

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 77/Bang/2024
Assessment Year : 2020-21

M/s. Udupi District Ex-Servicemen's Multipurpose Co-op. Society Ltd., Adi-Udupi, Udupi – 576 103. PAN: AABAU6021F	Vs.	The Income Tax Officer, Ward – 1 & TPS, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Mahesh R. Uppin, Advocate
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of Hearing	:	28-02-2024
Date of Pronouncement	:	28-02-2024

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi order dated 29.11.2023, DIN & Order No. ITBA/NFAC/S/250/2023-24/1058313109(1) for A.Y. 2020-21 on the following grounds of appeal:

“1. Was C.I.T. (A) justified in sustaining addition of Interest on Investments from S. B. A/cs of Rs. 1,99,957/- [SCDCC

Bank Rs. 1,24,030/- and IDBI Bank Rs. 75,927/-] to the returned income u/s. 56 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/cs Of Rs. 1,99,957/- derived by the appellant being in the nature of income derived from short term investments 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 I TA No. 376-379/Bang/2023 in The Totgars' Co-operative Sale Society Ltd. Sirsi Vs. ACIT, 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.”

2. The brief facts of the case are that the assessee filed return of income on 10.12.2020 declaring total income at Rs. Nil after claiming deduction u/s. 80P(2)(a)(i) of Rs.50,37,119/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. The assessee complied the notices issued by the Assessing Officer (AO), the AO observed that the assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959, which is engaged in providing credit facilities to its members and society, accepts deposits from its members and also gives advances to its members, hence the assessee is eligible to claim deduction u/s. 80P. The details of the assets and liabilities were also submitted. From the details

submitted, it was noted by the assessing officer that the assessee has received interest from SCDCC Bank savings account of Rs. 1,24,030/- and IDBI bank savings bank account of Rs.75,927/- totalling to Rs.1,99,957/- which is not from the business of credit facilities to its members. Accordingly, the assessee was issued show cause notice. The assessee furnished reply and he also relied on the decision of Hon'ble Mumbai Tribunal Special Bench in case of The Maharashtra State Co-operative Bank Ltd. vs. ACIT reported in (2010) 38 SOT 325 in respect of income attributable to business of banking. The submissions made by the assessee against SCN were examined and the AO concluded that the reply furnished by the assessee is not acceptable because the interest received from its SCDCC bank of Rs.1,24,030/- and IDBI bank savings bank account of Rs.75,927/- totalling to Rs.1,99,957/- cannot be treated as income from business of banking as claimed by the assessee as it is registered as a co-operative society and not registered for carrying on business of banking and the case law relied by the assessee is not applicable to the present facts of the case, since the assessee is a co-operative society but not a co-operative bank. Consequently, the entire savings bank interest was not allowed for deduction u/s. 80P(2)(a)(i) and added to the total income of the assessee.

3. Aggrieved from the above order, the assessee filed appeal before the Ld.CIT(A) and the submissions were made. The Ld.CIT(A) after relying on the following judgements.

1. State Bank of India vs CIT (72 Taxmann.com 64 (Gujrat)

2. PCIT vs Totagar Co-operative Sales Society (83 Taxmann.com140 (Karnataka).
3. CIT vs Punjab State Co-operative Agriculture Development Bank Ltd. (76 Taxmann307) (Punjab)
4. CIT vs South Eastern Railway Employees' Co-op Credit Society 73 Taxmann.com 123 (Calcutta)

He observed from the above orders of Hon'ble High Courts that the interest income earned by the co-operative society from its investment made with the co-operative banks or other nationalised banks or the treasury is assessable as income from other sources u/s. 56 of the Act and not eligible for deduction u/s. 80P(2)(a)(i) of the IT Act.

Aggrieved from the above order, the assessee filed appeal before the Income Tax Appellate Tribunal.

4. The Ld.AR reiterated the submissions made before the lower authorities and he has also filed a written synopsis which is as under:

"1. Assessee is a Co-operative Society Registered under Karnataka Cooperative Societies Act. It has made certain deposits which belongs to it and not immediately required for its business in South Kanara District Central Co-operative Bank and Industrial Development Bank. The said deposits earned interest income of Rs. 1,99,957/- (Rs. 1,24,030 from South Kanara District Central Co-operative Bank + Rs. 75,927/- IDBI Bank). The said interest income earned ought to have been deducted from the total income. But the Commissioner added the same to the total income and levied tax.

2. South Kanara District Central Co-operative Bank is a co-operative society registered under Karnataka Co-operative Societies Act. As per Section 80P(2)(d) of the Income Tax Act the said income earned is liable for deduction .

In so far as the interest earned from deposits made in IDBI Bank is concerned it is submitted that it is an income earned by the assessee which is attributable to the credit business of the assessee.

Alternatively

The above said interest income earned by the Assessee is attributable to the credit business of the Assessee society and it is liable to be deducted from the total income of the Assessee as per Section 80P2(a)(i) of the Income Tax Act.

List of authorities

- a) WP No. 12727 and 12767/2016 The Vavveru Co-operative Rural Bank Ltd Vs the Chief CIT*
- b) ITA No. 685/Bang/2023 Raythara Sahakari Sangha Ltd Vs ITO Ward-1 Udupi.*

Wherefore the Hon'ble Court be pleased to allow the above appeal in the interest of Justice."

He has also relied on the following judgment.

Vavveru Co-operative Rural Bank Ltd. vs. CCIT and Anr.
Reported in (2017) 396 ITR 371 (T & AP)

5. The Ld.DR relied on the orders of the lower authorities and submitted that the Ld.CIT(A) has relied on the latest judgment of the jurisdictional High Court on the same issue, in the case of PCIT vs. Totagar Co-operative Sale Society reported in 83 taxmann.com 140. As per the judgment, the assessee is not eligible for claim of deduction u/s. 80P(2)(a)(i) and interest income shall be taxed as income from other sources u/s. 56. He also submitted that the Hon'ble Apex Court has decided in the 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 that if the interest is received from co-operative bank

which comes under the definitions under the banking regulation Act 1949 and engaged in the banking activity will not be eligible for deduction u/s 80P(2)(d) of the Act. , Since the assessee has received interest from Co-operative bank ,therefore, the assessee is not eligible for deduction u/s. 80P(2)(d) because the SCDCC bank is running as a banking business. He relied on the judgement of of co-ordinate bench of the Tribunal in the case of M/s Judicial Employees House Building Co-operative Society Ltd. in ITA No. 108/Bang/2023 orser dated 11.04.2023. The Ld.DR submitted that the case laws relied by the Ld.AR is not applicable since the Hon'ble jurisdictional High Court had decided on the same issue.

6. Considering the rival submissions, we note that the assessee has received interest from the South Canara District Central Co-operative Bank and Industrial Development Bank of Rs. 1,99,957/- (Rs. 1,24,030/- from SCDCC bank plus Rs. 75,927/- from IDBI bank) on its savings bank account of which assessee has claimed the deduction u/s. 80P(2)(a)(i). The Ld.CIT(A) referred the latest judgment of the Hon'ble High Courts at para 5.6 noted above. Referring to the latest judgment of jurisdictional High Court in the case of PCIT vs. Totagar Co-operative Sale Society reported in 83 taxmann.com 140 in which it has been held as under:-

23. Thus, the aforesaid judgments supports the view taken by this Court that character of income depends upon the nature of activity for earning that income and though on the face of it, the same may appear to be falling in any of the specified Clauses of Section 80P(2) of the Act, but on a deeper analysis of the facts, it may become ineligible for deduction under Section 80P(2) of the Act. The case in Udaipur

Sahakari Upbhokta Thok Bhandar Ltd. (supra) was that of Section 80P(2)(e) of the Act, whereas in the present case, it is under Section 80P(2)(d) of the Act. Hence, the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus, clause (d) of Section 80P(2) of the Act would not apply in the facts and circumstances of the present case. The person or body corporate from which such interest income is received will not change its character, viz. interest income not arising from its business operations, which made it ineligible for deduction under Section 80P of the Act, as held by the Hon'ble Supreme Court.

.Respectfully following the above judgement of the jurisdictional High Court we hold that the assessee is not eligible for deduction u/s 80P(2)(d) on the interest income received. We also hold that the interest received from bank by the assessee is not attributable to the business of providing credit facilities to its members, therefore, assessee is not eligible for deduction u/s. 80P(2)(a)(i) of the act.

7. We note that the entire interest income received by the assessee has been disallowed by the assessing officer and added into the total income of the assessee. As per the judgment of the Hon'ble Jurisdictional High Court in case of Totgars Co-operative Sales Society Ltd.Sirsi vs. ITO, reported in (2015) 58 taxmann.com 35 (Karnataka), the assessee is eligible for cost of funds if any incurred towards earning interest income. Therefore, we remit this issue back to the assessing officer on the above observations and assessee is directed to file cost of funds of any incurred towards earning of interest income.

Accordingly, this issue is allowed for statistical purposes.

Accordingly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the captioned dated through virtual hearing.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, the 28th February, 2024.
/MS /

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

By order

Assistant Registrar,
ITAT, Bangalore