

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

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA No.517/Bang/2023
Assessment Year : 2017-18

M/s. Canara Bank Staff Credit Co-operative Society Ltd., No.26, 8 th Main Road, 6 th Cross, Sampangiramanagar, Bengaluru – 560 027. PAN : AAAAC 0152 A	Vs.	ITO, Ward – 7(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Suresh Muthukrishna A, CA
Revenue by	:	Shri. Ganesh R Ghale, Advocate, Standing Counsel for Revenue.

Date of hearing	:	03.10.2023
Date of Pronouncement	:	03.10.2023

ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 16.05.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. The grounds raised read as follows:

1. *The order of the learned AO in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The authorities below are not justified in disallowing the deduction of Rs. 15,06,020/- claimed u/s. 80P(2)(a)(i) and also u/s 80(2)(d) of the Act under the facts and in the circumstances of the appellant's case.*
3. *Without prejudice to the above, the authorities below have also erred in denying the claim of the appellant u/s. 80P(2)(d) of the Act under the facts and circumstances of the Appellant's case.*

4. *Without prejudice to the above, the authorities below have erred in denying the claim of the Appellant u/s. 80P(2)(a)(i) on Rs. 13,68,973/- being the Interest earned of the Statutory deposits maintained by the Society against the reserve fund in terms of the provisions of the Bye Laws of the Society as well as the provisions of the Karnataka Co-Operative Societies Act, 1959.*
5. *The Appellant denies itself being liable for Interest u/s. 234B, under the facts and circumstances of the case.*
6. *The Appellant craves leave of your Honour to add, alter, amend, rectify, and delete any of the grounds urged above.*
7. *For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant humbly prays that the appeal may be allowed, and Justice rendered.*

3. Brief facts of the case are as follows:

Assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. For the Assessment Year 2017-18, the return of income was filed on 30.10.2017. In the return of income, assessee had claimed deduction under section 80P(2)(a)(i) of the Act amounting to Rs.68,03,876/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act was served on the assessee on 09.08.2017. The assessment was completed under section 143(3) of the Act vide order dated 20.12.2019 wherein a sum of Rs.17,15,349/- (claimed as deduction under section 80P(2)(a)(i) of the Act out of Rs.68,04,876/-) was disallowed by treating the same as income from other sources. The AO noticed that interest income received by the assessee was out of investments made with banks and consequently he held that assessee is not entitled to deduction under section 80P(2)(a)(i) of the Act to the extent of Rs.17,15,345/-. The AO relied on the judgment of Hon'ble jurisdictional High Court in the case of PCIT Vs. Totgars Co-operative Sales Society reported in 395 ITR 611 (Karn.).

4. Aggrieved by the Assessment Order, the assessee society filed appeal before the First Appellate Authority. The CIT(A) partly allowed the appeal of the

assessee by allowing the claim of deduction under section 80P(2) of the Act amounting to Rs.2,09,329/- [refer para 7.15 of the impugned order of CIT(A)]. However, the CIT(A) did not grant deduction under section 80P(2)(a)(i) nor under section 80P(2)(d) of the Act to the extent of Rs.17,15,349/-.

5. Aggrieved, assessee has filed this appeal before the Tribunal. The learned AR submitted that the assessee society is mandated to maintain a reserve fund in terms of section 57(2) of the Karnataka Co-operative Societies Act, 1959 and same has to be deposited in co-operative banks and other reputed institutions as secured bonds. It is submitted that these investments are made out of compulsion as per the Karnataka Co-operative Societies Act, 1959 and the relevant Rules. Consequently, the same need to be treated as “business income” entailing the benefit of deduction under section 80P(2)(a)(i) of the Act. In this context, the learned AR relied on the judgment of the Hon’ble Apex Court in the case of CIT Vs. Karnataka State Co-operative Apex Bank in Civil Appeal Nos.4646-4648 of 2000, reported in 251 ITR 194 (SC).

6. The learned Standing Counsel supported the orders of the AO and the CIT(A).

7. I have heard the rival submissions and perused the material on record. The interest income is received out of investments made with Apex Co-operative Bank. It is the case of the assessee that the investments are made out of compulsions as per the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. The Hon’ble Apex Court in the case of CIT Vs. Karnataka State Co-operative Apex Bank (supra) had held that when amounts are invested by the Co-operative Societies as per the statutory requirements, the same would be entitled to

deduction under section 80P(2)(a)(i) of the Act. The Hon'ble Apex Court considered the following question of law:

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the interest income arising from the investment made out of reserve fund is exempt under section 80P(2)(a)(i) of the Income-tax Act, 1961?”

8. In considering the above question, the Hon'ble Apex Court rendered the following findings:

“4. This judgment was cited before the Bench of two learned Judges which decided the case of the Bangalore District Co-operative Central Bank Ltd. (supra). It was considered as having been rendered on its own facts and not applicable to the case of Bangalore District Co-operative Central Bank Ltd. (supra) in view of the finding of the Tribunal that the income in question was attributable to the business of that assessee. The Court referred to the Banking Regulation Act, the Karnataka Co-operative Societies Act and the Karnataka Co-operative Societies Rules, which showed that the investments that had been made by the assessee were in compliance with the statutory provisions and in order to carry on the business of banking. They were necessary and consequently, they were part of the business activities of the assessee falling within the scope of section 80P(2)(a)(i).

5. We do not agree with the finding of the Bench which decided the Bangalore District Co-operative Central Bank Ltd.'s case (supra) that the decision in the case of M.P. Co-operative Bank Ltd. (supra) was rendered on its own facts. The latter decision was clearly a reasoned decision.

6. The question is whether we agree with the reasoning in M.P. Co-operative Bank Ltd.'s case (supra). There is no doubt, and it is not disputed, that the assessee-co-operative bank is required to place a part of its funds with the State Bank or the Reserve Bank of India to enable it to carry on its banking business. This being so, any income derived from funds so placed arises from the business carried on by it and the assessee has not, by reason of section 80P(2)(a)(i), to pay income-tax thereon. The placement of such funds being imperative for the purposes of carrying the banking business, the income derived therefrom would be income from the assessee's business. We are unable to take the view that found favour with the Bench that decided the case M.P. Co-operative Bank Ltd. (supra) that only income derived from

circulating or working capital would fall within section 80P(2)(a)(i). There is nothing in the phraseology of that provision which makes it applicable only to income derived from working or circulating capital.

7. *In the premises, we take the view that the decision of this Court in the case of M.P. Co-operative Bank Ltd. (supra) does not set down the correct law and that the law is as we have put it above. The question, accordingly, is answered in the affirmative and in favour of the assessee.”*

9. A similar view that has been held by the Hon'ble Andhra Pradesh High Court in the case of CIT-II, Hyderabad Vs. Andhra Pradesh State Cooperative Bank Ltd., reported in 336 ITR 516 (AP).

10. The Bangalore Bench of the Tribunal in the case of M/s. The Bharathi Co-operative Credit Society Vs. ITO in ITA No.793/Bang/2022 (order dated 28.11.2022) for Assessment Year 2015-16, following its earlier order in the case of M/s. Vasavamba Co-operative Society Ltd., Vs. The PCIT in ITA No.453/Bang/2020 (Order dated 13.08.2021), had rendered a similar finding which 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.”

11. In light of the aforesaid reasoning and the judicial pronouncements cited supra, we restore this issue to the files of the AO. The AO is directed to examine whether the amounts invested with Apex Co-operative Bank and other banks, are out of compulsions under the Karnataka Co-operative Societies Act, 1959, and the

relevant Rules. If it is found that the investments are made out of compulsions under the Act and the relevant Rules, the interest income received out of the investments made under such compulsions would be liable to be taxed as “business income” which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act. With the aforesaid observation, we restore the matter to the AO. It is ordered accordingly.

12. 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: 03.10.2023.

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

By order

Assistant Registrar,
ITAT, Bangalore.