accepted the claim of deduction u/s 80P(2)(a)(i) of the Act amounting to Rs.14,08,711 and 80P(2)(c) of the Act amounting to Rs.50,000 (for 80P(2)(c), the assessee claimed deduction of Rs.1,08,550). Accordingly, the assessment was completed at Rs.58,550. Subsequently notice u/s 263 of the Act was issued on 05.02.2020 by the CIT. The CIT was of the view that the assessment completed u/s 143(3) of the Act vide order dated 18.12.2017 is erroneous and prejudicial to the interests of the revenue, since the A.O. had wrongly granted deduction u/s 80P(2) of the Act. The assessee filed objections to the notice issued u/s 263 of the Act vide its reply dated 05.03.2020. However, the CIT rejected the objections raised by the assessee and passed the impugned order u/s 263 of the Act by setting aside the assessment order completed u/s 143(3) of the Act dated 18.12.2017. The CIT directed the A.O. to disallow the claim of deduction u/s 80P(2)(d) amounting to Rs.7,59,337 and Rs.50,000 claimed u/s 80P(2)(c) of the Act. The relevant finding of the CIT, reads as follows:-

> *"4. The Hon'ble High Court of Karnataka in the case of Pr.Commissioner of Income Tax v. The Totagars Co-operative Sale Society in which the decision was rendered on 16.06.2017 held that the income received as interest from investments made in Nationalised and Co-operative banks is not an allowable deduction u/s 80P(2)(d) of the IT Act, 1961. There is no dispute on the fact that the assessee is a co-operative society and carries on the business of providing credit facilities to the members and not mandated to carry on the business of banking. Therefore, it is held that the income of Rs.7,59,337/- earned by the assessee by way of income from institutions (who are not its members) is not eligible for deduction u/s 80P(2)(a)(i) of the Act and also u/s 80P(2)(d) of*

> *the IT Act, 1961. Therefore, the AO is directed to disallow the claim of deduction u/s 80P(2)(d) amount into Rs.7,59,337/-.*
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> *5. Further, the assessee claimed deduction u/s 80P(2)(c) amounting to Rs.50,000/- on the interest received from Co-operative Societies. It is noted that the assessee is not eligible for deduction u/s 80P(2)(c) of the IT Act, 1961 as the assessee has already claimed deduction u/s 80P(2)(a)(i) of the IT Act, 1961.*
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> *6. Therefore, the assessment order passed by the ITO, W-1(3), Mysuru for AY 2015-16 u/s 143(3) of the IT Act, 1961 on 18.12.2017 is held to be erroneous and prejudicial to the interest of revenue and the AO is directed to revise the assessment order accordingly after affording the assessee reasonable opportunity of being heard."*

4. Aggrieved, the assessee has filed this appeal before the Tribunal. The learned AR submitted that the interest income received from co-operative Banks is entitled to deduction u/s 80P(2)(a)(i) of the Act. The learned AR further 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). As regards the claim of deduction u/s 80P(2)(c) of the Act, the learned AR submitted that the A.O. has verified the income offered to tax and also made disallowance u/s 80P(2)(c) of the Act by restricting the claim to Rs.50,000 instead of Rs.1,08,554 claimed by the assessee. Accordingly, it was submitted that the order of the AO is not erroneous nor prejudicial to the interests of the revenue.

5. The learned Departmental Representative, on the other hand, strongly supported the order of the CIT passed u/s 263 of the Act.

6. We have heard rival submissions and perused the material on record. The main contention of the assessee is that interest income received from investments with Co-operative banks is entitled to deduction u/s 80P(2)(a)(i) of the Act. Alternatively it is contended that 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 Act. As regards the main contention of the assessee, we find the Hon'ble jurisdictional High Court in the case of Totagars Co-operative Sale Society v.ITO reported in 395 ITR 611 (Kar.) had categorically held that interest income received on investment of surplus funds with Co-operative banks is to be assessed as income from other sources and not income from business (Thereby denying the claim of deduction u/s 80P(2)(a)(i) of the Act). It was further held by the Hon'ble High Court that only those interest income received from Co-operative Societies alone (not from Co-operative Banks) is entitled to deduction u/s 80P(2)(d) of the Act. As regards the alternative claim of the assessee, 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.*
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> *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.*
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> *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."*

6.1 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, this issue 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.

6.2 Insofar as the claim of deduction u/s 80P(2)(c) of the Act is concerned, we noticed that the assessee is having income from distribution of food grains and kerosene under PDS scheme. The net profit arrived from PDS scheme is Rs.1,08,554, which does not qualify for deduction u/s 80P(2)(a)(i) of the Act. However, the said income is allowable for deduction u/s 80P(2)(c) of the Act (u/s 80P(2)(c) the amount of deduction is restricted to Rs.50,000). In the instant case, the A.O. had granted deduction u/s 80P(2)(c) of the Act by restricting it to Rs.50,000. Therefore, the CIT(A) is not justified in directing the A.O. to deny the benefit of deduction u/s 80P(2)(c) of the Act (which the A.O. correctly granted deduction of Rs.50,000).

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

Order pronounced on this 08th day of December, 2021.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 08th December, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The Pr.CIT Mysore
4. The Joint CIT, Range-1, Mysuru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore