

**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.921/Bang/2023
Assessment year : 2020-21

The Ideal Homes Co-operative Building Society Ltd., 1, Silver Jubilee Premises, Remodified 1 <sup>st</sup> Stage, Ideal Homes Township, Mysore Road, Bangalore – 560 098. <b>PAN: AAAAI 3937R</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Rajeev Nulvi, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	01.01.2024
Date of Pronouncement	:	17.01.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the DIN & Order No.ITBA/APL/S/250/2023-24/1057528911(1) dated 31.10.2023 of the Addl./Jt.CIT(Appeals)-2, Mumbai, for the AY 2020-21 on the following grounds:-

- “1. The intimation order u/s 143(1)(a) of the Income Tax Act, 1961 and the order of the Commissioner of Income Tax

(Appeals) confirming the intimation order u/s 143(1)(a) of the Income Tax Act, 1961 is bad in law and against the provisions of the law and judicial precedence.

2. On the fact and circumstances of the case and in law, the C.P.O erred in disallowing the claim of 80P(2)(d) of the Income Tax Act, 1961 without cross verifying that the said deduction was allowed in the Appellants own case in previous years.

4. The C.P.O in law erred in interpreting that co-operative banks are not at par with co-operative societies which is against the definition of the co-operative banks defined in section 2(b-1) of Karnataka Co-operative Societies Act, 1959.

5. The C.P.O erred in the law that the co-operative banks and other non-cooperative and non-commercial banks do not fall under the purview of co-operative societies, such notion of C.P.O is bad in law as the co-operative banks and co-operative societies are registered under co-operative societies Act.

6. On the facts and circumstance of the case, under the provisions of the law, the C.P.O erred in disallowing the claim u/s 80P(2)(d) of the Income Tax Act, 1961 without giving intimation to the Appellant Society, for such denial in writing or in electronic mode as mandated under the proviso to Sec. 143(1) of the Income Tax Act, 1961 and against the principal of natural justice.

7. On the fact and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in dismissing the ground of the Appellant Society of the C.P.C. not giving intimation to the Appellant Society, for such denial in writing or in electronic mode as mandated under the proviso to Sec. 143(1) of the Income Tax Act, 1961 by stating that "Against appellant grievance that no opportunity was granted during the proceedings u/s 143(1), opportunity has now been accorded to the appellant to explain his case". The said statement of the Commissioner of Income Tax (Appeals) is against the provisions of the law and judicial precedence and violation of principal of natural justice.

8. For these and other reasons which may be adduced at the time of the hearing, the Appellant prays before Your Honour to allow the claim of Appellant u/s 80P(2)(d) of Income Tax Act, 1961.”

2. The brief facts of the case are that the assessee is a co-operative society engaged in the purchase of land and doing conversion and formation of layout under the co-operative sector for its registered members. The assessee filed its return of income on 26.10.2020 u/s. 139(1) of the Act showing income from house property of Rs.1,37,257, loss from business of (-) Rs.87,37,294 and income from other sources of Rs.98,49,424, resultantly net taxable income was declared of Rs.12,49,887 and claimed deduction u/s. 80P(2)(d) of Rs.12,49,887. Accordingly there was a net taxable income of NIL.

3. The return was processed u/s. 143(1) by CPC disallowing claim of deduction u/s. 80P(2)(d) and determining taxable income of Rs.12,49,887. The CIT(Appeals) after discussing the issue in detail dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

4. The Id. AR strongly reiterated the submissions made before the CIT(Appeals) and submitted that assessee is eligible to make claim of deduction as per section 80P(2)(d) of the Act on the interest received on fixed deposits in banks with any other co-operative society, since cooperative bank is primarily co-operative society and relied on various decisions. The Id. AR further relied on the order dated 27.07.2023 of ITAT Mumbai in ITA No.1346 & 1347/Mum/2023 wherein the judgment of Hon'ble jurisdictional High Court is relied

and it is observed that where there are two conflicting judgments, then the favourable judgment should be followed as per the Hon'ble Supreme Court judgment in the case of CIT v. Vegetable Products Ltd. (1972) 88 ITR 192 (SC) and submitted that interest received from deposits in co-operative banks have been allowed as deduction u/s. 80P(2)(d) of the Act.

5. On the other hand, the Id. DR relied on the orders of lower authorities and submitted that the CIT(Appeals) has discussed the issue in detail and also relied on the judgment of Hon'ble jurisdictional High Court in the case of Totgars Co-operative Sale Society dated 16.06.2017 reported in 395 ITR 611 (Kar). He also discussed the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society 322 ITR 283 (SC) and judgment of Hon'ble Gujarat High Court in the case of SBI v. CIT, 389 ITR 578 (Guj) and various other judgments. He further submitted that in the case of **Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer reported in [2023] 154 taxmann.com 305 (SC)** the distinction between co-operative society and co-operative banks which are registered under co-operative societies Act has been discussed in detail. He submitted that Hon'ble Supreme Court has clearly stated that interest received from co-operative bank registered as a co-operative society and running the business of banking in terms of RBI regulations is a co-operative bank and not eligible for deduction u/s. 80P(2)(d) of the Act. Therefore,

the CIT(Appeals) has rightly decided the issue in favour of the revenue.

6. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we note that the assessee filed return of income on 26.10.2020, claimed deduction u/s. 80P of Rs. 12,49,887 on the interest income and the taxable income was shown at Nil. The CPC on 25.11.2021 while processing the return after setting of loss, determined the taxable income of Rs.12,49,890 denying deduction u/s. 80P(2)(d). The CIT(Appeals) dismissed the appeal of the assessee. On going through the computation of income filed by the assessee which is at pages 62 to 65 of appeal memo, we note that assessee has received interest income as under:-

<b>Schedule 4</b>	
<b><u>Interest income</u></b>	
<i>Name of the Bank and Account No.</i>	Interest
<b><u>Interest on Time Deposits</u></b>	
Karnataka State Co-Operative Apex Bank (SB) - 1001102040009375	78,208

Karnataka State Co-Operative Apex Bank (FD/RFD) - 1001102040009375	43,16,339
Karnataka State Co-operative Apex Bank - 2049365	21,705
Karnataka State Co-operative Apex Bank (FD/RFD) - 2049365	14,98,704
Karnataka State Co-operative Apex Bank - 2040000002	37,04,941
Karnataka State Co-operative Apex Bank (SB) - 2040000002	1,71,432
Bangalore City Co-Operative Bank SB - 00000604	852
<b>Total</b>	<b>97,92,181</b>
<b>Interest on Savings a/c</b>	
State Bank of India - 10334028354	24,499
State Bank of India - 10334028955	887
State Bank of India - 10334028637	20,591
Bank Of Maharashtra - 20043823027	11,766
<b>Total</b>	<b>57,743</b>
<b>Taxable Interest</b>	<b>98,49,924</b>

7. The assessee has claimed deduction u/s. 80P(2)(d) of the Act of Rs.12,49,887. There is no dispute that the assessee has received interest from various banks on deposits. Section 80P(2)(d) of the Act is very clear that interest received from the co-operative society is eligible for deduction. In the present case, the Id. AR could not bring to our notice that the interest received by the assessee is only from co-operative society and it is not carrying on business of banking as per RBI Regulations. This issue has been considered by the Hon'ble Apex Court in the case of Kerla State Co-operative Agricultural & Rural Development Bank Ltd. vs ITO (Supra). For the sake of convenience we are reproducing the relevant part of the above judgement.

*“15. It is on the aforesaid touchstone that these appeals must now be further considered from the point of view of the applicable provisions of law.*

*15.1 section 80P speaks about deduction in respect of income of co-operative societies from the gross total income referred to in sub-section (2) of the said section. From the said income, there shall be*

*deducted, in accordance with the provisions of section 80P, sums specified in sub-section (2), in computing the total income of the assessee for the purpose of payment of income tax. Sub-section (2) of section 80P enumerates various kinds of co-operative societies. Sub-section (2)(a)(i) states that if a co-operative society is engaged in carrying on the business of banking or providing credit facilities to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities shall be deducted. The sub-section makes a clear distinction between business of banking on the one hand and providing credit facilities to its members by co-operative society on the other. Thus, the definition of banking under section 5(b) of the BR Act must be borne in mind as opposed to providing credit facilities to its members.*

**15.2** *section 80P was inserted to the Act with effect from 1-4-1968, however, sub-section (4) was reinserted with effect from 1-4-2007, in the present form. Earlier sub-section (4) was omitted with effect from 1-4-1970. Sub-section (4) of section 80P in the present form is in the nature of an exception which states that the provisions of section 80P shall apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions co-operative bank and primary agricultural credit society as well as primary co-operative agricultural and rural development bank are defined in the Explanation as co-operative bank and primary agricultural credit society having the meanings respectively assigned to them in Part V of the BR Act, 1949.*

**15.3** *The controversy in this case is, whether, the appellant entity is a co-operative bank and if so, it would be covered within the scope and meaning of sub-section (4) of section 80P and therefore, would not be eligible to the benefit of deduction as provided therein.*

**15.4** *Having regard to the Explanation to sub-section (4) of section 80P, it is necessary to consider Chapter V of the BR Act, 1949 which states that the said Act shall apply to co-operative societies subject to modifications made thereunder. section 56 begins with a non-obstante clause and states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act*

*shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely,*

- *in clause (a) throughout the said Act, unless the context otherwise requires,- (i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank.*
- *in clause (c), it is stated that in section 5 as per clause (cci), "co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank.*
- *clause (ccv) defines "primary co-operative bank" while clause (ccvii) defines "central co-operative bank" and "state co-operative bank" to have the meanings assigned to them in the NABARD Act, 1981.*

*Since the expression 'banking company' is defined under the BR Act, 1949, it would be useful to consider the definition of banking company in section 5(c) thereof which means any company which transacts the business of banking in India. "Banking" is defined in section 5(b) of the said Act to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Therefore, a banking company must transact banking business vis-à-vis the public. Thus, in the first place a co-operative society must be engaged in banking business as defined in section 5(b) of the said Act. For that, section 22 of the BR Act, 1949, speaks about licence to be obtained by a bank to do banking business which is modified as per clause (o) of section 56 thereof which states that no co-operative society shall carry on banking business in India unless it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose. Secondly, a co-operative society must obtain a licence under section 22 of the BR Act, 1949, only if it functions as a co-operative bank and not otherwise. Thus, a co-operative society including a co-operative credit society which is not a co-operative bank does not require a licence to function as such.*

**15.5** .....

**15.6** .....

**..15.7 .....**

**15.8** *Since the words 'bank' and 'banking company' are not defined in the NABARD Act, 1981, the definition in sub-clause (i) of clause (a) of section 56 of the BR Act, 1949 has to be relied upon. It states that a co-operative society in the context of a co-operative bank is in relation to or as a banking company. Thus, co-operative bank shall be construed as references to a banking company and when the definition of banking company in clause (c) of section 5 of the BR Act, 1949 is seen, it means any company which transacts the business of banking in India and as already noted banking business is defined in clause (b) of section 5 to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Thus, it is only when a co-operative society is conducting banking business in terms of the definition referred to above that it becomes a co-operative bank and in such a case, section 22 of the BR Act, 1949 would apply wherein it would require a licence to run a co-operative bank. In other words, if a co-operative society is not conducting the business of banking as defined in clause (b) of section 5 of the BR Act, 1949, it would not be a co-operative bank and not so within the meanings of a state co-operative bank, a central co-operative bank or a primary co-operative bank in terms of section 56(c)(i)(cci). Whereas a co-operative bank is in the nature of a banking company which transacts the business of banking as defined in clause (b) of section 5 of the BR Act, 1949. But if a co-operative society does not transact the business of banking as defined in clause (b) of section 5 of the BR Act, 1949, it would not be a co-operative bank. Then the definitions under the NABARD Act, 1981 would not apply. If a co-operative society is not a co-operative bank, then such an entity would be entitled to deduction but on the other hand, if it is a co-operative bank within the meaning of section 56 of BR Act, 1949 read with the provisions of NABARD Act, 1981 then it would not be entitled to the benefit of deduction under sub-section (4) of section 80P of the Act.*

**15.9** *section 56 of the BR Act, 1949 begins with a non-obstante clause which states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act, shall apply*

*to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to certain modifications. The object of section 56 is to provide a deeming fiction by equating a co-operative society to a banking company if it is a co-operative bank within the meaning of the said provision. This is because Chapter V of the BR Act, 1949, deals with application of the Chapter to co-operative societies which are co-operative banks within the meaning of the said chapter. For the purpose of these cases, what is relevant is that throughout the BR Act, 1949, unless the context otherwise requires, - references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank. Therefore, while considering the meaning of a co-operative bank inherently, such a co-operative society must be a banking company then only it would be construed as a co-operative bank requiring a licence under section 22 of BR Act, 1949 in order to function as such a bank."*

8. In the above case the Hon'ble SC has examined in detail that what is co-operative Bank even if it is registered under the Co-operative Society Act. We remit this issue back to the file of AO for determination whether interest received by the assessee is only from co-operative society or co-operative bank as decided by the Hon'ble Apex Court. If the AO finds that interest is received from deposits in the co-operative society, the assessee is eligible for deduction u/s. 80P(2)(d) of the Act on such interest received. If the AO finds otherwise, then assessee would be eligible for deduction of cost of funds as per the judgment of the Hon'ble jurisdictional High Court in the case of Totgar Co-operative Sale Society vs ITO reported in (2015) 58 taxmann.com 35 (Karnataka). The AO will provide reasonable opportunity to the assessee and assessee is directed not to

seek unnecessary adjournment and provide requisite documents for early disposal of the case.

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

Pronounced in the open court on this 17<sup>th</sup> day of January, 2024.

Sd/-  
( GEORGE GEORGE K. )  
VICE PRESIDENT

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 17<sup>th</sup> January, 2024.

*/Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.