

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

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

ITA No.856/Bang/2023
Assessment Year : 2017-18

M/s. Shri Mallikarjuna Credit Co-operative Society Ltd., Shiroor, Vandar, Udupi – 576 223. PAN : AAIAS 2725 B	Vs.	ITO, Ward – 2, Udupi – 576 103.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Mahesh R. Uppin, Advocate
Revenue by	:	Shri. Nischal B, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	01.01.2024
Date of Pronouncement	:	01.01.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 05.09.2023, 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. *Was C.I.T. (A) justified in sustaining addition of Interest on Investments of Rs. 14,43,433/- to the returned income u/s. 56 of the Act by ignoring the submission dated 11.08.2023 that interest of Rs. 14,33,328/- derived from investments with SCDC Bank and Rs. 10,115/- from*

Syndicate Bank (S.B. interest) aggregating Rs. 14,43,433/- is liable for deduction u/s. 80P of the Act.

2. *Whether in law and on facts, does the action of both the below authorities sustainable in holding that Interest on S.B. A/c of Rs. 10,115/- derived by the appellant from S.B. A/c in the nature of short term investments with Syndicate Bank is taxable in view of the law laid down by —*

- (a) *Hon. High Court of Karnataka in ITA307/2014 - Tumkur Grain Merchants Souharda Co-operative Ltd. vs. I.T.O. and ITA 29/2015 - Guttigedarara Credit Co-op. Society Ltd. Mysore Vs. ITO. and*
 (b) *Hon. High Court of Judicature at Hyderabad in W.P. No. 12727 and 12767/2016 The Vavveru Co-op. Rural Bank Ltd. and Anr. Vs. The Chief C.I.T. & anr. vis-a-vis the judgement in Totgars Co-operative Sale Society Ltd.;*

3. *It is submitted, the issue of interest derived from investments in term deposits with SCDCC Bank stands covered by the judgement of this Hon. Tribunal dated 18-07-2023 in ITA No. 376-379/Bang/2023 in The Totgars' Co-operative Sale Society Ltd. Sirsi Vs. ACTT, Hubli.*

4. *The appellant craves leave to add, to amend, modify and / or to alter any of the foregoing grounds and also urge such other grounds at the time of hearing.*

3. Brief facts of the case are as follows:

Assessee is a credit co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is primarily engaged in the business of providing credit facilities to its members. For the Assessment Year 2017-18, the return of income was filed on 16.10.2017 declaring Nil income after claiming deduction under section 80P of the Act, amounting to Rs.33,69,971/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 13.08.2018. The assessment was completed under section 143(3) vide order dated 16.11.2019. In the assessment completed, the AO held that

assessee is not eligible for deduction under section 80P of the Act, for the reason that assessee had transacted with nominal members who are non-members. Further, the AO also held that the interest income received from scheduled banks / co-operative banks is not entitled to deduction since the same has to be assessed as “income from other sources”.

4. Aggrieved by the Order of Assessment, assessee preferred appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee. The CIT(A) held that the AO is not justified in disallowing the deduction claimed under section 80P(2)(a)(i) of the Act to the assessee society since nominal members are also regular members. However, the CIT(A) did not adjudicate the issue whether the interest income that is received on investments from scheduled banks / co-operative banks is entitled to deduction under section 80P(2) of the Act (though a specific ground was raised before him in ground No.3).

5. Aggrieved, assessee has filed the present appeal before the Tribunal. The solitary issue that is raised is whether the interest income received on investments with scheduled banks / co-operative banks aggregating to Rs.14,43,433/- is entitled to deduction under section 80P of the Act. We find that the assessee, before the CIT(A), had specifically raised ground No.3 which reads as follows:

“3. The A.O. erred in holding that the Interest income earned by the appellant is chargeable under Sec. 56 of the Act by relying on the judgement in - Totagars Co-operative Sale Society Ltd. Sirsi (ITA 100066/2016). The interest earned Rs. 14,43,433/- was incidental to appellants business of providing credit facilities to its members and qualifies for deduction u/s, 80P (2)(a)(i) of the Act as held in ITA 29/2015 M/s. Guttigedarara Credit Co-op. Society Ltd, Mysore Vs. ITO, Mysore. Further, the observation in Para 21 of Totagars Co-operative Sale Society Ltd is also in favour of the appellant.”

6. We find that the issue raised in the above ground has not been adjudicated by the CIT(A) [though the CIT(A) had allowed the appeal of the assessee]. Therefore, in the interest of justice and equity, we restore the matter to the CIT(A) to adjudicate the issue raised in ground No.3. The assessee is free to raise any other contentions such as the deduction of cost of funds, etc., before the CIT(A). It is ordered accordingly.

7. 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/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 01.01.2024.

/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.