

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU (SMC) “B” BENCH, BENGALURU**

Before Shri Chandra Poojari, Accountant Member

ITA No. 1122/Bang/2022 (Assessment Year: 2020-21)		
Sree Renukamba Credit Co-operative Society Ltd. Vinobanagara, PB Road Davanagere 577006 PAN – ABIAS7107E	vs	The Income Tax Officer Ward - 1 Davanagere
(Appellant)		(Respondent)

Assessee by:	Shri Sandeep C, CA
Revenue by:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing:	17.01.2023
Date of pronouncement:	17.01.2023

ORDER

Per: Chandra Poojari, A.M.

This appeal by the assessee is directed against the order of the CIT(A), NFAC, Delhi dated 23.11.2022 for AY 2020-21.

2. The assessee has raised the following grounds of appeal: -

- “1. That the order of the learned Commissioner of Income-tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.*
- 2. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in deciding the appeal ex-parte on the ground that the appellant did not respond to the hearing notices and such finding is perverse as the appellant has sought adjournment.*
- 3. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in not considering the fact that the appellant responded to the intimation u/s 143(1) of the Act*

and not grossly negligent without taking any action to the above said intimation.

4. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in making disallowance of Rs. 14,60,510/- claimed as deduction u/s 80P(2)(d) of the Act even though such disallowance will not come under the purview of intimation u/s 143(1).*
5. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in making disallowance of Rs. 14,60,510/- claimed as deduction u/s 80P(2)(d) of the Act without assigning any reasons.*
6. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in making disallowance of Rs. 14,60,510/- claimed as deduction u/s 80P(2)(d) of the Act even though the appellant is entitled for deduction u/s 80P(2)(a)(i).*
7. *That the intimation u/s 143(1) is bad in law as the proviso to section 143(1) which states that no adjustment specified under section 143(1)(a)(i) to (vi) can be made unless an intimation is given to the assessee of such adjustments is not complied with.*
8. *That the learned Commissioner of Income-tax (Appeals) ought to have disposed off the appeal on merits.”*

3. The crux of the above grounds are that the AO denied deduction under Section 80P(2)(d) of the Income Tax Act, 1961 (the Act) while processing the return under Section 143(1) of the Act. The assessee claimed deduction under Section 80P(2)(d) of the Act of Rs.14,60,510/-. The same has been denied by the AO while processing the return under Section 143(1) of the Act. On appeal the CIT(A) confirmed the same. Against this the assessee is in appeal before the Tribunal.

4. I have heard the rival contentions and perused the material on record. Similar issue came for consideration before the Tribunal in the case of Ravindra Multipurpose Co-operative Society Ltd. in ITA No. 1262/Bang/2019 wherein vide order dated 31.08.2021 it was held as under: -

“4.1. We have considered the rival submissions of both sides in the light of records placed before us.

4.2. The issue that arises for consideration is:

(i) whether the authorities below were justified in denying the claim of the assessee for reduction u/s 80P(2)(a)(i) of the Act. (Grounds 2-4, Additional Ground no.1)

(ii) whether, interest income earned by assessee is eligible for deduction u/s 80P(2)(d) of the Act, whereas the deduction is one claimed u/s 80P(2)(a)(i) of the Act. (Additional ground 2)

5. Ground No.1 is general in nature and therefore do not require any adjudication.

6. Grounds 2-4 & Additional Ground No.1:

In respect of associate/nominal members, Hon’ble Supreme Court in the case of Mavilayi Service Cooperative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC) has held that the expression “Members” is not defined in the Income-tax Act. Hence, it is necessary to construe the expression “Members” in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. In view of this, the facts are to be examined in the light of principles laid down by the Hon’ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. (supra). Accordingly, we remit this issue of deduction u/s.80P(2)(a)(i) of the Act to the file of Ld.AO to examine the same de novo in the light of the above judgment. Needless to say that proper opportunity of being heard is to be granted to assessee in accordance with law.

Accordingly grounds 2-4 and Additional Ground No.1 stands allowed for statistical purposes.

7. Additional Ground 2 is in respect of interest from investment in Co-operative banks, nationalised banks.

7.1 This issue has been decided by coordinate bench of this Tribunal in case of Potters Cottage Industrial Co-Operative Society Ltd., for assessment years 2015-16 in ITA No 1257 & 1258/Bang/2019 by order dated 30-08-2019. This Tribunal observed and decided as under:

“We note that the Ld.AO denied deduction under section 80P(2)(d) of the Act, as well in respect of interest income received by assessee from deposits kept with banks for the years under consideration. The Ld.AO assessed the interest income received from bank deposits under the head income from other sources.

The Ld.Counsel placed reliance on the decision of Hon'ble Karnataka High Court in keep case of Totgars co-operative sale society Ltd. vs ITO reported in (2015) 58 Taxmann.com 35.

We have perused plethora of decisions on this issue by Hon'ble Karnataka High Court and the ratio laid down by Hon'ble Supreme Court. Hon'ble Supreme Court in the case of the Totgars Co-operative Sale Society Ltd. Vs. ITO reported in 322 ITR 283 held that, Income from utilisation of surplus funds was taxable under the head income from other sources, and therefore not eligible for deduction u/s 80P.

Hon'ble Karnataka High Court in case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO reported in 230 Taxman 309, dealt with an issue where deduction u/s.80P(2)(a)(i) of the Act was claimed on interest from the deposits made in a nationalized bank which was used for providing credit facilities to its members. The Assessee therein claimed that the said interest amount is attributable to the credit facility provided by the assessee and forms part of profits and gains of business. Hon'ble Karnataka High Court after considering the decision by Hon'ble Supreme Court in case of Totgars(supra) held that, since the word income is qualified by the expression "attributable" to the business of Banking, is used in Sec.80P(2)(a)(i) of the Act, it has to receive a wider meaning and should be interpreted as covering receipts from sources other than the actual conduct of business. Hon'ble Karnataka Court held that a Cooperative Society that is carrying on with the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, cannot be kept idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act. Hon'ble Karnataka Court distinguished the facts in the decision of the Hon'ble Supreme Court in the case of Totgars (supra) by observing that Hon'ble Supreme Court was dealing with a case where the assessee-cooperative society, apart from providing credit facilities to the members, was also in the business of marketing of

agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the or under Section 80P(2)(a)(iii) of the Act. Therefore, in the facts of Totgars (supra), Hon'ble Supreme Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. The Court also observed that even the Hon'ble Supreme Court made it clear that, they are confining the said judgment to the facts of that case.

Similar view taken in case of Guttigedarara Credit Co-operative Society Ltd. vs. ITO reported in [2015] 377 ITR 464 by Hon'ble Karnataka High Court. In a subsequent decision of Pr.CIT And Anrs vs. Totagars Co-Operative Sale Society reported in 392 ITR 74 in the context of deduction u/s.80P(2)(d) of the Act, it was held by Hon'ble Karnataka high Court that deduction 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 is available under sec.80P(2)(d) of the Act. Hon'ble Karnataka high Court held that decision by Hon'ble Supreme Court in case of Totgars (supra), was not on the deduction claimed u/s.80P(2)(d) of the Act, but was rendered in respect of deduction claimed under Section 80P(2)(a)(i) of the Act.

Hon'ble Karnataka High Court in the case of Pr.CIT Anr. vs. Totgars Co-Operative Sale Society reported in 395 ITR 611 took a different view and held that interest income earned on deposits whether with any other bank will be in the nature of income from other sources and not income from business and therefore the deduction u/s.80P(2)(d) of the Act cannot be allowed to the Assessee. The Hon'ble Court followed decision of Hon'ble Gujarat High Court in the case of SBI Vs. CIT reported in 389 ITR 578, wherein Hon'ble Gujarat High Court dissented from the view taken by the Hon'ble Karnataka High Court in the case of Tumkur Merchants case (supra). It can thus be seen that the ratio laid down by the Hon'ble Karnataka High Court in the case of Totagars Cooperative Sales Society in 395 ITR 611 is that, in light of the principles enunciated by Hon'ble Supreme Court in Totgars Co-operative Sale Society (supra), in case of a society engaged in

providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. Thus interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by assessee with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. This needs to be verified by the Ld.AO.

On the basis of above discussions, and in the interest of Justice we remand this issue back to the Ld.AO to verify the interest earned from investments made in co-operative societies that is eligible for deduction under section 80P(2)(d) of the Act.”

11.2 Respectfully following the above view, we direct the Ld.AO to verify the interest earned on investment earned from co-operative societies and to consider the claim of assessee in accordance with law under section 80p(2)(d) of the Act.

Accordingly these grounds raised by assessee stands allowed for statistical purposes.”

5. In view of the above order of the Tribunal, taking consistent view, the issue in dispute before me is remitted to the file of AO for fresh consideration.

Ordered accordingly.

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

Dictated and pronounced in the open Court on 17th January, 2023.

Sd/-
(Chandra Poojari)
Accountant Member

Bengaluru, Dated: 17th January, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.