

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.75/Bang/2023 : Asst.Year 2017-2018

The Income Tax Officer Ward - 1 & TPS Tumkur.	v.	M/s.Tumkuru Basaveshwara Credit Co-operative Society Ltd., Janathadal Building Ashoka Road, Near Bus stand Tumkur - 572 101. PAN : AAAAS4169F.
(Appellant)		(Respondent)

Appellant by : Sri.Janardhan Sanathan, JCIT-DR
Respondent by : Sri.Balasubramanyam, CA

Date of Hearing : 03.04.2023	Date of Pronouncement : 05.04.2023
-------------------------------------	---

ORDER

Per George George K, JM :

This appeal at the instance of the Revenue is directed against CIT(A)'s order dated 21.11.2022. The relevant assessment year is 2017-2018.

2. There is a delay of 24 days in filing this appeal. The Revenue has filed a petition for condonation of delay and also an affidavit of the Assessing Officer stating therein the reasons for belated filing of this appeal.

3. We have perused the reasons stated in the affidavit of the A.O. for belated filing of this appeal. We find there is sufficient cause in late filing of this appeal and no laches can be attributed to the Revenue. Hence, we condone the delay in

filing this appeal and proceed to dispose of the matter on merits.

4. The grounds raised read as follows:-

“(i) The CIT(A) has erred in not uploading the decision of AO in withdrawing the deduction claimed u/s 80P(1)(d) of the IT Act ignoring the fact that the said interest income had accrued to the assessee on account of deposits with scheduled Banks which is against the provisions of the IT Act and settled position of law in the case of M/s Totagars Co-operative Sale Society Vs ITO (SC) 322 ITR 283.

(ii) The CIT(A) has erred in allowing the deduction claimed u/s 80P(1) of the IT Act with respect to receipts from E-stamping ignoring the fact that the said receipts are beyond the ambit of regular business operations of the assessee and are not covered by the principle of mutuality.

(iii) The CIT(A) has erred in setting aside the issue of verification to the file of AO, whether extension of credit facilities to the nominated members is an approved activity as per Karnataka Co-operative Societies Act ignoring the fact that nominal members do not have the same rights and facilities such as right to vote, right to participate in activities of the society etc. unlike resident: members who are covered by principle of mutuality.”

5. The brief facts of the case are as follows:

The assessee is a credit co-operative society, registered under the Karnataka Co-operative Societies Act, 1959. For the assessment year 2017-2018, the return of income was filed on 19.10.2017, declaring taxable income of Rs.35,380 after claiming deduction u/s 80P of the I.T.Act amounting to Rs.3,70,52,235. The assessment was selected for scrutiny by issuance of notice u/s 143(2) of the I.T.Act on 09.08.2018. The assessment was completed u/s 143(3) of the I.T.Act vide

order dated 29.11.2019. The total income computed in the assessment order is as under:-

Total income declared by the assessee in the return	Rs.35,380.00
Add : 1. Disallowance of deduction u/s 80P(2)(a)(i) and considered as business income / loss	Rs.1,22,30,068.00
2. Disallowance of deduction u/s 80P(2)(d) and considered as 'income from other sources'	Rs.2,47,36,787.00
3. E-stamping commission, considered as income from other sources.	Rs.85,380.00
4. Disallowance u/s 40(a)(ia) as discussed above.	Rs.9,01,767.00
	Rs.3,79,89,382.00
Total Income R/O	Rs.3,79,89,382.00

6. Aggrieved, the assessee filed appeal before the first appellate authority. The CIT(A) vide the impugned order dated 21.11.2022, disposed of the assessee's appeal. The CIT(A) partly allowed the assessee's appeal.

7. Aggrieved by the order of the CIT(A), the Revenue has filed the present appeal before the Tribunal. The learned Departmental Representative relied on the grounds raised.

8. The learned AR, on the other hand, submitted that the assessee had also filed an appeal before the Tribunal as against the impugned order of the CIT(A) in ITA No.1156/Bang/2022 and the Tribunal vide order dated 10.03.2023 had disposed of the assessee's appeal. The learned AR submitted that the assessee nor the Tribunal were not aware of the Revenue's appeal, since the Revenue had filed appeal only on 13.02.2023, whereas the assessee's

appeal was heard on 02.02.2023 (though the order was pronounced on 10.03.2023). The learned AR further submitted that as regards question No.1 and 3 raised in Revenue's appeal, the issues were already considered in the assessee's appeal by the Tribunal and the same were restored to the files of the A.O. The learned AR submitted that similar issue may be taken as regards ground 1 and 3 in Department's appeal. As regards question No.2 is concerned, the learned AR submitted that commission from e-stamping amounting to Rs.85,380 was never claimed as a deduction u/s 80P of the I.T.Act. Therefore, ground No.2 raised in Department's appeal is out of context.

9. We have heard rival submissions and perused the material on record. The first question raised in Revenue's appeal is regarding the interest income accruing to the assessee on account of investments with scheduled bank, whether it is entitled to deduction u/s 80P(2)(d) of the I.T.Act? We find in assessee's appeal, the Tribunal has confirmed the disallowance claimed u/s 80P(2)(d) of the I.T.Act. However, the Tribunal by following the judgment of the Hon'ble jurisdictional High Court in the case of Totgars Co-operative Sale Society Ltd. reported in 231 Taxman 794, restored the matter to the A.O. The Tribunal directed the A.O. to examine whether the assessee had incurred any expenses for earning the said interest income, which was being assessed as income from other sources u/s 56 of the I.T.Act, and if so, such expenditure ought to be allowed as a deduction u/s 57 of the

I.T.Act. Since the issue in assessee's appeal has already been restored to the files of the A.O., the ground No.1 raised in Revenue's appeal is also restored to the files of the A.O. The A.O. is directed to consider the issue afresh in line with the direction of the Tribunal order in ITA No.1156/Bang/2022 (order dated 10.03.2023).

10. Ground No.2 raised in Revenue's appeal is with reference to the receipts from e-stamping, whether it is entitled to deduction u/s 80P of the I.T.Act? The assessee submits that it had not claimed the receipts from e-stamping as a deduction u/s 80P of the I.T.Act, and therefore, this ground does not survive. We restore the issue raised in ground No.2 to the files of the A.O. The A.O. is directed to examine whether the assessee had claimed deduction with respect to the receipts from e-stamping and decide the matter in accordance with law. It is ordered accordingly.

11. The third ground is with regard to whether the assessee is entitled to the benefit of section 80P of the I.T.Act with regard to credit facilities provided to the nominal members. We find the Tribunal in assessee's appeal (supra) had restored the matter to the A.O. The relevant finding of the Tribunal in this regard reads as follows:-

“.....In section 80P(2)(a)(i), the assessee is entitled to deduction related interest earned from nominal member. The verification is required related to investment to nominal members as per the activity of the trust in purview of Karnataka Co-op Society Act. We remit back the issue to the

*AO for adjudication in light of the observation of the bench.
.....”*

12. In the light of the aforesaid order of the Tribunal in assessee's appeal, we restore ground No.3 also to the files of the A.O.

13. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on this 05th day of April, 2023.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 05th April, 2023.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore