

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 1015/Bang/2023
Assessment Year : 2017-18

M/s. Ubaradka Mithur Primary Agricultural Credit Co-operative Society Ltd., 01 Ubaradka Mithur, Sullia 574 248, Karnataka. PAN: AAAAU0546J	Vs.	The Income Tax Officer, Ward – 1, Puttur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Shreehari Kutsa, Advocate
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Dept.

Date of Hearing	:	04-01-2024
Date of Pronouncement	:	19-01-2024

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The instant appeal filed by the assessee is directed against the order dated 31.10.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi arising out of the order dated 18.12.2019 passed by the ITO, Ward 1, Puttur u/s. 143(3) of

the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2017-18.

2. The issue relates to deduction claimed u/s. 80P(2)(d) on interest / dividend income earned from Co-operative Bank.
3. At the very outset of the proceeding, the Ld.Counsel appearing for the assessee submitted that the issue is squarely covered by several judgments passed by the Coordinate Bench and also by the jurisdictional High Court. In fact, he relies upon the following judgments.
 - a) Decision of Hon’ble Karnataka High Court in case of Tumkur Merchants Souharda Credit Co-operative Ltd. vs. ITO, Ward-V, Tumkur reported in (2015) 55 taxmann.com 447
 - b) Decision of Coordinate Bench in case of Kedambady Keyur Primary Agricultural Co-operative Society Ltd. in ITA Nos. 667 & 668/Bang/2023 vide order dated 08.11.2023 for A.Ys. 2017-18 & 2018-19
4. The brief facts leading to this case is this that the assessee is a primary agricultural credit co-operative society engaged in the business of providing credit facilities to its member-agriculturists, engaged in the business of acceptance of deposits from members, lending loans to members.

5. During the year under consideration, the assessee has filed its return of income on 23.10.2017 declaring total income of Nil after claiming deduction of Rs.29,42,050/- u/s. 80P of the Act. The return of income was processed u/s. 143(1) of the Act.
6. The assessee society has received Rs.40,23,010/- as interest / dividend from its investments with Scheduled Banks and Co-op Banks other than co-op societies.
7. The Ld.AO ultimately disallowed the interest dividend earned from Scheduled Banks and Co-operative Banks other than co-operative societies to the tune of Rs.40,23,010/- as the same was not found eligible for deduction u/s. 80P(2)(d) of the Act.
8. It is the case of the assessee that the interest income earned from investment in co-operative bank by a primary agricultural credit co-operative society is eligible for deduction u/s. 80P(1) of the Act as per the judgment passed by the Jurisdictional High Court in case of Tumkur Merchants Souharda Credit Co-operative Ltd. vs. ITO (supra).
9. We have further considered the judgment passed in the matter of Kedambady Keyur Primary Agricultural Co-operative Society Ltd. (supra). While granting relief to the assessee, the Hon'ble Coordinate Bench was pleased to observe as follows:

“3. We have heard the rival submissions and perused the materials available on record. As rightly pointed out by the ld. A.R. in his petition, the issue involved in these additional grounds is only question of law and there is no necessity of investigation of any facts otherwise on record and these additional grounds are admitted for adjudication.

4. Facts of the case are that the assessee is a Primary Agricultural Credit Co-operative Society engaged mainly in the business of providing credit facilities to its member-agriculturists and distribution of ration articles. For the assessment year 2017-18, the entire income of the assessee is eligible for deduction u/s 80P of the Act and hence had filed its return of income declaring 'NIL' taxable income. a. The assessee's case was selected for scrutiny assessment u/s 143(2) of the Act. b. While passing the order u/s 143(3), the learned assessing officer disallowed the assessee's claim for deduction u/s 80P of the Act relying on the decision of the Honorable Supreme Court in the case of Citizen Cooperative Society Ltd. v. Assistant Commissioner of Income-tax, Circle-9(1), Hyderabad reported in [2017] 84 taxmann.com 114 (SC), c. Further the learned assessing officer also disallowed the assessee's claim for deduction u/s 80P(2)(d) in respect of income from investment in other co-operative societies relying on the decision of the Dharwad Bench of the Hon'ble High Court of Karnataka in the case of The Totagars Co-op. Sale Society in ITA No. 100066 of 2016.

4.1 The assessee's contention that being a primary agricultural co-op. society, they are eligible for the said deduction and that the judicial pronouncements relied upon by him are not applicable to them was not considered by the learned A.O. Aggrieved by the disallowance of deduction u/s 80P of the Act, the assessee has preferred this appeal.

5. The ld. D.R. relied on the order of lower authorities. 6. We have heard the rival submissions and perused the materials available on record. The ld. A.R. for the assessee has submitted detailed written submissions, which are kept on record. First of all, the claim of assessee has been denied on the reason that the assessee is having nominal members and associated members. As per the Bye-laws of the assessee society, nominal members and associated members are not

allowed to participate in the administration and they are not entitled to vote as particular category of member is not entitled to participate and thereby the ld. AO followed the decision of Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (397 ITR 1) (SC). However, we find that the decision of Hon'ble Supreme Court in the case of Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT (431 ITR 1) (SC), wherein held as under: "It is important to note that though the main object of the primary agricultural society in question is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet, some of the objects go well beyond, and include performing of banking operations "as per rules prevailing from time to time", opening of medical stores, running of showrooms and providing loans to members for purposes other than agriculture. (para 15) Court in Citizen Cooperative Society Ltd. [397 ITR 1] held as follows: "13. If the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of Section 80-P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary cooperative society, it was so made clear as is evident from clause (f) with reference to a milk cooperative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk cooperative society."

22. *With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a cooperative bank. However, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction would still be provided. Thus, cooperative banks are now specifically excluded from the ambit of Section 80-P.*

23. *If one has to go by the aforesaid definition of "cooperative bank", the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a cooperative bank, it is imperative to have a license from Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, Reserve Bank of India has itself clarified that the business of the appellant does not amount to that*

of a cooperative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80-P. (para 20) Following propositions may be culled out from the judgment:

(I) That section 80P is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the cooperative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are co-operative societies who must possess a license from the RBI to do banking business. Given the fact that the assessee in that case was not so licensed, the assessee would not fall within the mischief of section 80P(4). (para 21) Ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in

lending money to members of the public, which have a license in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assesseees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to nonmembers, profits attributable to such loans obviously cannot be deducted. (para 45) It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. (para 46) Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i). Unlike the facts in Citizen Cooperative Society Ltd. (supra), the Kerala Act expressly permits loans to nonmembers under section 59(2) and (3). Giving of loans by a primary-agricultural credit society to nonmembers is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra). Impugned Full Bench judgment is set aside. (para 47)”

6.1 In view of this, the claim of assessee cannot be denied on the basis of assessee having nominal members and associated members.

6.2 Further, ld. D.R. referred to the judgement of Hon'ble Supreme Court in case of Totagars Co-operative Sale Society Ltd. vs. ITO reported in (2010) 322 ITR 283. He also referred to recent decision of Hon'ble Supreme Court in case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors. in Civil Appeal Nos. 10069 of 2016 dated 14.09.2023 submitted that the assessee cannot be allowed deduction on the interest earned from deposits made in cooperative banks under section 80 P (2) (d) of the Act.

6.3. We have perused the submissions advanced by both the sides in the light of the records placed. When we look at the decision of Hon'ble Supreme Court in case of Totgars Co-operative Sale Society's case reported in

(2010) 322 ITR 283, relied by the Ld.DR, Hon'ble Supreme Court was dealing with a case where the assessee therein, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such amount retained by the assessee therein was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. On these facts Hon'ble Supreme Court held the assessing officer was right in taxing the interest income indicated above under Section 56 as income from other sources of the Act. Hon'ble Supreme Court, also clarified that, they are confining the said judgment to the facts of that case alone.

6.4 Further the adjudication by the Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. vs. ITO (322 ITR 283) (SC) was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a cooperative society towards deduction under Sec.80P(2)(d) on the interest income on the investments/deposits parked with a cooperative bank. Therefore, reliance was placed by the Ld. DR on the decision of Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. ITO (supra) is distinguishable on facts.

6.5 At this juncture, we refer to subsequent decision of Hon'ble Karnataka High Court in the case of PCIT Vs. Totagars cooperative Sale Society reported in (2017) 395 ITR 611, wherein Hon'ble Court held that, a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we find, that the Hon'ble Karnataka High Court in the case of PCIT & Anr. vs. Totagars Cooperative Sale Society reported in (2017) 392 ITR 74 and Hon'ble Gujarat High Court in the case of State Bank Of India Vs. CIT reported in (2016) 389 ITR 578, held, that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

6.6 The Ld.D R relied on a recent decision of Hon'ble Supreme Court in case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd., KSCARDB Vs. AO & Ors (Supra), in support of the disallowance of interest claimed by the assessee before us from the investments made in other Co-operative Banks/Sahakari Sangha etc. We have gone through this decision of Hon'ble Supreme Court. In para 3 of the decision, the issue that was under consideration before the Hon'ble Court reads as under:- "The issue involved in these cases is, whether, the appellant/assessee, a co-operative society, is entitled to claim deduction of the whole of its profits and gains of business attributable to the business of banking or providing credit facilities to its members who are all co-operative societies under Section 80P of the Income Tax Act, 1961 (hereinafter referred to as "the Act", for the sake of brevity)."

6.7 In other words Hon'ble Supreme Court in the said decision analyzed, whether the assessee therein could be treated as a "cooperative Bank" within the meaning of sec. 80P(4) of the Act. The Hon'ble Supreme Court considered the above issue in case of an assessee who is a state level Agricultural and Rural Development Bank, governed as a cooperative society, under the relevant state cooperative societies Act, and was engaged in providing credit facilities to its members who were cooperative societies only. On facts, the assessee therein claimed deduction under Section 80P (2)(a)(i) of the Act. The Ld.AO disallowed the deduction under Section 80P(2)(a)(i) holding that the appellant/assessee is neither a primary agricultural credit society nor a primary co-operative agricultural and rural development bank. The Ld.AO therein held that the appellant/assessee is a "co-operative bank" and thus, was hit by the provisions of Section 80(P)(4) and was not entitled to the benefit of Section 80(P)(2) of the Act. This was upheld by the Ld.CIT(A) and the Tribunal. The decision of the Tribunal was confirmed by Hon'ble Kerala High Court.

6.8 The Hon'ble Supreme Court analyzed the legal framework, relevant provisions under relevant co-operative societies Act, NABARD Act, provisions of sec. 80P under the Income Tax Act, 1961, RBI Act, the Banking Regulation Act and the various judicial precedents on similar issues. The observations of Hon'ble

Supreme Court in para 14.3 and 15.8 are of relevant that reads as under:-

“14.3. While analysing Section 80P of the Act in depth, the following points are noted by this Court:

i) Firstly, the marginal note to Section 80P which reads "Deduction in respect of income of co-operative societies" is significant as it indicates the general "drift" of the provision.

ii) Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society"

iii) Thirdly, the gross total income must include income that is referred to in sub-section (2).

iv) Fourthly, sub-clause (2)(a)(i) speaks of a co-operative society being "engaged in", inter alia, carrying on the business of banking or providing credit facilities to its members.

v) Fifthly, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P.

vi) Sixthly, the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. It was highlighted that the distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted. vii) Seventhly, under Section 80P(1) (c), the co-operative societies must be registered either under Co-operative Societies Act, 1912, or a State Act and may be engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). viii) Eighthly, sub-clause (d) states that where interest or dividend income is derived by a co-operative society from investments with other co-operative societies, the whole of such income is eligible for deduction, the object of the provision being furtherance of the cooperative movement as a whole.

.....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 cooperative 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 cooperative 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) or Section 80P of the Act.”

6.9. In any event Hon'ble Supreme Court in the decision relied by the Ld. DR has elaborately analyzed the requirement of a cooperative bank that could fall within the exception of section 80 P(4) of the Act. Based on such principle analyzed by Hon'ble Supreme Court and respectfully following the view taken by the Hon'ble Karnataka High Court in the case of PCIT & Anr. Vs. Totagars Cooperative Sale Society reported in (2017) 392 ITR 74 and Hon'ble Gujarat High Court in the case of State Bank Of India Vs. CIT reported in (2016) 389 ITR 578, we hold that, the interest income earned by a

cooperative society on its investments held with a cooperative bank that do not have license under section 22 of the Banking Regulation Act 1949, falls outside the definition the term, 'Banking Company' as per section 2(c) of the Banking Regulations Act, 1949, would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. The Ld.AO is thus directed to carry out necessary verification in respect of the that same to consider the claim of deduction u/s.80 P(2)(d) of the Act. Further, we make it clear that the assessee is not entitled for deduction u/s 80P(2)(a)(i) of the Act in view of judgement of Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (322 ITR 283) (SC), wherein held as follows:

"The words "the whole of the amount of profits and gains of business" in section 80P(2) of the Income-tax Act, 1961, emphasise that the income in respect of which deduction is sought by a co-operative society must constitute the operational income and not the other income which accrues to the society. The interest income arising to a co-operative society carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members, on the surplus, which is not required immediately for business purposes, from investment in shortterm deposits and securities, has to be taxed as income from other sources under section 56 of the Income-tax Act, 1961. Such interest cannot be said to be attributable to the activities of the society, viz., carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. Interest income of such society from amounts retained by it cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) or section 80P(2)(a)(iii) of the Act." 6.10 It is directed that in the event it is found that the interest is earned by the assessee from such commercial/cooperative banks that fall within the definition of "banking company' as per section 2(c), Section 5(b) and holds license under section 22 of the Banking Regulation Act 1949, such interest are to be considered under the head 'income from other sources' however, relief may be granted as available to the assessee u/s 57 of the Act in accordance with law. With the above directions, we remit this issue to the Ld.AO.

Additional grounds: 7. With regard to additional ground No.1, in our opinion, this ground is very general in nature and not made any specific material to suggest that the ld. AO have no jurisdiction to frame the assessment in this case. Hence, the first additional ground is dismissed.

7.1 Next additional ground is with regard to levy of interest u/s 234A, 234B & 234C of the Act. Since we have remitted the issue with regard to grant of deduction u/s 80P(2)(d) of the Act, this ground is infructuous at this stage. Accordingly, this ground is dismissed.

7.2 In the result, the additional grounds raised by the assessee are dismissed.

8. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.”

10. Thus taking into consideration the entire aspect of the matter and the judgment passed by the Coordinate Bench as cited hereinabove in the matter of Kedambady Keyur Primary Agricultural Co-operative Society Ltd. (supra), we remit the issue to the file of AO to pass orders in the light of the ratio laid down in the said order.

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

Order pronounced in the open court on 19th January, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(MADHUMITA ROY)
Judicial Member

Bangalore,
Dated, the 19th January, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore

By order

Assistant Registrar,
ITAT, Bangalore