

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos.479 & 480/Bang/2023
Assessment years : 2017-18 & 2018-19

The West Coast Paper Mill Employees Souhardha Credit Co-op. Ltd., Bangurnagar, Dandeli, Haliyal – 581 325. <b>PAN : AAAAT 3512F</b>	Vs.	The National e-Assessment Centre, New Delhi / ITO, Ward 1(7), Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri Nagaraj K.H., CA
Respondent by	:	Smt. Vidya K., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.08.2023
Date of Pronouncement	:	22.08.2023

**ORDER**

*Per Bench*

These appeals are against the DIN & Orders No.ITBA/NFAC/S/250/2023-24/1052519504(1) and No. ITBA/NFAC/S/250/2023-24/1052520565(1) both dated 02.05.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi (NFAC) for the AYs 2017-18 & 2018-19.

2. Since the grounds and issues involved in these appeals are similar, these appeals were heard together and disposed of by this common order for the sake of convenience and brevity. The grounds raised in AY 2017-18 as follows:-

- “1.0 The assessment order passed u/s. 143(3) of the Income Tax Act, 1961 dated 19/11/2019 by the Income Tax Officer, Ward-1 (7), Hubli is erroneous to the facts and law and the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the assessment order.
- 2.0 The learned Income Tax Officer, Ward-1(7), Hubli has erred in disallowance of Rs. 9,93,255/- 80P(2)(a)(i) of the Income Tax Act, 1961 and the learned Commissioner of Income Tax (Appeals), National .Faceless Appeal Centre has erred in law and facts in confirming the additions.
- 3.0 The learned Income Tax Officer, Ward-1(7), Hubli has erred in disallowance of Rs. 9,93,255/ - which is allowable under section 80P(2)(a)(i) or 80P(2)(d) and hence, addition to the income and the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in law and facts in confirming the additions to the extent of Rs. 9,93,255/-.”

3. The brief facts of the case are that the assessee filed its return of income for AY 2017-18 on 27.10.2017 declaring gross total income of Rs.68,98,443 and after claiming deduction u/s. 80P(2)(a)(i) of the same amount, NIL income was declared. The case was selected for scrutiny and statutory notices were issued to the assessee. From the documents furnished, the AO observed that the assessee is a Souhard Co-operative registered under the Karnataka Souhard Sahakari Act, 1997 and not

under the Karnataka Co-op. Societies Act, 1959. The assessee has maintained books of accounts and obtained audit report u/s. 44AB as per the provisions of Karnataka Souhard Sahakari Act, 1997. The AO noted that assessee has claimed deduction u/s 80P(2)(a)(i) of the Act and assessee submitted that society is providing credit facilities to its members which is claimed as deduction. It is dealing with members who are employees of the assessee and apart from providing financial services the assessee is also engaged in purchase and supply of daily needs products like grains, edible oils and other daily needs exclusively for its members and maintained separate trading account for consumer business. The AO noted that deduction u/s 80P(2)(a)(i) of the Act is provided to a co-operative society and in the absence of registration under Karnataka Co-op. Societies Act, 1959, the AO disallowed the claim of deduction amounting to Rs.63,48,443. Further the AO noted that the assessee has received interest income of Rs.9,93,255 on account of interest on investment with KCC Bank in FD/RFD and disallowed the same u/s. 80P(2)(a)(i). The CIT(Appeals) confirmed the disallowance of Rs.9,93,255 made by the AO. Aggrieved, the assessee is in appeal before the Tribunal on this issue.

4. The Id. AR reiterated the submissions made before the lower authorities and filed written synopsis which is as under:-

“The learned AO has relied upon the decision of the Hon'ble ITAT, Bangalore in the case of M/s. Udaya Souhardha Credit Co-operative Ltd in ITA No.2831/Bang/2017 dated 17.08.2018 and held that the assessee is registered under the Karnataka Souhardha Sahakari Act, 1997 and therefore does not qualify to

be a Co-operative Society as per the provisions of Section 2(19) of the Act. The learned CIT(A) has considered the submissions of the assessee had held that the assessee is eligible to claim deduction u/s. 80P(2)(i) of the Act from the interest income earned from its members. But, the learned CIT(A) has sustained the additions to the extent of Rs. 9,93,255/- (Interest and dividend income received from Co-operative Banks) and relied on the decision of the Hon'ble Supreme Court in the case of M/ s. Totgar Cooperative Sale Society Limited Vs ITO [ITR 283(SC)]. The learned CIT(A) has erred on law and facts for the simple reasons that the assessee is a Credit Co-operative society and, whereas Totgars Co-operative is a "Sales Society." The Hon'ble ITAT, Bangalore in various decisions has distinguished the facts and allowed the deduction on the interest income earned/received by a Co-operative Society from Co-operative banks.

The Learned AO and The NFAC has not considered the decision of Hon'ble ITAT, Bangalore in the case of M/s. The Jayanagar Co-operative Society Ltd in ITA No. 3254/Bang/2018, Date of decision 23 July 2019.

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As per the provisions of Section 80P(1) of the Income Tax Act, 1961, the income of a Co-operative Society specified in Section 80P(2) of the Act is eligible for deduction in computing total income of the assessee.

.....

The jurisdictional High Court of Karnataka in the case of CIT Vs. M/s. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot reported in [2015] 56 Taxmann.com 280 (Karnataka) has held as under:

"Assessee, a credit co-operative society, engaged in providing credit facilities to its members only, was entitled to claim deduction under section 80P(2)(a)(i)."

In view of the above, assessee credit co-operative society is eligible to claim deduction u/s. 80P(2)(a)(i) of the Income Tax Act, 1961. The interest income earned by the credit co-operative

society from investments and deposits is attributable to its business activities and therefore is eligible for deduction u/s. 80P(2) of the Income Tax Act, 1961. ....

the jurisdictional Hon'ble High Court of Karnataka in the case of M/s. Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO, Ward-5, Tumkuru reported in [2015] 55 taxmann.com 447 (Karnataka), has held 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 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. ...."

The Hon'ble ITAT, 'B' Bench, Bengaluru in the case of M/s. Shri Siddasiri Pattina Souharda Sahakari Niyamita reported in [2015] 61 taxmann.com 332 has held as under

"Where assessee was in business of providing credits to its members and earned interest on deposits in bank which were out of deposits received from members, interest earned was exempt under section 80P and, accordingly, assessee was entitled to section 80P(2)(a)(i)."

In view of the above, it is- submitted that the interest and dividend income earned by the assessee from Co-operative banks is also eligible for deduction u/s. 80P(2)(i) of the Income Tax Act, 1961 and therefore it is requested to delete the additions of Rs. 9,93,255/- confirmed by the learned CIT(A).

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It is also submitted that the Hon'ble ITAT, Bangalore in appellant's own case for A.Y. 2010-11 in ITA No. 638/Bang/2015, Date of decision 14/08/2015 has considered and allowed deduction u/s. 80P of the Act. Thus, it is respectfully

submitted that the deduction claimed u/s. 80P(2)(a)(i) of the Act on the interest income earned from Co-operative banks is covered by appellants's own decision rendered by the Hon'ble ITAT, Bangalore.

The Learned AO has allowed interest received from Co-op bank u/s 80P in the AY 2020-21.”

5. The Id. AR further submitted that the deposits were made under the provisions of Karnataka Souharda Sahakari Act, 1997 which are required to be maintained mandatorily with the banks. Therefore, interest earned on such deposits are attributable to regular business activity of the assessee. Therefore, the assessee is eligible to claim deduction u/s. 80P(2)(a)(i) of the Act on interest received. Alternatively, he submitted that if deduction u/s. 80P(2)(a)(i) is not allowed, then necessary cost of fund for earning income u/s. 57 should be granted to the assessee.

6. The Id. DR relied on the orders of lower authorities.

7. Considering the rival submissions, we note that the assessee is a Souharda Co-operative Society registered under Karnataka Souharda Sahakari Act, 1997 and providing credit facilities to its members and on such income deduction is claimed u/s. 80P(2)(a)(i) of the Act. The Id. AR stated that assessee is required to maintain certain funds as per the statutory requirements under the Karnataka Souharda Sahakari Act, 1997, accordingly the said fund cannot be lent to the members. During the year, the assessee has received interest of Rs.9,93,255 from investments in FD/RFD from DCCB. The issue raised by assessee that

it is eligible for deduction u/s. 80P(2)(a)(i) of the Act. The assessee has received interest on deposits from DCCB but not the interest from credit facilities provided to members during the ordinary course of business. However the Id. AR submitted that the assessee is required to maintain certain funds as per the relevant Act/Rules but he has not shown under which Act/rules and how much funds are required to deposited. Since the assessee is registered under the Karnataka Souharda Sahakari Act, 1997 therefore the issue is remitted back to the file of the AO and assessee is directed to demonstrate the mandatory requirement for following the mandatory maintaining of funds as per Karnataka Souharda Sahakari Act, 1997. If it is found in order, then the amount of deposits which are required to be maintained as per statutory requirement and interest earned to such extent will qualify for deduction u/s. 80P(2)(a)(i) of the Act. However, interest earned on deposits exceeding the statutory requirement will not be considered for allowing deduction u/s. 80P(2)(a)(i) of the Act. This issue is partly allowed. Further, the assessee has also raised issue in regard to deduction u/s. 80P(2)(d) on such interest received is also not sustainable because the assessee has not received the interest from co-operative society. Accordingly this issue raised by the assessee is also dismissed.

8. The Id. AR of the assessee further raised alternative ground that the expenditure should be allowed towards earning of such income. We are in agreement that the necessary expenditure should be allowed towards earning of such income. We note that this issue has been

decided by the Hon'ble High Court of Karnataka in the case of Totgars Co-operative Sale Society [2015] 58 taxmann.com 35 [Kar] wherein it is held as under:-

“12. It is no doubt true that the appellant did initially claim deduction under Section 80P(2). Upon the pronouncement of the order by the Apex Court, in these appeals referred to supra, the income earned on the interest is declared as "other income" falling under Section 56 of the Income Tax Act. Then the next immediate question that follows is as to whether the entire fund i.e., in deposit with the Bank is taxable or the proportionate expenditure incurred by the appellant requires deduction. It is logical that when the Revenue is permitted to assess and recover taxes from assessee under Section 56 by treating the income earned by interest as income from "other sources", the appellant shall be entitled for proportionate expenditure cost incurred in mobilizing the deposit placed in the Bank/s. What can be taxed is only the net income which the appellant earns after deducting cost and expenditure incurred and administrative expenses incurred by the assessee.”

9. Respectfully following the above judgment of the Hon'ble High Court of Karnataka, we hold that the assessee is entitled for cost of funds and only the net interest income is taxable u/s. 56 of the Act. Considering the alternative submissions this issue is remitted to the file of AO for determination of net income after set off of cost of funds/interest expenditure in earning the interest income for the purpose of taxability u/s. 56 of the Act as per law. Needless to say that the assessee may be given reasonable opportunity of being heard and the assessee is directed to produce all the relevant documents to

substantiate its claim and avoid seeking unnecessary adjournment for early disposal of the case. This issue is allowed for statistical purposes.

10. The appeal for AY 2107-18 is partly allowed for statistical purposes.

11. The facts being identical in AY 2018-19, therefore the decision in the appeal for AY 2017-18 applies mutatis mutandis.

12. In the result, both the appeals by the assessee are partly allowed for statistical purposes.

Pronounced in the open court on this 22<sup>nd</sup> day of August, 2023.

Sd/-

Sd/-

( GEORGE GEORGE K.)  
VICE PRESIDENT

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,

Dated, the 22<sup>nd</sup> August, 2023.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.