

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.366/Bang/2023
Assessment year : 2017-18

BEE Co-op Credit Society Ltd., No.T-70, BEL Colonyo, Jalahalli, Bengaluru. PAN - AAAAB 0981 A	Vs.	The Income Tax Officer, Ward-6(2)(4), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Madhukar G Hegde, CA
Revenue by	:	Smt. Supriya Rao O.N, Addl. CIT (DR)

Date of hearing	:	21.06.2023
Date of Pronouncement	:	19.07.2023

ORDER

Per Beena Pillai, Judicial Member

The present appeal is filed by the assessee against the order dated 31/3/2023 passed by the NFAC, Delhi for the assessment year 2017-18 on following ground of appeal:-

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. Under the facts and circumstances of the case, the authorities below failed to appreciate that the surplus funds which is

not immediately required for business activities is invested and the interest on such deposits is le for deduction u/s 80P(2)(a)(i) of the Act

3. *The authorities below erred in not appreciating the fact that interest earned on investments made with co-operative banks are eligible for deduction u/s 80P(2)(d) of the Act.*

4. *Without prejudice, if the interest earned on investments with banks is considered as income from other sources, then the Ld.AO ought to have allowed deduction towards proportionate expenditure as held by the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society*

5. *The impugned orders passed by the authorities are illegal and are liable to be set aside in view of the judgment of the Hon'ble ITAT, Mumbai in the case of Manickpur Urban Coop. Society Ltd. Vasai vide ITA.No 3083/Mum/2022 dt 27.02.2023.*

6. *The impugned orders passed by the authorities are illegal and are liable to be set aside in view of the judgment of the Hon'ble High Court of Karnataka in ITA 29/2015 in the case of M/s. Guttigedarara Credit Co-op. Society Ltd. Mysore Vs. ITO, Ward 2(2), Mysore and ITA 307/2014 - M/s. Tumkur Merchants Souharda Credit Co-op. Ltd. Vs. ITO, Ward-1, Tumkur.*

7. *For these and other grounds that may be urged at the time of hearing of the appeal the Appellant prays that the appeal may be allowed.*

8. *The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above."*

2. The brief facts of the case are as under:-

The assessee is a society and filed its return of income on 01/10/2017 declaring Nil income after claiming exemption u/s 80P of the Act of Rs.2,04,97,582/-. The same was processed u/s 143(1) of the Act by CPC. Subsequently, the return was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued.

2.1 As the assessee did not furnish any details of investment/advances/loans given and cash deposits

during the demonetization period, another show cause notice was sent to the assessee. The issue that was raised in the said notice was regarding deduction claimed u/s 80P of the Act.

2.2 The Ld.AO observed that the assessee had claimed exemption u/s 80P(2)(a) of the Act amounting to Rs.1,94,95,980/- and exemption u/s 80P(2)(d) of the Act being interest income of Rs.30,78,608/-. The Ld.AO observed that the assessee earned interest from surplus deposits and securities in cooperative banks/banks as under:-

Sl. No.	Mode	Amount [Rs.]
1	VIJAYA BANK SB INTEREST	85,358
2	STATE BANK OF INDIA INT. ON INSURANCE	29,691
3	SIR M VISVESVARAYA CO-OP. BANK	2,30,953
4	VIJAYA BANK FD INTEREST	79,551
5	SIR M VISVESVARAYA CO-OP. BANK	26,34,165
6	APEX BANK APPADHANA DEPOSIT INTEREST	5,51,753

7	AXIS BANK SB INTEREST	550
8	BDCC BANK APPADHANA DEPOSIT INTEREST	222
9	STATE BANK OF INDIA SB INTEREST	7,756
10	APEX BANK SB INTEREST	56
	TOTAL	36,20,055

2.3 The Ld.AR noted that the assessee had only claimed exemption of Rs.30,78,608/-. The Ld.AO was of the opinion that it is not the business of the assessee to take deposits from the members and generate surplus out of it and reinvest the same in banks to earn interest thereon. He was thus of the opinion that such activities falls outside the purview of sec. 80P(2)(d) of the Act and, therefore, disallowed the claim of assessee u/s 80P(2)(d) of the Act was disallowed.

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

3.1 The CIT(A) relied on the decision of *Hon'ble Suprme Court* in the case of *Totgar Cooperative Sales Society Vs. ITO* reported in (2010) 188 *Taxmann.com* 282 and decision of *Hon'ble Karnataka High Court* in the case of *PCIT Vs. Totgar Cooperative Sales Society* reported in (2017) 83 *Taxmanno.com* 140 to upheld the addition made by the Ld.AO.

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

4.1 The Ld.AR submitted that in the instant case, the assessee did not carry on business of bank. It is submitted that it carried on the business of providing credit facilities to its members. The Ld.AR submitted that assessee is a co-operative society and carrying on the business of providing credit facility to members. They also accept deposits from members. During the AY 2017-18 they have carried on the said business with their members only and have not done any business with non members.

4.2 It is submitted that the assessee is an employees co-operative society and the members are employees of Bharat Electronics Ltd., only and no outsiders are admitted as members. The Ld.AR further submitted that Clause 7(2) and 7(3) of the bye-laws clearly restricts the memberships and no outsiders except the permanent employees of Bharat Electronics are allowed to be members of the society.

4.3 The Ld.AR submitted that the judgment rendered by the *Hon'ble Supreme Court* in the case of *The Citizen Co-operative Society Limited, Hyderabad Vs. ACIT* reported in 397 ITR 1 is not applicable to assessee as, they are dealing with members only unlike the said society before

Hon'ble Supreme Court submitted that where the transactions were carried out with non members. The Ld.AR submitted that para 18 of the *Hon'ble Supreme Court* judgment in said case states that, there cannot be any dispute to the proposition that section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co- operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee. Therefore, it hardly needs to be emphasized that all those co-operative societies which fall within the purview of Section 80P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof.

4.4 It is submitted by the Ld.AR that the primary object of the assessee is not to carry on business of banking as observed by the revenue authorities. The primary objects inter alia include promotion of self-help, co-operative attitude, providing credit facilities, other facility for the members etc. Therefore, it cannot be said that assessee is carrying on the business of Banking. The assessee submitted, accordingly Section 80P (4) does not apply to assessee.

4.5 The Ld.AR further submitted that, the major portion of the investment was in cooperative bank i.e eligible for deduction u/s 80P(2)(d) of the Act. He submitted that the Act does not provide for any distinction between the investment and any income received by the assessee being cooperative society from another cooperative society would be eligible for deduction u/s 80P(2)(d) of the Act. He, thus prayed for exemption to be allowed as claimed by the assessee.

5. On the contrary, the Ld.DR relied on the orders passed by the lower authorities.

6. We have pursued the submissions advanced by both the sides in the light of the records placed.

6.1 The solitary issue raised for contention is regarding eligibility of exemption of income received by the assessee from cooperative banks/banks during the year under consideration and that has been listed herein above in the preceding paragraphs. In the recent decision by the coordinate bench of this Tribunal in the case of M/s University of Agricultural Employees House Building CO-op Society Ltd., in ITA No.319/Bang/2023 for the assessment year 2016-17 vide order dated 18/05/2023 observed and held as under:-

4.1 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 Cooperative 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.

5. This Tribunal in case of M/s. Bhavasar Kshtriya Co-operative Credit Society Ltd. vs. ITO/ADIT in ITA Nos. 581 to 583/Bang/2022 by order dated 19.10.2022 wherein it was held as under:

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 cooperative societies. According to banking Regulations Act, a co-operative society bank as the same meaning of the cooperative 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 cooperative 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 Cooperative 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.Coop.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 subsection (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.”

5.1 We note that the facts and circumstances are identical in the present assessee’s case, with that in the case of M/s. Bhavasar Kshtriya Co-operative Credit Society Ltd. vs. ITO/ADIT (supra).”

6.2 From the above discussion, we hold that the assessee is eligible for 80P(2)(d) deduction in respect of interest earned from co-operative banks based on the view taken in the above decision. It is directed that any interest earned by the assessee from commercial banks may be considered. under the head Income from other sources by granting benefit available to the assessee u/s. 57 of the Act.

6.3 We direct the Ld.AO to follow the directions therein and to compute the deduction in the hands of the assessee in accordance with law.

7. In the result, the appeal of the assessee stands allowed for statistical purpose.

Order pronounced in court on 19th July, 2023

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, 19th July, 2023
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.