

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

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA No.628/Bang/2023
Assessment Year : 2017-18

M/s. The Metropolitan Co-operative Housing Society Ltd., No.21, Grund Floor, Vidhana Soudha, Vidhana Veedi, Bengaluru – 560 001. PAN : AAAAT 0990 P	Vs.	ITO, Ward – 1(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sandeep Chalapthy, 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 09.05.2023, 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 48 days in filing this appeal. The assessee has filed an application for condonation of delay stating therein the reasons for belatedly filing this appeal. On perusal of the same, I am satisfied that there is reasonable cause in filing this appeal belatedly and no laches can be attributed to the assessee. Hence, I condone the delay of 48 days in filing this appeal and proceed to dispose off the same on merits.

3. Brief facts of the case are as follows:

Assessee is a house building co-operative society. For the Assessment Year 2017-18, assessee filed the return of income declaring Nil income, after claiming deduction amounting to Rs.42,69,224/- under section 80P(2)(d) of the Act. The assessment was selected for complete scrutiny and notice under section 143(2) of the Act was issued on 13.08.2018. The assessment was completed under section 143(3) of the Act vide order dated 29.12.2019 wherein the claim of deduction under section 80P(2)(d) of the Act was denied. The reason for denying of claim under section 80P(2)(d) of the Act was that the assessee earned interest income from investments with Canara Bank and Apex Co-operative Bank. In holding so, the AO relied on the judgment of the jurisdictional High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd., Vs. ITO reported in 395 ITR 611 (Karn.).

4. Aggrieved by the order of the assessment, assessee filed appeal before the First Appellate Authority. The CIT(A), vide the impugned order, dismissed the appeal of the assessee and confirmed the view taken by the AO. The CIT(A) held that interest income from deposits kept with scheduled banks and co-operative banks are to be taxed under the head "Income from Other Sources" and the nature of income cannot be changed to business income. Therefore, it was concluded that assessee is not entitled to the benefit of deduction under section 80P(2)(d) nor under section 80P(2)(a)(i) of the Act in respect of interest income earned out of investments with scheduled banks and co-operative banks.

5. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book enclosing therein the case laws relied on, the statement of total income for the relevant Assessment Year, the

financial statement for the year ending 31.03.2017, letter from BDA, the English translation of the same and the performance guarantee to Canara Bank.

6. The learned AR reiterated the submissions made before the AO and the CIT(A) and 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).

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

8. I have heard the rival submissions and perused the material on record. Out of the claim of deduction under section 80P(2)(d) of the Act, the learned AR submitted that a sum of Rs.18,08,198/- is received from Apex Co-operative Bank. It was submitted that these investments with the Apex Co-operative Bank is on account of compulsions as per the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. Therefore, it was contended that the said amount is entitled for deduction under section 80P of the Act. 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 (supra). 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?”

9. 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.”

10. 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).

11. 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.”

12. 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 interest income of Rs.18,08,198/- received from Apex Co-operative Bank are on account of investments made 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”. Further, AO shall also examine whether assessee society is entitled for deduction of such interest income under section 80P(2)(a) of the Act. It is ordered accordingly.

13. In so far as the interest income received from Canara Bank amounting to Rs.27,87,387/-, the learned AR submitted that the same is not taxable and is covered under the principle of mutuality. It was stated that deposits were made on account of orders of court to provide bank guarantee to release land of around forty

sites which were in legal dispute. It was stated that the assessee was forced to make the fixed deposit in the Canara Bank, M. G. Road and the letter of the BDA requiring performance of bank guarantee is placed on record at page 9 of the Paper Book filed by the assessee. It was contended that the same is out of business compulsion since assessee was into the business of building houses and necessarily the sites were to be released which were in dispute. I am of the view that this issue also needs to be examined by the AO afresh. If investments are made for the purpose of obtaining a bank guarantee out of business compulsions, the same can be treated as business income and if the same is to be treated as business income, whether the assessee is entitled to benefit of deduction under section 80P(2)(a)(i) of the Act also requires to be examined. With the aforesaid observations, I restore the issue to the files of the AO

14. 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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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.