

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.1006/Bang/2023
Assessment Year : 2017-18

M/s. Primary Agricultural Credit Co-operative Society Ltd., 1 'Jeshta' Uppinangady Road, Guruvayanakere, Belthangady – 574 217. PAN : AABAS 3237 K	Vs.	ITO, Ward –1, Puttur.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Harsha J, Advocate
Revenue by	:	Shri. Parithivel, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	06.02.2024
Date of Pronouncement	:	06.02.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 20.10.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. Assessee has raised eleven grounds and one additional ground. However, during the course of hearing, the learned AR argued only the issues pertaining to claim of deduction under section 80P(2)(a)(i) of the Act (grounds 3, 5 and 7) and deduction under section 80P(2)(d) of the Act (grounds 4 and 8).

3. Brief facts of the case are as follows:

Assessee is a primary agricultural co-operative society registered under the Karnataka Co-operative Societies Act, 1959. It is engaged in the business of accepting deposits from the Members, lending loans to the Members and providing public distribution services. For the Assessment Year 2017-18, assessee society had filed return of income on 18.10.2018 declaring total income of Rs.1,22,070/-, after claiming deduction under section 80P of the Act, amounting to Rs.37,26,482/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act, was issued to the assessee on 27.08.2018. During the course of assessment proceedings, assessee was asked to justify the claim of deduction under section 80P of the Act. Assessee had attended the proceedings before the AO and submitted certificate of registration of the assessee society under the Karnataka Co-operative Societies Act, 1959. The assessment was completed under section 143(3) of the Act vide order dated 04.10.2019. In the assessment completed under section 143(3) of the Act, the AO denied the claim under section 80P of the Act. The AO relying on the judgment of Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd., reported in (2017) 397 ITR 1, held that assessee was primarily dealing with non-members, hence, had violated the principles of mutuality. The AO also observed that assessee had earned interest income from Co-operative Bank and same is to be assessed under section 56 of the Act. The AO relying on the judgment of the Hon'ble Apex Court in the case of Totgar's Co-operative Sales Society Ltd., Vs. ITO reported in (2010) 322 ITR 283 held that assessee is not entitled to deduction under section 80P(2)(a)(i) of the Act. Further, the AO relied on the judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totgars Sales Society reported in 395 ITR 611 (Karnataka) and held that assessee is not entitled to deduction under section 80P(2)(d) of the Act.

4. Aggrieved by the order of the AO, assessee filed appeal before the CIT(A). The CIT(A) partly allowed appeal of the assessee. The CIT(A) confirmed the view that assessee is not entitled to deduction under section 80P(2)(a)(i) of the Act nor under section 80P(2)(d) of the Act. However, with regard to the alternative claim of the assessee that it is entitled to deduction of proportionate expenditure for earning interest income, the CIT(A) restored the matter to the AO (Refer para 6 of the CIT(A) order, page 17).

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 submissions made before the income tax authorities, the case laws relied on, the relevant provisions of the Karnataka Co-operative Societies Act, 1959 and the Rules, etc. The learned AR submitted that though assessee had relied on the recent judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, reported in 431 ITR 1, the same has not been taken note by the CIT(A) while confirming the order of AO denying the claim of deduction under section 80P of the Act. The learned AR submitted that assessee had also dealt with members and proportionate deduction under section 80P of the Act is to be allowed. As regards the claim of deduction with regard to interest income received from co-operative banks, the learned AR submitted that investment were made with Co-operative Bank in compliance with the requirement under the Karnataka Co-operative Societies Act, 1959 and the relevant Rules. Therefore, it was contended that the interest income is entitled to deduction under section 80P(2)(a)(i) of the Act. The learned AR further relying on the judgment of the Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural Rural Development Vs. AO reported in 458 ITR 384 (SC),

submitted that assessee is entitled to benefit of deduction under section 80P(2)(d) of the Act.

6. The learned DR supported the orders of the AO and the CIT(A).

7. We have heard the rival submissions and perused the material on record. The claim of deduction under section 80P of the Act was denied by the AO primarily for the reason that assessee was dealing with non-members and had violated the principles of mutuality. In this context, the AO and the CIT(A) had relied on the judgment of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd., (supra). We notice that the judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT (supra) was relied on by the assessee before the CIT(A). However, there is no mention of the same in the order of the AO as well as before the CIT(A). The Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT (supra) had held that assessee is entitled to proportionate deduction under section 80P of the Act for its dealing with its members. Assessee contends that it has been dealing with members and with non-members. Hence, it is entitled to deduction under section 80P(2)(a)(i) of the Act, in dealing with its members. We are of the view that the claim of deduction under section 80P of the Act needs to be examined afresh by the AO since the AO and the CIT(A) has not considered the dictum laid down by Hon'ble Apex Court in case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT (supra). Accordingly, the matter is restored to the files of the AO.

8. As regards the claim of deduction of interest income received from Co-operative Banks, it is the contention of the assessee that investments are in

compliance with the requirement under the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. Therefore, the interest income is entitled to deduction under section 80P(2)(a)(i) of the Act. On identical facts, the Bangalore Bench of the Tribunal in the case of Canara Bank Staff Credit Co-operative Societies Ltd., in ITA No.517/Bang/2023 (order dated 03.10.2023) had restored the matter to the AO to examine whether the amounts invested with the Co-operative Banks are out of compulsion under the Karnataka Co-operative Societies Act and the relevant Rules. It was further held by the Tribunal that if the investments are out of compulsion under the Act and the relevant Rules, the interest income received out of the investment made under such compulsion would be liable to be taxed as 'income from business' which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act. The relevant finding of the Bangalore Bench of the Tribunal reads as follows:

“7. I have heard the rival submissions and perused the material on record. The interest income is received out of investments made with Apex Co-operative Bank. It is the case of the assessee that the investments are made out of compulsions as per the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. The Hon’ble Apex Court in the case of CIT Vs. Karnataka State Co-operative Apex Bank (supra) had held that when amounts are invested by the Co-operative Societies as per the statutory requirements, the same would be entitled to deduction under section 80P(2)(a)(i) of the Act. 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?”

8. *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.”

9. *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).*

10. *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 co-operative societies is to be allowed as deduction.”

11. *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 amounts invested with Apex Co-operative Bank and other banks, are 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” which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act. With the aforesaid observation, we restore the matter to the AO. It is ordered accordingly.*

12. *In the result, appeal filed by the assessee is allowed for statistical purposes.”*

9. In the event it is found that assessee is not entitled to get the benefit under section 80P(2)(a)(i) of the Act, the AO shall also examine whether it is entitled to deduction under section 80P(2)(d) of the Act in light of the recent judgment of the

Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural Rural Development Vs. AO (supra). It is ordered accordingly.

10. 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/-

(CHANDRA POOJRAI)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 06.02.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.