

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI 'SMC' BENCH : PANAJI
(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA.No.260/PAN/2019
Assessment Year 2009-2010

Bellad Bagewadi Krishi Seva Sahakari Bank Ltd., Bellad Bagewadi Tal Hukkeri Dist. Belgaum Karnataka. PIN 590 005 PAN AAAAT0640C	vs.,	The Income Tax Officer, Ward – 1, Gokak, State-Karnataka.
(Appellant)		(Respondent)

For Assessee :	Shri Praveen P Ghali
For Revenue :	Shri N. Shrikant

Date of Hearing :	17.11.2022
Date of Pronouncement :	21.11.2022

ORDER

This assessee's appeal for assessment year 2009-10, arises against the CIT(A)'s Belgaum order dated 05.01.2019 passed in Case No. CIT(A)/BGM/10129/2018-19, in proceedings u/s. 143(3) r.w.s. 260A of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties. Case file perused.
3. Coming to the assessee's sole substantive grievance that both lower authorities have erred in law and on facts in denying it section 80P(2)(a)(i) deduction of Rs.25,01,300/- in issue, the CIT(A)'s detailed discussion to this effect reads as follows :

10. During the appellate proceedings, the AR of the assessee contended that the Vishwanath Sugars Ltd. is admitted as nominal member of the said assessee society and the company is considered as the regular member of the assessee society as per the definition of "Member" under section 2(f) of the Karnataka Co-operative Society Act, 1959. The AR further claimed that as the Vishwanath Sugars Ltd is a regular member of the assessee society, the interest income received from the said company is a regular income in the course of business of the assessee society i.e. providing credit facilities to the members and hence eligible for deduction 80P(2)(a)(i).

11. The AR further contended that as per section 80P(2)(a)(i) any income attributable to the activities of carrying on business of banking or providing credit facilities to the members shall be deducted from Total Income under the above provisions and in this clause, the word "**attributable**" is used against "**derived**" in respect of income and the term "**attributable**" is wider term than "**derived**" and accordingly income arising directly or indirectly or relating to above activities shall be considered as income of main activities, so any income incidental to the main activities is also deductible. AR further claimed that in case of above assessee society providing all deposit with Vishwaraj Sugar Industry Ltd. and earning interest on such deposits is directly incidental to the main activity of carrying on banking business or providing credit facilities to its members and hence such interest being incidental to the main activity, it shall be considered as the income from main activities and entire interest from VSL shall be allowed as deduction u/s 80P(2)(a)(i).

12. Hon'ble jurisdictional High Court in the case of Tumkur Merchants Souharda Credit Co-operative Ltd., Vs ITO, Ward-1, Tumkur vide I.T.A. No.307 of 2014, dtd:28th October, 2014 while allowing deduction under section 80P(2) of I T Act dealt at length on interest "**attributable**" to rendering credit facilities, para 10 of relevant portion of judgment is reproduced as under:

".....10. In the instant case, the amount which was invested in Banks to earn interest was not an amount due to any members, It was not liability. It was not shown as liability in their account. In fact this amount which is in

Bellad Bagewadi Krishi Seva Sahakari Sangh Ltd.,
ITA No.CIT(A)/BGV/10129/2018-19 – AY: 2009-10

the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there was no takers.....”

The decision clarified what type of interest is attributable to the business of rendering credit facility so that such interest income can be considered for deduction under section 80P(2)(a)(i) of Income-tax Act, 1961.

The emphasis was on a temporary investment of funds which were idle funds. ".....was not immediately required by the assessee for lending money to the members, as there was no takers....."



12.1 From the discussion above, it is clear that society places its idle funds with Banks only to withdraw it back into society to render credit facility to its members and the interest earned on them is attributable to business. But in many society cases, it is observed that, interest from banks earned is not from short term investment. There are no indications of withdrawing the money for the purpose of rendering credit facilities even after a longer period. Most of the times, societies renew such deposits regularly and as such investment increases year after year. In such a situation, it is very un-reasonable to call such interest earned on such investment as "attributable to business" of society. For this fact, I am of the opinion, from the above judgment of Hon'ble High Court that any interest earned by society by placing its "idle funds" with any banks **temporarily** as there were no takers immediately can be attributable to the business income of society and it is eligible for deduction under section 80P(2)(a)(i) of Income-tax act, 1961.

12.2 **However, interest earned on long term i.e.** for more than four quarters of the year, is to be assessed as "income from other sources". Interest on such "investments" is purely income from other sources and that interest earned year after year from the deposits cannot be "attributable" to rendering credit facilities to its members. Income earned on deposits which were not utilized to render credit facilities to its members during any quarter of the year and deposits which were more than one year, I consider as income on investments which clearly fall under the head "Income under Other source". Allowing further deduction under section 80P(2)(a)(i) on such interest, I feel defeats the purpose of very provisions of section 80P(2)(a)(i) which were brought on the statute to societies which run on the principle of mutuality.

12.3 Interest income received from a Co-operative society is eligible for deduction under section 80P(2)(d). In the instant case, the assessee has placed its investment with Vishwanath Sugars Ltd. and not in a co-operative Society. Accordingly, the AO considered

*Bellad Bagewadi Krishi Seva Sahakari Sangh Ltd.,
ITA No.CIT(A)/BGV/10129/2018-19 AY: 2009-10*

interest income for disallowance of 80P on interest income earned from long term deposits placed with Vishwanath Sugars Ltd. of Rs.25,01,300/-. While disallowing the interest income, the AO has allowed proportionate expenses incurred for earning such interest. As discussed above, the AO has brought to tax the net taxable income under income from other sources which is in accordance with law. As the AO has already allowed proportionate expenses on interest income earned from long term deposits, further allowance does not arise, I find the AO's order is in accordance with law and the addition made of **Rs.25,01,300/-** on this issue stands **confirmed**.

4. The Revenue vehemently argued during the course of hearing that since assessee has derived the impugned interest income from long term deposits made with M/s. Vishwanath Sugar Ltd., it does not deserve the impugned deduction as the said interest payer was not a member of the society. I find that the issue of such a membership is no more res integra in the light of hon'ble apex court recent landmark decision in Mavilayi Service Co-operative Bank Ltd., vs., CIT [2021] 431 ITR 1 (SC) wherein their lordships have rejected the Revenue's identical stand seeking to create a distinction between nominal and regular members of an eligible society. This is not the Revenue's case raised during the course of hearing that M/s. Vishwanath Sugars Ltd., is otherwise not a member of this assessee society or its membership violates the provision of the Karnataka state co-operative law, in any manner, whatsoever. The impugned section 80P deduction disallowance is deleted therefore.

5. No other ground or argument has been raised during the course of hearing.

6. This assessee's appeal is allowed in above terms.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 21st November, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. CIT(A) concerned.
4.	The CIT concerned
5.	D.R. ITAT, Panaji 'SMC' Bench, Panaji
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.