

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

<b>Appeal No.</b>	<b>Appellant</b>	<b>Respondent</b>	<b>Assessment Year</b>
ITA No. 581/Bang/2022	M/s. Bhavasar Kshtriya Co- operative Credit	The Income-tax Officer, Ward -3(3), Hubballi.	2015-16
ITA No. 582/Bang/2022	Society Ltd., Radhakrishna Galli, Durgad Bail, Hubballi – 580	The Income-tax Officer, Ward – 1(1), Hubballi.	2017-18
ITA No. 583/Bang/2022	020. <b>PAN:</b> <b>AAAJB0915D</b>	The Assistant Director of Income Tax, CPC, Bengaluru.	2019-20

Assessee by	:	Smt. Pratibha, Advocate
Revenue by	:	Smt. Priyadarshini Baseganni, Addl. CIT (DR)

Date of Hearing	:	10-10-2022
Date of Pronouncement	:	19-10-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals are filed by assessee against three separate orders all dated 10/05/2022 passed by National Faceless Assessment Centre, Delhi for A.Ys. 2015-16, 2017-18 and 2019-20.

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

**Assessment Year 2015-16:**

2.1 The assessee is a cooperative credit society engaged in providing credit facilities to its members, filed its return of

income for the assessment year under consideration on 25/09/2015 declaring income of NIL after claiming Chapter VIA deduction u/s 80P(2)(a)(i) of the Act of Rs. 60,70,430/-. The Ld.AO after considering the submissions furnished by the assessee completed the assessment by disallowing the deduction claimed u/s. 80P.

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

The Ld.CIT(A) observed and held as under:

*“5.4 However I find that the Appellant has earned ‘a total interest income of Rs. 21,56,028/- on its investment with various Banks. In my view this is not an income which is eligible for deduction u/s. 80P(2)(a) or 80P(2)(d), since the said banks are neither members of the assessee society nor are they co-op societies/banks Moreover, the said interest income has arisen from deposits which in turn is made out of funds which stand in the balance sheet as liability. Therefore, the said income of Rs 21,56.028/- is held to be assessable as income from other sources u/s. 56 of the Act, subject to allowing administrative expenses and cost of fund. This will be worked out and allowed by the AO at the time of giving appeal effect to this order.”*

Aggrieved by the impugned order, the assessee is in appeal before this *Tribunal*.

2.3 The Ld.AR submitted that, the Ld.CIT(A) failed to appreciate that the interest earned from deposits were from Co-operative Banks as well as other Banks. She submitted that the entire interest earned was treated as “Income from other sources”. The Ld.AR vehemently submitted that interest earned from deposits made with Co-operative Banks are eligible for deduction u/s. 80P(2)(d).

**2.4.** It was submitted by the Ld.AR that the claim of deduction u/s 80P(2)(d) of the Act, the has been considered by the coordinate bench of this *Tribunal* in the case of [M/s.The](#)

Jayanagar Co-operative Society Ltd. v. ITO in ITA No.3254/Bang/2018 by order dated 23.07.2019, on similar facts, had restored the matter to the files of the Ld.AO for *de novo* consideration. The Ld.AR 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 A 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*.

**2.5.** On the contrary, the Ld.DR relied on the decision of the *Hon'ble Supreme Court* in the case of *Citizens Co-operative Society Ltd. v. ACIT* reported in 397 *ITR 1*, and submitted that, the assessee violated the principles of mutuality by dealing with nominal members, and hence, was not entitled to the benefit of mutuality. The Ld.DR also relied on a subsequent decision of the *Hon'ble Karnataka High Court* in the case of *PCIT Vs. Totgars Co-operative Sale Society Ltd.*, reported in 395 *ITR 611*.

**2.6.** We have heard both sides in light of records placed before us.

The Ld.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 Ld.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* reported in 322 ITR 283, wherein, *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.

**2.7.** While Ld.AR relied on the decision of the *Hon'ble Karnataka High Court* in the case of *Tumukur Merchants Souharda Credit Co-operative Ltd.*, reported in 230 taxman 309. We have carefully gone through the said judgment.

**2.8.** We have also considered, whether the co-operative bank wherein the assessee made deposits out of its surplus fund be considered as a co-operative society, for if a co-operative bank is considered to be a co-operative society than only the interest earned by the assessee on the deposits would be eligible for deduction u/s 80P(2)(d). We find that co-operative society is a broad and larger umbrella under which the co-operative banks do perform. We also note that all co-operative societies may not be banks, but all co-operative banks are deemed to be co-operative societies. According to banking Regulations Act, a co-operative society bank as the same meaning of the co-operative society. Further, we have also given a thought as to the interest earned by the surplus funds. Section 80P(2)(d) reads as under:

*"Section 80P(2)......"*

*(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income."*

**2.9.** On a plain reading of section 80P(2)(d), there is no such stipulation or prerequisite as to the nature of the funds. We also find that [Section 80P\(2\)\(d\)](#) of the Act, allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society.

Section 80P(2)(d) provides additional benefit of deduction under section 80P for those co-operative societies, which has surplus funds even unrelated to its main business activity, which are invested with other co-operative societies. Thus, Clause (d) of section 80P applies to all co-operative societies, whether or not, their main businesses banking and credit facilities to the members. Therefore, in our view, the section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society.

**2.10.** We have also considered the case of *Totgars Co-operative Sale Society Ltd.*, reported in 322 ITR 283 relied upon by the Ld.DR, and find that, the *Hon'ble Supreme Court* has deliberated on the issue of deduction u/s 80P(2)(a)(i) but not on [Section 80P\(2\)\(d\)](#). We also observed that in the case of *Totgars Co-operative Sale Society Ltd.* itself the *Hon'ble High Court of Karnataka* has allowed the claim of deduction u/s 80P(2)(d) vide order dated 05.01.2017 and also in *Tumukur Merchants Souharda Credit Co-operative Ltd.*, reported in 230 taxman 309.

**2.11.** Similar is the view taken by coordinate bench of this Tribunal in case of *Thannirupantha Primary Agricultural Credit*

*Co-operative Society Ltd vs. ITO in ITA no.276-277/Bang/2020 by order dated 30/07/2021, wherein it was held as under:*

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 Co-operative 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 Co-operative 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 Co-operative 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 *M/s. Thannirupantha Primary Agri. Cr. Co-op. So. Ltd.* 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 2011- 12 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.

**2.12.** Thus we hold that the assessee is eligible for deduction under section 80P(2)(d) in respect of interest earned from deposits made on other Co-operative banks. However, 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 Act, to the files of the

Ld.AO to allow the claim as indicated herein above, by granting proper opportunity of being heard to the assessee.

**2.13.** The Ld.AR also took the plea that, the expenditure incurred in earning of interest from the commercial banks be allowed while computing the taxable income. The provision of Section 57 reads as under:

*"Section 57: The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:—*

*(i) in the case of [dividends, 94[other than dividends referred to in section 115-O,]] [or interest on securities], any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend [or interest] on behalf of the assessee;*

*[(ia) in the case of income of the nature referred to in sub-clause (x) of clause (24) of section 2 which is chargeable to income-tax under the head "Income from other sources", deductions, so far as may be, in accordance with the provisions of clause (va) of sub-section (1) of section 36 ;]*

*(ii) in the case of income of the nature referred to in clauses (ii) and (iii) of sub-section (2) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of section 30, section 31 and [sub-sections (1) [\*\*\*] and (2)] of section 32 and subject to the provisions of [section 38];*

*[(iia) in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or [fifteen] thousand rupees, whichever is less.*

*Explanation.—For the purposes of this clause, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death ;]*

*(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;*

*[(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section.]"*

**2.14.** We have heard the submissions advanced by both sides on this aspect. We direct the Ld.AO to allow the expenditure incurred while computing income under the head, 'Income from

Other Sources', in relation to earning of interest from the commercial banks.

**Accordingly the grounds raised by the assessee for assessment year 2015-16 stands allowed for statistical purposes.**

**Assessment Year 2017-18:**

**3. Issue – 1: Disallowance of cash deposited by the members during demonetisation period.**

**Issue – 2: Disallowance of claim u/s. 80P(2)(d) in respect of interest earned from Co-operative Banks / other Banks.**

3.1 For the Assessment Year under consideration, assessee filed its return of income on 26/10/2017 declaring total income of Rs.1,17,760/- after claiming exemption of Rs.72,23,512/- as deduction u/s. 80P(2)(a)(i) of the Act.

3.2 The assessment was completed u/s. 143(3) by making disallowance of Rs.73,41,272/- from the exemption claimed. The Ld.AO was of the opinion that the said amount is not eligible for claiming deduction u/s. 80P as they are interests earned from investments in scheduled banks and co-operative banks other than co-operative societies.

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

3.3 The Ld.CIT(A) upheld the disallowance made by the Ld.AO u/s 80P(2)(d) of the I.T.Act as they have not been received from investments with other co-operative societies.

3.4 Aggrieved by the order of Ld.CIT(A), assessee is in appeal before this *Tribunal*.

**3.5.** At the outset, it is submitted by both sides that, the facts of Issue no.2 is similar and identical to the issue argued and considered for assessment year 2015-16 herein above.

**3.6.** We thus apply *mutatis mutandis*, the view taken regarding deduction disallowed under section 80P(2)(d) in respect of interest earned on the fixed deposits in other cooperative banks and other banks.

3.7 Accordingly grounds 2 to 5 relating to the claim of deduction u/s 80P(2)(d) of the Act, Re remanded to the files of the Ld.AO to allow the claim as indicated herein above, by granting proper opportunity of being heard to the assessee. We also direct the Ld.AO to allow the expenditure incurred while computing income under the head, 'Income from Other Sources', in relation to earning of interest from the commercial banks.

**Issue 2:**

4. It is the submission of the Ld.AR that assessee being a co-operative society had accepted cash deposits during the demonetisation period into its bank accounts in specified bank notes. It is also submitted that all details regarding the depositors are available with the assessee. On the contrary, the Ld.DR submitted that the case deposited during the demonetisation period has not been verified by the Ld.AO in accordance with the CBDT Circular wherein an instruction has been issued on 21/02/2017, 03/03/2017, 15/11/2017 and 09/08/2019.

He submitted that as the verification of the cash deposits is not in accordance with the directions of the CBDT.

4.1 We have perused the submissions advanced by both sides in the light of records placed before us.

We are of the opinion that there is a violation of natural justice in respect of not granting sufficient time to the assessee for representing its case before the Ld.PCIT. However, considering the fact that in any event, the issue would have to be remanded to the Ld.AO in order to verify the cash deposit of Rs.1,23,80,000/- in specified bank notes during the demonetisation period in its bank account in accordance with various instructions referred to by the Ld.DR hereinabove.

4.2 Admittedly, the assessee had accepted the SBNs which were no longer a legal tender and were to be explained in accordance with the relevant circular mentioned hereinabove.

These instructions gives a hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

4.3 In 1 of such instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of accounts have been rejected or not where substantial evidences of wide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

4.4 The instruction dated 21/02/2017 that the assessing officer basic relevant information *e.g.* monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash and is or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash else or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

4.5 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. We are aware of the fact that not every deposit during the demonetisation period would fall under category of unaccounted cash. However the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash.

The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law.

Needless to say that proper opportunity of being heard must be granted to the assessee. The assessee may be granted physical hearing in order to justify its claim.

**Accordingly Ground nos. 6-8 stands partly allowed for statistical purposes.**

**Ground no. 9** is consequential in nature and do not require adjudication.

**Ground no. 10** is general in nature.

**Accordingly the appeal filed by assessee stands allowed for statistical purposes.**

**Assessment Year 2019-20**

5. For the assessment year 2019-20, the return of income was filed on 28/10/2019 declaring total income of Rs.6,09,700/- after claiming deduction of Rs.1,03,11,674/-. The intimation u/s 143(1) of the I.T. Act was passed on dated 02/12/2020 by the CPC disallowing the deductions claimed by the assessee u/s. 80P(2)(a)(i) / 80P(2)(d) of the Act.

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

5.2 The Ld.CIT(A) directed the Ld.AO to verify the claim of the assessee of Rs.1,03,11,674/-.

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

5.4 At the outset, it is submitted by both sides that, the facts of this year is similar and identical to the issue argued and considered for assessment year 2015-16 herein above.

5.5 We thus apply *mutatis mutandis*, the view taken regarding deduction disallowed under section 80P(2)(d) in respect of

interest earned on the fixed deposits in other cooperative banks and other banks.

5.6 Accordingly grounds 2 to 4 relating to the claim of deduction u/s 80P(2)(a)(i) of the Act is Re remanded to the files of the Ld.AO to allow the claim as indicated herein above, by granting proper opportunity of being heard to the assessee. We also direct the Ld.AO to allow the expenditure incurred while computing income under the head, 'Income from Other Sources', in relation to earning of interest from the commercial banks.

**Accordingly the grounds raised by the assessee in all the assessment years stands allowed for statistical purposes.**

**In the result, all the three appeals filed by assessee stands allowed for statistical purposes.**

**Order pronounced in the open court on 19<sup>th</sup> October, 2022.**

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 19<sup>th</sup> October, 2022.  
/MS /

Copy to:

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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