

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 531/Bang/2022 &amp; S.P. No. 32/Bang/2022 (in ITA No. 531/Bang/2022) Assessment Year : 2017-18</b>
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M/s. Karnataka Journalists' Cooperative Society Ltd., Suvarna Bhavana, 2 <sup>nd</sup> Floor, No. 11/4, Queen's Road, Bangalore – 560 052. <b>PAN: AAAAK3609A</b>	<b>Vs.</b>	The Income Tax Officer, Ward 1 (2)(5), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Ravi Shankar, Advocate
Revenue by	:	Smt. Priyadarshini Baseganni, Addl. CIT (DR)

Date of Hearing	:	26-07-2022
Date of Pronouncement	:	02-08-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal by the assessee has been filed by assessee against the order dated 28/04/2022 u/s. 250 passed by the National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Year 2017-18 on following grounds of appeal:

*“1. The order of the learned CIT(A) in upholding the order of the AO without appreciating the relevant material facts and the law laid down by the Honourable Supreme Court, is erroneous and arbitrary. Therefore the said order is liable to be set-aside.*

*2. The order passed by the learned CIT (a) is without application of mind since the contentions of the appellant were not adjudicated. Except extracting the grounds of appeal, the submissions of the appellant and the order of the assessment, the learned CIT (A) has not passed a speaking order and therefore there is gross violation of Principles Of Natural Justice.*

*3. On the facts and in the circumstances of the case, learned CIT (appeals) ought to have appreciated that appellant provide credit facilities only to its members on payment of interest, though appellant had received deposits from nominal members. Appellant had not provided any loans to general public or to the nominal members at any point of time.*

*4. On the facts and in the circumstances of the case, learned CIT (appeals) ought to have appreciated that the Associate Members and the Regular Members are all working or associated with journalism and print media. These 2 categories are considered as members of the Appellant society and they are the shareholders of the appellant society. However the Associate Members are not given voting rights, until they become the resident members. The credit facilities have been extended by the appellant both to Associate Members and the Regular Members. However, at no point of time appellant has extended credit facilities to Nominal Members, who have been given an informal membership only with a view to receive deposits from them.*

*5. On the facts and circumstances of the case, the learned CIT(A) erred in upholding the disallowance made towards interest income of Rs. 14,22,213/-- earned by Appellant, despite placing relevant materials to the effect that the entire amount was earned out of the deposits made with Karnataka State Cooperative Apex Bank, which is also a cooperative society for the purposes of section 80 P of the Act.*

*6. The learned CIT(A) has failed to appreciate that the appellant being a credit co-operative society providing credit facilities only to its members, has made a few fixed deposits with Karnataka State Cooperative Apex Bank under a statutory compulsion and therefore the said deposits are not made out of the surplus. Accordingly the*

*interest income earned from the statutory deposits ought to be allowed as a deduction under section 80P (2)(d) of the Act.*

*7. The learned CIT(A) erred in confirming the order of the AO by not considering the precedents which held that the interest earned by credit co-operative societies on deposits with banks is an income attributable to business and hence eligible for deduction under Section 80 P(2)(a)(i) of the Act.*

*8. The reliance placed upon by the learned CIT(A) and the learned assessing authority on the judgement of the Hon'ble Karnataka High Court in the case of Pr. CIT Vs Totgar Co-operative Sale Society reported in 325 ITR 611 (Kar) is wholly misplaced and improper.*

*9. The learned CIT(A) and assessing authority did not appreciate that the Hon'ble High Court in Pr. CIT Vs Totgar Co-operative Sale Society reported in 325 ITR 611 (Kar) had no occasion to consider the deductions allowable under section 80 P (2) (d) vis-à-vis the statutory deposits but only considered the investment of surplus amounts for a limited period.*

*10. The learned CIT(A) and assessing authority have failed to appreciate that the Hon'ble High Court in the aforesaid case has relied upon the exception carved out in section 80 P (4) of the Act and has categorically held that the reduction under section 80 P (2) (d) cannot be denied if the interest income is derived from the deposits made with primary agricultural credit societies or primary cooperative agricultural and rural development banks. In the case of the appellant the interest income is derived from the deposits made with primary agricultural credit societies and therefore the reliance placed by the learned assessing authority upon the aforesaid judgement to deny the benefit of deduction under section 80 P (2) (d) is illegal.*

*11. Further, the learned CIT(A) and assessing authority failed to appreciate the interest income earned from deposits made with cooperative societies which are engaged in carrying on the business of banking is held to be allowable as a deduction under section 80 P (2) (d) of the Act in the following judgements;*

*i. Menasi Seemeya Group Gramagala Seva Sshakari Sanga Niyamitha ITA Nos. 609 86610/Bang/2014 dated 6.2.2015*

*ii. Shri Marikamba Mahila Cooperative Credit Society Ltd ITA No. 617/Bang/2014 dated 20.3.2015*

*iii. The Totgar's Cooperative Sale Society Ltd ITA Nos. 704 to 709/Bang/2015 which has been affirmed by the*

*Hon'ble High Court of Karnataka in the case of Pr. CIT Vs The Totgar's Cooperative Sale Society Ltd reported in 392 ITR 74W (Kar). Against this judgement the Department has filed Special Leave Petition vide SLP(c) Nos. 26314-26321/2017 and matters are pending adjudication.*

*In view of the aforesaid decisions of the appellate tribunal as also the Hon'ble High Court supporting the claim of the appellant, the Hon'ble appellate authority shall allow the claim made by appellant.*

*12. The learned CIT(A) erred in not appreciating the fact that interest income Rs. 14,22,213/- has already been included in the total income of Rs. 54,85,033/- computed under section 80 P of the Act and when the entire income of Rs. 54,84,033/- is disallowed by the Assessing Officer, the learned assessing authority was not justified in further disallowing the interest income under section 80P(2)(d) of the Act. The said act of the respondents amounts to double jeopardy.*

*13. Without prejudice the disallowances as confirmed by the learned CIT (Appeals) are arbitrary excessive and ought to be reduced substantially*

*14. Levy of interest of Rs. 5,90,604/- under sections 234B and 234 C on the alleged ground that appellant has failed to pay the advance tax and has deferred the payment of advance tax is wholly arbitrary and unjustified.*

*15. For these and other grounds that may be urged at the time of hearing, appellant prays that the appeal be allowed, to meet the ends of justice and equity.”*

## **2. Brief facts of the case are as under:**

2.1 The assessee is a cooperative bank. For the assessment year 2017-18, the return of income was filed on 31/10/2017 declaring total income of Rs. 8,45,180/- after claiming deduction of Rs.63,29,211/-. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 16/12/2019 disallowing the deductions claimed by the assessee u/s. 80P(2)(a)(i) / 80P(2)(d) of the Act.

2.2 Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

2.3 The Ld.CIT(A) upheld the disallowance as under:

a) Disallowance u/s. 80P(2)(a)(i) – Rs.54,84,033/-

b) Disallowance u/s. 80P(2)(d) – Rs.14,22,213/-

by relying on the ratio of the judgment of the *Hon'ble Karnataka High Court* in the case of *Pr.CIT & Anr. v. Totagars Co-operative Sale Society* reported in (2017) 395 ITR 611. The Ld.CIT(A) also held that the assessee is not entitled to deduction u/s 80P(2)(d) of the I.T.Act since the interest income was not received from investments with other co-operative societies.

2.4 Aggrieved by the order of the Ld.CIT(A), the assessee has preferred this appeal before this *Tribunal*.

3. The Ld.AR submitted that all the issues alleged are in respect of disallowance upheld by the Ld.CIT(A) u/s. 80P2(a)(i)/(d) of the Act.

3.1 The Ld.AR at the outset submitted that, identical issue was considered by the *ITAT in ITA No.490/Bang/2021* in the case of *M/s. Kakkabe VSSN Bank Ltd.vs. Pr.CIT by order dated 28.02.2022 for Assessment Year 2015-16*. The Ld.AR submitted that, this *Tribunal* in above cited case, directed the Ld.AO to consider the *dictum* laid down by the *Hon'ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT* reported in 431 ITR 1, *de horse* the observation of the Ld.CIT, u/s 263 of the I.T.Act.

4. The Ld.DR did not raise any objection for giving a similar direction in the instant case.

5. We have heard the submissions advanced by both sides based on the material placed on record. *Hon'ble Supreme Court* in the case of *Mavilayi Service Co-operative Bank Ltd. v. CIT* (supra) held

that, when the assessee is registered as a Co-operative Society under the respective State Acts, the interest income received for providing credit facilities to its members is entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act. The relevant finding of the *Hon'ble Supreme Court* reads as under:-

*"45. To sum up, therefore, the ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes cooperative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to nonmembers, profits attributable to such loans obviously cannot be deducted.*

*46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions' Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I (1997) 11 SCC 287 referred to section 80P of the IT Act and then held:*

*"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the*

*Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:*

*"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"*

*Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).*

*47. Further, unlike the facts in Citizen Cooperative Society Ltd. (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:*

*"59. Restrictions on loans.- (1) A society shall not make a loan to any person or a society other than a member:*

*Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.*

*Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.*

*(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.*

*(3) Granting of loans to members or to non-members under subsection (2) and recovery thereof shall be in the manner as may be specified by the Registrar."*

*Thus, the giving of loans by a primary agricultural credit society to nonmembers is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra).*

*48. Resultantly, the impugned Full Bench judgment is set aside. The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment."*

*6. In view of the recent judgment of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT (supra),*

we remit the issues raised in this appeal to the file of Ld.AO. The Ld.AO is directed to examine the deduction u/s 80P(2)(a)(i) of the I.T.Act in the light of the dictum laid down by the *Hon'ble Supreme Court* in the case of *Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)*.

7. The Ld A.R also submitted that the issue of deduction u/s 80P(2)(d) is being restored to the file of A.O. by the Bangalore bench of Tribunal with certain directions and accordingly prayed that this issue may be restored to the file of the A.O for examining afresh by considering all the contentions of the assessee.

8. We heard Ld. D.R. and perused the record. We notice that an identical issue was restored to the file of the A.O. by the *Coordinate Bench* in the case of *Thannirupantha Primary Agricultural Credit Co-operative Society Ltd. Vs. ITO* with the following observations:

9.1 As regards the claim of deduction u/s 80P(2)(d) of the I.T.Act, the Bangalore Bench of the Tribunal in the case of *M/s.The Jayanagar Cooperative Society Ltd. (supra)*, on identical facts, had restored the issue to the files of the A.O. for de novo consideration. The narration of facts, contentions and the findings of the Tribunal in the case of *M/s.The Jayanagar Cooperative Society Ltd. (supra)* reads as follow: -

“4. The issues that arise for consideration in this appeal by the assessee are as to whether the Revenue authorities were justified in holding that the assessee was not entitled to the benefit of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (in short ‘the Act’) on interest income earned and under section 80P(2)(d) of the Act in respect of interest received from Co-operative institutions. The Assessing Officer (AO) denied the claim of the assessee on the ground that interest income earned by making investment of surplus funds has to be assessed under the head “Income from Other Sources” and not income from business and since interest income is not assessed as business income, the claim for deduction under section 57 of the Act cannot be allowed. In upholding the above conclusions, the CIT(A), inter alia, relied on the decision of the Hon’ble Supreme Court in the case of *The Totgar’s Co-operative Sales Society Ltd., Vs. ITO 322 ITR 283 (SC)* wherein the Hon’ble Supreme Court held that the benefit of deduction under section 80P(2)(a)(i) of the Act is only on income which is assessable under the head “Income from Business”. Interest earned on investment of surplus funds not immediately required in short term deposits and securities by a Co-operative Society

*providing credit facilities to members or marketing agricultural produce to members is not business income but income from other sources and the society is not entitled to special deduction.*

5. *While learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Credit Co-operative Ltd., 230 taxman 309 (Karn), the DR relied on a subsequent decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totgars Cooperative Sale Society Ltd., 395 ITR 611 (Karn.). We have carefully gone through the said judgment. The facts of the case before the Hon'ble Karnataka High Court was that the Hon'ble Court was considering a case relating to Assessment Years 2007-08 to 2011-12. In case decided by the Hon'ble Supreme Court in the case of the very same assessee, the Assessment Years involved was Assessment Years 1991-92 to 1999-2000. The nature of interest income for all the Assessment Years was identical. The bone of contention of the Assessee in AY 2007-08 to 2011-12 was that the deduction under Section 80P(2) of the Act is claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act which was the claim in AY 1991-92 to 1999-2000. The reason given by the Assessee was that in AY 2007-08 to 2011-12 investments and deposits after the Supreme Court's decision against the assessee Totgar's Co-operative Sale Society Ltd. (supra), were shifted from Schedule Banks to Cooperative Bank. U/s.80P(2)(d) of the Act, income by way of interest or dividends derived by a Co-operative Society from its investments with any other Co-operative Society is entitled to deduction of the whole of such interest or dividend income. The claim of the Assessee was that Co-operative Bank is essentially a Co-operative Society and therefore deduction has to be allowed under Clause (d) of Sec.80P(2) of the Act. The Hon'ble Karnataka High Court followed the decision of the supreme Court in The Totgars Co-operative Sales Society Ltd. (supra) and held that interest earned from Schedule bank or cooperative bank is assessable under the head income from other sources and therefore the provisions of Sec.80P(2)(d)of the Act was not applicable to such interest income. It is thus clear that the source of funds out of which investments were made remained the same in AY 2007-08 to 201112 and in AY 1991-92 to 1999-2000 decided by the Hon'ble Supreme Court. Therefore whether the source of funds were Assessee's own funds or out of liability was not subject matter of the decision of the Hon'ble Karnataka High Court in the decision cited by the learned DR. To this extent the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Co-operative Ltd. (supra) still holds good. Hence, on this aspect, the issue should be restored back to the AO for a fresh decision after examining the facts in the light of these judgment of the Hon'ble Apex Court rendered in the case of The Totgars Co-operative Sale Society Ltd. (supra) and of Hon'ble Karnataka high Court rendered in the case of Tumukur Merchants Souharda Co-operative Ltd. (supra)."*

*9.2 In the light of the above order of the Tribunal, we deem it appropriate on the facts of the instant case, to restore the issue of claim of deduction u/s 80P(2)(d) of the I.T.Act to the files of the A.O. Hence ground Nos.6 and 7 are allowed for statistical purposes."*

9. Following the above said decision we restore this issue to the file of the A.O. for examining it afresh in the light of discussions made (supra).

10. The Ld A.R also put up an alternative claim that the expenses incurred to earn the interest income should be allowed u/s 57(iii) of the Act, if it claim for deduction u/s 80P(2)(a)(i) or 80P(2)(d) is not allowed. Since we have already restored the issue

of claim of deduction u/s 80P(2)(d) of the Act, we restore this alternative contention also to the file of the A.O., since the claim of the assessee gets support from the decision rendered by *Hon'ble Karnataka High Court* in the case of *Totgars Co-operative Sales Society Ltd. Vs. ITO* reported in (2015) 58 taxmann.com 35.

**Accordingly the grounds raised by the assessee stands allowed for statistical purposes.**

As we have remanded the appeal to the Ld.AO, the stay petition filed by the assessee stands in fructuous.

**In the result, the appeal filed by the assessee stands partly allowed for statistical purposes and the stay petition stands dismissed as in fructuous.**

**Order pronounced in the open court on 02<sup>nd</sup> August, 2022.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 02<sup>nd</sup> August, 2022.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore