

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 855/Bang/2023
Assessment Year : 2017-18

<p>M/s. Sri Bhyraveshwara Credit Co-operative Society Ltd., #1, 8th Main, 22nd Cross, MRCR Layout, Vijayanagar, Bangalore – 560 040. PAN: AAAAS6789B</p>	Vs.	<p>The Income Tax Officer, Ward – 3(2)(2), Bangalore.</p>
APPELLANT		RESPONDENT

Assessee by	:	Shri Pradeep Kumar Jain, CA
Revenue by	:	Shri Parithivel, JCIT DR

Date of Hearing	:	01-01-2024
Date of Pronouncement	:	23-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order dated 07.09.2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

“1. That the order of the Authorities in so far as it is against the assessee is opposed to law, facts, circumstances, natural justice, equity all other known principles of law.

2. That On the facts and in the circumstances of the case, the impugned addition of Rs.53,13,671/- by disallowing the deduction u/s 80 P of the Act was opposed to law and liable to be deleted.

3. That learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming the addition of Rs. 53,13,671/- being disallowance of deduction claimed under section 80P of the Act.

4. That learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming the addition of Rs. 53,13,671/- being disallowance of deduction claimed under section 80p of the act without considering the submission of the assessee in violation of the principles of natural justice

5. That learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming the addition of Rs. 53,13,671/- being disallowance of deduction claimed under section 80p of the act by not giving the assessee sufficient opportunity of being heard.

6. That both the Learned Appellant authority and the Learned Assessing Officer erred in not relying on statements submitted by the assessee at the time of proceedings.

7. There being gross violation of principles of natural justice and that the appellant having not been given adequate opportunity, the impugned addition as made is opposed to law and liable to be deleted.

8. The learned Appellant authority ought to have appreciated, as observed and examined and on the findings by the A.O., that the assessee is a co-operative society and engaged in the business of providing credit facilities to its members and hence is eligible for deduction u/s 80 P and accordingly the impugned addition as made were uncalled for and against the principles of natural justice and thus liable to be deleted.

9. *The Learned appellant authority failed to take cognizance of the supreme court order in the case of CIT Vs. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Limited (Civil Appeal No. 8719/2022) dated 20th April 2023 wherein the honourable court observed that - There are concurrent findings recorded by CITA, ITAT and the High Court that the respondent/Assessee cannot be termed as Banks/Cooperative Banks and that being a credit society, they are entitled to exemption under Section 80(P)(2) of the Income Tax Act.*

10. *Without prejudice, the impugned addition is excessive, arbitrary and unreasonable and liable to be deleted in toto.*

11. *The AO erred in disallowing deduction u/s 80P of Rs.53,13,671/-*

12. *The appellant denies the levy of interest u/s.234B of Act. Further submits that the interest, if any, can be levied only on the returned income.*

13. *No opportunity has been given before levy of interest u/s 234B of the Act.*

14. *Without prejudice to the appellant's right of seeking waiver before appropriate authority the appellant begs for consequential relief in the levy of interest u/s 234B*

15. *For the above and other grounds and reason which may be adduced during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.”*

2. Brief facts of the case are as under:

2.1 The assessee filed its return of income for the A.Y.2017-18 declaring total income of Rs NIL after claiming deduction u/s 80P of the Act of Rs 53,13,671/-. The Ld.AO on perusal of submission filed by the assessee during the assessment proceedings found that the assessee had not submitted any documentary proof to support the claim that the credit facilities provided by the assessee to its members only. The Ld.AO also found that the

paid-up capital or reserve is not less than Rupees One Lakh and that any other Co-operative Society cannot become a member of the assessee. Accordingly, the Ld.AO disallowed assessee deduction of Rs 53,13,671/- claimed u/s 80P(2)(a)(i) of the Act and added back to the total income of the assessee under the head income from other sources.

2.2 The Ld.AO also noted that assessee had earned interest income of Rs.35,63,518/- from nationalised / co-operative banks and deduction was claimed u/s. 80P. After considering various submissions of the assessee, the Ld.AO dismissed the claim of assessee by following the ratio of the *Hon'ble Karnataka High Court* in case of *PCIT Vs. Totagars cooperative Sale Society* reported in (2017) 395 ITR 611 wherein *Hon'ble Supreme Court* held that co-operative society would not be entitled to claim of deduction u/s. 80P(2)(d) of the act.

On an appeal before the Ld.CIT(A), the disallowance made by the Ld.AO was upheld without considering the documents filed by the assessee.

2.3 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

We have considered the arguments of both sides in the light of records placed before us.

3. It has been submitted by the Ld.AR that the claim of deduction u/s 80P(2)(d) amounting to Rs. 35,63,518/- of the Act, has been considered by the coordinate bench of this *Tribunal* in the case

of *M/s.The Jayanagar Co-operative Society Ltd. v. ITO* in ITA No.3254/Bang/2018 by order dated 23.07.2019, on similar facts, had restored the matter to the files of the Ld.AO for *de novo* consideration. The Ld.AR submitted that, identical issue was considered by the *ITAT* in ITA No.490/Bang/2021 in the case of *M/s. Kakkabe VSSN Bank Ltd.vs. Pr.CIT* by order dated 28.02.2022 for assessment A 2015-16. The Ld.AR submitted that, this *Tribunal* in above cited case, directed the Ld.AO to consider the *dictum* laid down by the *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in 431 ITR 1.

On the contrary, the Ld.DR has relied on the 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.

4. It is noted that this *Tribunal* has considered similar issue in case of *M/s. Vittal Vyavasaya Seva Sahakari Bank Niyamith vs. ITO* in ITA No. 640/Bang/2023 by order dated 08.11.2023 by observing as under:

“5. 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.

Accordingly the issue raised by the assessee in Ground nos. 3 & 5 does not have any merit.

5.1 Further the adjudication by the Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. vs. ITO(supra) 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 Co-operative Sale Society Ltd. vs. ITO (supra) is distinguishable on facts.

5.2 In the instant case, the amount which was invested with other co-operative societies and SCDCC bank to earn interest was not any amount due to its members. This is very clear from the submissions reproduced in the assessment order wherein the assessee has submitted that it is due to the statutory obligation to keep the reserve fund of the society in SCDCC Bank that such deposits are made, and therefore, such fixed deposit has to be maintained. Further the claim of the assessee in u/s 80P(2)(d) was not any liability due to its members. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a co-operative bank/other co-operative societies against which interest/dividend was earned.

5.3 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 co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

5.4 The Ld.DR 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).”

5.5 In other words Hon'ble Supreme Court in the said decision analyzed, whether the assessee therein could be treated as a “co-operative 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.

5.6 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 were 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 co-operative 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 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) or Section 80P of the Act.”

5.7. In any event Hon'ble Supreme Court in the decision relied by the Ld.DR has elaborately analysed the requirement of a cooperative bank that could fall within the exception of section 80 P(4) of the Act. Based on such principle analysed 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 licence 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.

5.8 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."

5. Respectfully following the above ratio, we remand this issue to the Ld.AO for necessary verification and to consider the claim of assessee in accordance with the directions hereinabove which is as per the ratio 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.

5.1 In respect of the balance amount claimed, the Ld.AO it is directed to verify, whether the income is derived from the credit

activities of the society, in order to be eligible for deduction u/s. 80P(2)(a)(i). Alternatively, Ld.AO is directed to carry out necessary verification in respect of the same to consider such claim u/s. 80P(2)(d) of the Act. We note that the authorities below have referred to paid up capital / reserve which cannot be the reason to deny the exemption claimed by the assessee u/s. 80P.

Accordingly, we remand this issue back to the Ld.AO for computing the deduction available to the assessee in accordance with law.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

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

Order pronounced in the open court on 23rd January, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 23rd January, 2024.
/MS /

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore