

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT**

ITA No.478/Bang/2023
Assessment Year : 2017-18

M/s. Kachur Credit Co-operative Society Ltd., 15-20-1227/6, Lower Ground Floor, Essel Wilcon Below Radha Medicals, Bendorewell, Kankanady, Mangalore – 575 002. <b>PAN : AAATK 8754 H</b>	Vs.	ITO, Ward - 2(2), Mangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Kashinath Kalamath, Advocate
Revenue by	:	Shri. Ganesh R Ghale, Advocate, Standing Counsel for Revenue.

Date of hearing	:	21.09.2023
Date of Pronouncement	:	26.09.2023

**ORDER**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 17.12.2022, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. There is a delay of 135 days in filing this appeal. The assessee has filed a petition accompanied with affidavit of the CEO stating therein the reasons for the belated filing of this appeal. We are of the view that the delay in filing the appeal is on the fault of the concerned tax practitioner and no laches can be attributed to the assessee. There is a reasonable cause for belated filing of this appeal. Hence, we condone the delay and proceed to dispose off the appeal on merits.

3. The solitary issue that is raised is whether CIT(A) is justified in confirming the disallowance of claim under section 80P(2)(a)(i) / 80P(2)(d) of the Act with respect to interest income amounting to Rs.5,07,822/- earned on investments with South Canara District Central Co-operative Bank Ltd.

4. Brief facts of the case are as follows:

Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in the business of providing credit facilities to its members. For the Assessment Year 2017-18, the return of income was filed on 24.10.2017 declaring 'Nil' income after claiming deduction under section 80P of the Act amounting to Rs.16,55,060/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 13.08.2018. Assessment was completed under section 143(3) of the Act vide order dated 30.03.2019 wherein the claim of deduction under section 80P of the Act was denied by the AO. The disallowance made by the AO was as under:

- “(a) an amount of Rs. 5,07,822/- as being interest income earned on fixed deposits held with cooperative banks and:*
- (b) further, the Learned Assessing Officer has observed that as per the bye laws of the appellant society there are 04 types of members viz. Class — A, Class — B, Class — C and Class — D. Only Class — A members are eligible to vote, get elected as Director and share in dividend. Class B, C & D members cannot vote and cannot become Director. Class C members are not entitled to dividend. In view of the varying rights of the different classes of members, the Lamed Assessing Officer opined, that the fundamental principle of mutuality requiring a nexus between members as contributors and as participators is missing. Therefore, disallowed an amount of Rs. 11,47,238/-*

*holding that the appellant had violated the principle of mutuality.”*

5. Aggrieved, assessee filed appeal before the First Appellate Authority (FAA). The CIT(A) partly allowed the appeal of the assessee by granting deduction under section 80P(2)(a)(i) of the Act amounting to Rs.11,47,238/-. As regards interest income received from South Canara District Central Co-operative Bank Ltd., amounting to Rs.5,07,822/-, the claim of the assessee under sections 80P(2)(a)(i) and 80P(2)(d) of the Act was rejected by the CIT(A). The relevant finding of the CIT(A) reads as follows:

*“6.1 In view of the para 4.14 (a) supra, the appellants alternative arguments fails. As per the interpretation of section 80P by the Hon'ble Supreme Court, the appellant would be eligible for deduction only on that component of the total income which is attributable to activity specified in Section 80P(2). The income earned by the co-operative society from ancillary activities is not entitled for exemption under section 80P (2) (a). Therefore, the Income by way of interest of Rs.5,07,822/- earned by the appellant on deposits held with South Canara District Central Co-operative Bank Ltd would not be entitled for deduction under section 80P (2) (a).*

*6.2 The appellant vide its submission cited supra argued that the Income by way of interest of Rs.5,07,822/- earned by the appellant on deposits held with South Canara District Central Co-operative Bank Ltd would not be entitled for deduction under section 80P (2) (d). However, in view of para 4.14 (d) supra, the appellant is not eligible for deduction on the said income under section 80P (2) (d). due to Section 80P (4). Section 80P (4) is to be read as a proviso which excludes co-operative banks from the word cooperative societies in section 80P. Therefore, the appellant is not entitled deduction under section 80P (2) (d) for income earned on deposits held with co-operative bank.”*

6. Aggrieved, the assessee has filed the present appeal before the Tribunal. The learned AR submitted that the investments are made with the Central Co-operative Banks and is in compliance with the requirements under the Karnataka

State Co-operative Societies Act, 1959 and Rules, and as such is entitled to be assessed as income from business for which deduction under section 80P(2)(a)(i) of the Act is to be allowed. In this context, the learned AR relied on the order of the Bangalore Benches of the Tribunal in the case of Bharat Co-operative Credit Society Vs. ITO for Assessment Year 2015-16 in ITA No.793/Bang/2022 (order dated 28.11.2022). Therefore, it was submitted that the issue may be restored to the AO for examination whether the investments are made with the Central Co-operative Banks under the relevant Acts and Rules which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act.

7. The learned Standing Counsel supported the order of the CIT(A).

8. I have heard the rival submissions and perused the material on record. The solitary issue for adjudication is whether a sum of Rs.5,07,822/- can be allowed as a deduction under sections 80P(2)(a)(i) of the Act. Admittedly, the amount of Rs.5,07,822/- has been received by the assessee from South Canara District Central Co-operative Bank Ltd. It is the claim of the assessee that the amounts are invested in compliance with the relevant Acts and Rules. On identical facts, the Bangalore Bench of the Tribunal in the case of Bharat Co-operative Credit Society Vs. ITO (supra) by following the Co-ordinate Bench's order in the case of Vasavamba Co-operative Society Ltd., Vs. PCIT in ITA No.453/Bang/2020 (order dated 13.08.2021) had stated that if the investments made with the Central Co-operative Bank is out of compulsions under Karnataka State Co-operative Societies Act, 1959 and Rules, the income received from such investments would be entitled to the benefit of deduction under section 80P(2)(a)(i) of the Act. The relevant finding of the Tribunal in the case of Bharat Co-operative Credit Society Vs. ITO (supra) reads as follows:

*“7.1 In the instant case, it was contended that majority of the interest income is earned out of investments made with Cooperative Banks and is in compliance with the requirement under the Karnataka Co-operative Societies Act and Rules. If the amounts are invested in compliance with the Karnataka Co-operative Societies Act, necessarily, the same is to be assessed as income from business, which entails the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act. Insofar as deduction u/s 80P(2)(d) of the I.T.Act is concerned, we make it clear that interest income received out of investments with cooperative societies is to be allowed as deduction.”*

9. In view of the above order of the Tribunal, I restore the issue to the files of the AO to examine whether interest income received amounting to Rs.5,07,822/- from South Canara District Central Co-operative Bank Ltd., is out of compulsions and in compliance with the Karnataka State Co-operative Societies Act, 1959 and the relevant Rules. If it is so, the same interest income is to be assessed as income from business which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act. With the aforesaid observation, I restore the matter to the AO. It is ordered accordingly.

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

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(GEORGE GEORGE K)  
Vice President**

Bangalore.

Dated: 26.09.2023.

/NS/\*

Copy to:

1. Appellants
2. Respondent
3. DRP
4. CIT
5. CIT(A)
6. DR, ITAT, Bangalore.
7. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.