

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI 'SMC' BENCH : PANAJI

(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA.No.8/PAN/2019

Assessment Year 2012-2013

M/s. Shiragao Prathamik Krishi Pattin Sahakri Bank Niyamit, Shiragao No.1, Tq. Hukkeri, Dist. Belagavi. Karnataka. PIN 591 309 PAN AABAS7301N	vs.,	The Income Tax Officer, Ward-1(3), Belagavi. Karnataka. PIN 590 001.
(Appellant)		(Respondent)

For Assessee :	Shri S. Gadadi, C.A.
For Revenue :	Shri N. Shrikant

Date of Hearing :	16.01.2023
Date of Pronouncement :	25.01.2023

ORDER

This assessee's appeal for assessment year 2012-13, arises against the CIT(A), Belagavi's order dated 29.11.2017, passed in case ITA.No.154/CIT(A)/BGM/2014-15, in proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. It emerges during the course of hearing that the assessee's instant appeal suffers from 351 days delay in filing which is treated to be attributable to various miscellaneous reasons mainly involving communication gaps as well as administrative approvals. Hon'ble apex court's landmark decision Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) has settled the law long back that all such technical aspects must

make way for the cause of substantial justice. I, therefore, condone the delay.

3. The assessee has raised the following pleadings in the instant appeal :

1. The learned Assessing Officer and honorable CIT (Appeals) have erred in disallowing the statutorily given benefit u/s 80P(2)(d).
2. The honorable CIT (Appeals) have not been verified the applicability of decision of honorable Supreme Court delivered in the case of **The Citizen Co-Operative Society limited v/s Assistant Commissioner of Income Tax, Circle-9(1), Hyderabad** by calling any information, explanation from us regarding the applicability of the said judgment.
3. The honorable CIT (appeals) have simply mentioned in the appellate order that our society is covered by judgment of the honorable supreme court delivered in the case of **The Citizen Co-Operative Society limited v/s Assistant Commissioner of Income Tax, Circle-9(1), Hyderabad** without bringing any such conclusive evidence to prove that facts and issues of case are akin to the cases of citizen co-op society.
4. The honorable CIT (Appeals) have wrongly held that the concept of mutuality is missing in our case which is not existed in our case, as we deal exclusive with the members as ours is primary agricultural co-op society as we are intermediary between the DCC bank and farmers to provide financial assistance to its farmer members through NABARD and DCC Bank.
5. The learned assessing officer and honorable CIT (appeals) have been wrongly taxed the interest earned on SLR and Non SLR deposits without considering the provision of sec 58 of Karnataka co-op Act and applicability of ratio of decision rendered by honorable Karnataka high court in the case of **Tumukur merchants Souhard credit co op limited vs The income Tax officer, I.T.A. NO. 307 OF 2014** regarding **taxability** of interest income.
6. The learned Assessing Officer and honorable CIT (Appeals) have not appreciated the Circular of department CIRCULAR NO. 18/2015 dated 2-11-2015.
7. The appellant craves leave to amend, add, alter or delete any of the above grounds of appeal.
8. For these grounds & other grounds that may be urged at the time of hearing, your petitioner prays to allow the appeal.

4. Coming to the assessee's sole substantive grievance challenging correctness of both the lower authorities action denying sec.80P deduction involving alleged nominal members as well as deposits of surplus funds in various banks, it is noticed that this tribunal's recent coordinate bench's order in ITA.No.17/PAN/2020 in Prathamik Krishi Pattin Sahalkari Niyamit, Salapur vs. ITO decided on 23.11.2022 has rejected the very contentions as follows:

“4. Next comes assessee’s sole substantive grounds on merits that both the lower authorities have erred in law and on facts in rejecting its section 80P(2)(d) deduction claim of Rs.9,35,731/- representing interest income derived from fixed deposits made with M/s. Belgavi District Cooperative Credit Bank, Belagavi for the reason that such receipts from cooperative societies is not eligible for the foregoing relief.

5. I have given my thoughtful consideration to vehement rival contentions and find no merit in the Revenue’s stand in the light of this Tribunal’s recent coordinate bench common order in ITA.Nos.170 & 171/Pune/2018 dated 04.04.2022 in The Belgavi Manufacturers cooperative Industrial Estate Ltd., Udyambag – Belagavi and others vs., ITO, Ward-1(1), Belagavi as follows :

“4. Brief fact is that all the cooperative societies invested their surplus funds in Cooperative Bank and accordingly the interest was earned. The assessee claimed the interest as deduction u/s 80P but the Ld. AO disallowed the deduction for violation of Section 80P(2)(d) of the Income Tax Act (in brevity the Act). In relation to restriction u/s 80P(4) of the Act. The interest was added back with the total income as income amount of Rs.857,533/- as income from other sources. The Revenue authorities had relied on the order of Hon’ble Supreme Court in the case of Totgar Cooperative Sales Society Ltd. V. ITO 188

Taxman 282 (SC). Accordingly the interest earned from Cooperative Bank was added back with the total income of the assessee society. The assessee filed an appeal before the Ld. CIT(A) and the Ld. CIT(A) upheld the order of the Ld. AO, so the assessee filed the appeal for further adjudication before the ITAT.

5. *The Ld. Counsel of the assessee vehemently argued and placed a paper book which is kept in record. According to the Ld. counsel the assessee invested his fund to the Cooperative Bank so the interest earned from the bank is liable for the exemption u/s 80P of the Act. Section 80P(4) is not affected in this particular deduction. The Revenue is wrongly interpreted the section 80P(4) and the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd, supra.*

6. *The Ld. DR vehemently argued and relied that the assessee invested in Cooperative Bank and the interest earned from the Cooperative Bank is not eligible u/s 80P(4). Section 80P(4) only restricted investment in the Cooperative Society not in bank. So the order of the Ld. CIT(A) is maintainable. ITA Nos. 170&171/PAN/2018 & Ors The Begaum Manufacturers Coop.& Ors v. ITO 8*

7. The Ld. counsel further argued that the assessee is registered under Cooperative Society Distt. Belagavi under department of Cooperative, Government of Karnataka bearing certificate no. 10161 dated 29.11.2003. The assessee is eligible for deduction of the interest or dividend derives by its investment which other Co-operative Society & also from co-operative bank. It was argued that the assessee has earned interest from Cooperative Bank which are primarily Cooperative society. So, the assessee is rightly eligible for deduction u/s 80P(2)(d).

8. The Ld. AO took the following observations related explanation of section 80P(4) of the Act as per the assessment order page 3 para 5 and 6 which are recasted as under:-

“5. Explanation to Section 80P(4) of the Income-tax Act, 1961 says that the Cooperative Bank and Primary Agricultural Credit Society shall have the meanings respectively assigned to them in Part-V of the Banking Regulation Act, 1949. The following definitions under Banking Regulation Act, 1949 will help in determining whether any particular Co-operative Society can be treated as Co-operative Bank/ Primary Co-operative Bank or not.

SI. No	Category	Clause/section of Banking Regulation Act, 1949	Definition
1	Co-operative Bank	Clause (cci) of Section 5	Co-operative Bank means a State Co-operative Bank, a Central Co-operative Bank and a
2	Primary Co-operative Bank	Clause (ccv) of Section 5	<p>Primary Co-operative Bank means a Co-operative Society other than a Primary Agricultural Credit Society-</p> <p>(1) the primary object or principal business of which is the transaction of banking business;</p> <p>(2) the paid up share capital and reserves of which are not less than one lakhs of rupees;</p> <p>(3) the bye-laws of which do not permit admission of any other co-operative society as a members.</p>
3	Primary Credit Society	Clause (ccvi) of Section 5	<p>Primary Co-operative Society means a Co-operative society other than a primary agricultural credit society –</p> <p>(1) the primary object or principal business of which is the transaction of banking business;</p> <p>(2) the paid up share capital and reserves of which are not less than one lakh of rupees; and</p> <p>(3) the bye laws of which do not permit admission of any other co-operative society as a member.</p>

6. From the above chart, it is clear that Co-operative Bank includes Primary Cooperative Bank and Primary Co-operative Bank and Primary Co-operative Bank means Co-operative Society- (1) the primary object or principal business of which is the transaction of banking business; (2) the paid up share capital and reserves of which are not less than one lakh of rupees; and (3) the bye-laws of which do not permit admission of any other co-operative society as a member.”

9. We heard the rival submissions and perused the material available on record.

10. Having discharge the matter in the issue of section 80P(2)(a)(i), the claim of assessee for deduction is viewed as follows:-

10.1. The Cooperative Bank wherein the assessee deposited out of its surplus funds for earning interest. Then, the only interest was earned by the assessee on the deposit would be eligible for deduction u/s 80P(2)(d). The definition of the Cooperative Society is bought in larger umbrella under which the Cooperative Banks is performed. In this consideration we relied on the catena of judgments which are as follows:-

a) *In the case of Tumukur Merchants Souhard credit coop limited Vs. The income Tax officer ward-1 Tumkur, [2015] 55 taxmann.com 447 (Karnataka)*

“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 the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State co-operative Bank Ltd., [2011] 200 Taxman 220/12 taxmann.com 66. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set

aside. The substantial question of law is answered in favour of the assessee and against the revenue.

Hence, we pass the following order”

b) In the case of The Commissioner of Income tax vs Gulshan Mercantile Urban Co-Operative Bank Ltd [2013] 29 taxmann.com 8 (All.)

“10. The question as to whether the business is derived from or attributable to SLR or non-SLR funds would not make any difference for the purposes of qualifying the interest earned by the cooperative bank under Section 80P(2)(a)(i) as the deposits of surplus idle money available from working capital, including reserves, excess collection of interest tax and other incomes are all attributable to the business of banking. The interest from such deposits cannot be said to be beyond the legitimate business activities of the bank.

11. For the aforesaid reasons, we do not find that the Income Tax Appellate Tribunal committed any error in arriving at findings that the interest are not deposits of non-SLR funds and the

cooperative bank will qualify for exemption under Section 80P(2)(a)(i) of the Act.”

c) In the case of Kaliandas Udyog Bhavan Memises Co-op Society Ltd. v. Income-tax Officer-21(2)(1), 6547/MUM/2017, AY 14-15 (ITAT-Mumbai), Date of Order-25/04/2018.

“9. We thus in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view taken by the lower authorities that the assessee would not be entitled for claim of deduction under Sec. 80P(2)(d), in respect of the interest income on the investments made with the co-operative bank. We thus set aside the order of the lower authorities and conclude that the interest income of Rs.27,48,553/- earned by the assessee on the investments held with the co-operative bank would be entitled for claim of deduction under Sec. 80P(2)(d).”

d) In the case of Tirupati Campus PH. II CO-OP HOUSING SOCIETY MARYADIT VERSUS THE NCOME TAX OFFICER WARD - 7 (4), PUNE (ITAT_Pune) ITA No.1429/PUN/2018, AY-2015-16, Date of Order 28/02/2019.

“5. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80P(2)(d) of the Act. The claim of deduction by the assessee was denied by the AO with respect to the interest income earned from Saraswat Co-operative Bank on the ground that the same is not a Co-operative Society. I find that the Co-ordinate Bench of the Delhi Tribunal in the case of M/s. The Veer Cooperative Group Housing Society Limited (supra) has held that Sarswat Co-operative Bank to be a Cooperative Society and the interest earned therein to be entitled to claim deduction u/s 80P(2)(d) of the Act. I further find that Co-ordinate Bench of the Mumbai Tribunal in the case of Lady Ratan Tower Cooperative Housing Society Ltd., (supra) and after relying on the decision in the case of Kaliandas Udyog Bhavan Premises Cooperative Society Ltd., (supra) has held that the interest earned on investments held with the Co-operative Banks would be eligible for deduction u/s 80P(2)(d) of the Act.”

10.2. In relation to the judgment of Hon'ble Supreme Court, Totgars Co-operative Sales Society Ltd, supra the counsel has made a comparative chart which is inserted as follows:

... of generation and distribution of electricity."

Clarification regarding non applicability of decision of Totagar Co-operative sale society v/s Principal commissioner of Income Tax, Hubballi due to following factual differences and position of the law.

Sl. No	Point of difference	Totagar Co-operative sale society	Facts of our own case
1	Activity of the society	Engaged in multiple activities.	Engaged in multiple activities.
2	Source of funds	Source was out of fund retained by it out of sale proceeds payable to the members	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 the liability.
3	Nature of fund invested	It is not operational fund society.	It is operational fund of the society.
4	Obligation to deposit	There was no obligation on the part of the society to invest funds in the banks it should have paid the same members from whom goods were bought.	As per provisions of section 58 of co operative society act it is obligatory on us to invest our funds into the modes specified and to maintain the liquidity in the kind of business done by us we cannot lend our entire fund to the members.
5	Nature of interest earned and its nexus to business	Interest income is not attributable to its main business.	Interest income is attributable to its main business, as the society has entered into binding MOU with DCC bank (copy enclosed), which mandates society to invest its entire funds with the DCC bank
6	Maintenance of liquidity	The society is under no obligation to maintain liquidity to the extent of kind of fund invested by it	The society is under obligation to maintain liquidity to the extent of kind of fund invested by it so as to safeguard the interest of depositors in the form of safety, liquidity and return.

10.3. Thus we also find that section 80P(2)(d) of the Act allows whole deduction of income by way of interest or dividend derived by Cooperative Society from its investments with any other co-operative society. This provision does not make any distinction with regard to the source of investment because this section envisages

deduction in respect of any income derived by co-operative society from in his investment with a co-operative society. So the Revenue is not required to look another of investment whether it was formed as required within time or otherwise.

10.4. We have heard the considered of the case of Totagars Co-operative Sales Society Ltd. Supra which was relied by the Ld. DR and find that the Hon'ble Apex Court has dilapidated 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 Totagars Cooperative Sales Society Ltd, [2017] 78 taxmann.com 169 (Karnataka) 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.

10.5. Considering all the judgments of the different High Courts & Tribunals we hereby hold that the investment of assessee in cooperative bank is eligible investment u/s 80P(2)(d) of the Act. The interest of the said investment related to Cooperative Society, assessee is eligible for

*deduction u/s 80P(2)(a)(i) of the Act. Accordingly
the appeals of the assessee are allowed.”*

5. This is indeed coupled with the fact that hon'ble apex court's recent land mark decision in Mavilayi Service Co-operative Bank Ltd. vs. CIT [2021] 431 ITR 1 (SC) has already rejected the Revenue's stand regarding nominal and regular membership of such credit cooperative society. I, therefore, accept the assessee's instant sole substantive grievance in very terms.

6. Learned counsel at this stage invited my attention to the assessee's income derived from harvesting alleged rent and tractor rent as also eligible for sec.80P deduction in light of [2006] 203 CTR 186 (Allahabad) CIT vs. U.P. Co-operative Federation Ltd. I, therefore, direct the Assessing Officer to finalise his consequential/computation in very terms. Ordered accordingly.

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

Order pronounced in the open court on 25.01.2023.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 25th January, 2023
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.