

**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.64/PAN/2018
निर्धारण वर्ष / Assessment Year : 2012-13**

Prathamik Krishi Pattin Sahakhari
Sangh Niyamit Sankeshwar,
Azad Road, Sankeshwar,
Tq: Hukkeri, Dist. Belgaum- 591313.

PAN : AAAAT4153E

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward- 1(3),
Belgaum.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M. S. Tigadi
Revenue by : Shri Rijula Uniyal

सुनवाई की तारीख / Date of Hearing : 04.04.2021

घोषणा की तारीख / Date of Pronouncement : 06.04.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of ld. Commissioner of Income Tax (Appeals), Belagavi [‘CIT(A)’ for short] dated 29.11.2017 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 providing credit facilities to its members. The return of income for the assessment year 2012-13 was filed on 15.09.2013 declaring Rs.Nil income. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward- 1(3), Belgaum (‘the Assessing

Officer') vide order dated 31.07.2014 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.9,19,389/-. While doing so, the Assessing Officer denied the claim for deduction of exemption of income of Rs.8,19,601/- being the amount of interest received from other cooperative society i.e. Belgaum District Central Co-op. (BDCC) Bank Ltd. on the ground that income of the cooperative bank is not exempt from the tax u/s 80P(4) of the act.

3. Being aggrieved by the order of assessment, an appeal was filed before the ld. CIT(A), who vide impugned order confirmed the action of the Assessing Officer placing reliance on the decision of the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd. vs. ITO, 188 Taxman 282 (SC).

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

5. It is submitted that the interest income was received by the assessee on the surplus deposited with BDCC Bank Ltd. and also investments of statutory reserve funds etc. The ld. AR submits that the appellant is not a cooperative bank but a cooperative society and eligible for deduction u/s 80P(2)(a)(i) of the Act.

6. On the other hand, ld. Sr. DR placed reliance on the orders of the lower authorities.

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 80P(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.8,19,601/- 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 06th day of April, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th April, 2022.

Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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