

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

**BEFORE SHRI GEORGE GEORGE K, VICE – PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 139 & 140/Bang/2024
Assessment Years : 2018-19 & 2020-21

M/s. Siddhi Vinayaka Souharda Pattina Sahakari Niyamita, # 10-7/53, First Floor, N.V. Complex, Opp. Asian Arcade S.B. Temple Road, Kalaburagi – 585 103. PAN: AACAS4900N	Vs.	The Income Tax Officer, Ward – 1 & TPS, Gulbarga.
APPELLANT		RESPONDENT

Assessee by	:	Shri Varun Bhat, CA
Revenue by	:	Shri V. Parithivel, Addl. CIT (DR)

Date of Hearing	:	18-03-2024
Date of Pronouncement	:	04-04-2024

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

These two appeals filed by the assessee are against separate orders passed by the NFAC, Delhi both dated 03.05.2023 DIN & Order No: ITBA/NFAC/S/250/2023-24/1052574535(1) and

ITBA/NFAC/S/250/2023-24/1052575899(1) for A.Ys. 2018-19 and 2020-21 respectively.

2. The issue involved in both the appeals are similar, therefore we are reproducing the grounds of appeal for A.Y. 2018-19 in ITA No. 139/Bang/2024 which is as under and the decision of this appeal may apply mutatis mutandis for the Assessment Year 2020-21 in ITA No. 140/Bang/2024.

<i>Grounds of Appeal</i>	<i>Tax effect relating to each Ground of appeal</i>
<p>1. That the learned Commissioner of Income Tax ('Appeals') ['CIT(A)] - National Faceless Appeal Centre has erred on facts and circumstances of the case and in law so far as the first appellate order passed by him / her is prejudicial to the interest of the Appellant.</p>	<p>General Ground</p>

<p>2. <i>The learned CIT(A) as well as the learned AO erred in denying the deduction u/s 80P(2)(a)(i) of the Income tax Act in respect of interest income received from various banks and in doing so</i></p> <p><i>a. He failed to appreciate that the interest income from other banks are attributable to profit and gains of the business of extending credit facilities to applicant's members.</i></p> <p><i>b. He failed to appreciate that the business of applicant consist entirely of extending credit facilities only to its members and the interest income from various banks arose only on account of keeping the surplus funds for the time being in anticipation of lending the same to the members as there were no ready borrowers for the said amount.</i></p> <p><i>c. He failed to appreciate the circular issued by the CBDT circular, having Circular No.18/2015 dated 02.11.2015. in this circular it is clearly stated that interest income from SLR/non-SLR investment by banking company and a cooperative society shall be changeable under the head "profit and gains of business or profession".</i></p> <p><i>d. He failed to appreciate the fact that investment made outside the business is out of compulsions under the Karnataka Souharda Sahakari Act 1997, and the relevant Rules.</i></p>	<p style="text-align: center;"><i>Rs.23,97,866</i></p>
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<p>3. <i>The learned CIT(A) has erred on facts and in circumstances of the case and in law by confirming the order of the learned Assessing Officer who has held that interest income from co-operative banks and other banks are to be considered under income from other sources under section 56 of the Income Tax Act, 1961. Further, The learned CIT(A) has not allowed the expenditure under section 57 Income Tax Act, 1961.</i></p>	<p><i>Same as Ground 2 above since they are on the same issue.</i></p>
<p>4. <i>The Appellant prays for leave to add, modify, delete, or introduce additional grounds of appeal at any time before the Appeal is disposed of.</i></p>	<p><i>General Ground</i></p>
<p><i>Total Tax Effect</i></p>	<p><i>Rs.23,97,866</i></p>

3. Both the appeals before the Tribunal are delayed by 207 days. The assessee has filed application for condonation and affidavit stating that it is a co-operative society and returns are filed through ITP and the email id in the income tax portal belongs to ITP only and therefore the assessee was not aware of the CIT(A)'order and came to know of it when the demand was raised. Therefore the appeal was filed with a delay in both the appeals. The ld. AR submitted that considering the reasonable cause the delay in filing appeals may be condoned.

4. After hearing both the parties, we note that there was reasonable cause in filing the appeals before the Tribunal and therefore following the Supreme Court judgment in the case of

Collector, Land Acquisition v. Mst. Katiji (167 ITR 471 (SC), we condone the delay in filing both the appeals.

5. Brief facts of the case are that the assessee Siddhivinayak Souharda Pattina Sahakari Niyamita is a society providing credit facilities to its members. The assessee filed the return of income for the Assessment Year 2018-19 declaring gross total income of Rs.60,45,355/- after claiming deduction of Rs.57,90,011/- u/s. 80P(2)(a)(i) and Rs. 50,000/- u/s. 80P(2)(c) under chapter VIA, the total income is declared at Rs.2,06,344/-. The case was selected for scrutiny and statutory notices were issued to the assessee. Accordingly, the assessee submitted reply. It was noticed that the assessee has invested Rs.5,68,93,785/- in co-operative banks on which it has earned Rs.35,18,407/- as interest and the interest has been claimed as deduction u/s. 80P(2)(a)(i). The deduction claimed by the assessee under chapter VIA u/s. 80P(2)(a)(i) was examined by the assessing officer and he concluded that the deduction 80P is available only to the co-operative societies however the assessee is not registered under the Co-operative Societies Act, 1912 or under any other law for the time being in any state for the registration of co-operative society. Accordingly, the deduction u/s. 80P(2)(a)(i) was denied to the assessee.

6. Aggrieved from the above order, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) after relying on the judgment of Hon'ble Jurisdictional High Court, noted that the assessee is eligible for deduction u/s. 80P and it may be treated

as a co-operative society for the income tax purpose and eligible for deduction u/s. 80P(2)(a)(i) on the assessee's income and allowed this ground. Further the assessee received interest income of Rs.35,18,407/- by investing in co-operative banks/commercial banks to which the assessee has claimed business income and claimed deduction u/s. 80P(2)(a)(i) of the act whereas the assessing officer has held that the deduction u/s. 80P(2) is not allowed on such interest earned on deposits with co-operative banks and treated as income from other source. The Ld.CIT(A) after relying on the judgment of Totagars' Co-operative Sales Society Ltd. reported in (2017) 395 ITR 611 (Karnataka) dated 16.06.2017 and Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. reported in (2022) 140 taxmann.com 602 (Gujarat) dated 04.01.2022 observed that the interest derived from surplus funds invested by assessee in nature of FDRs in co-operative banks and nationalised banks other than co-operative societies would not fall in category to be entitled to claim deduction u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act. Accordingly, the deduction u/s. 80P was not allowed on interest income earned on the investments made with co-operative banks and he partly allowed the appeal of the assessee.

7. Aggrieved from the above order, the assessee filed appeal before the ITAT. The Ld.AR of the assessee reiterated the submissions made before the lower authorities and he has also filed the returns, synopsis pages 1 to 09 & paper book page No. 01 to 35 which are placed on record. The Ld.AR of the assessee

distinguished the judgment cited by the Ld.CIT(A) regarding treatment of interest income received on investments with co-operative banks and submitted that the interest income received is attributable to business income and it was invested to maintain the SLR/non-SLR which was mandatory as per the Karnataka Co-operative Society / Karnataka Co-operative Souharda Society Act and he has also referred to CBDT Circular No. 18/2015 dated 02.11.2015 and submitted that as per the above circular, the interest income received shall be treated as a business income. Accordingly, the interest received is to be considered as a business income and eligible for deduction u/s. 80P(2)(a)(i) of the Act. He also referred to the written submissions in which the counsel has submitted the detail of the deposits collected from the members and the detail of the investments made and the interest received thereon and he also relied on the judgment of the Co-ordinate Bench decision in the case of The West Coast Paper Mill Employees Souhardha Credit Co-op. Ltd. in which it has been held that cost of funds should be allowed to the assessee.

8. The Ld.DR relied on the order of the Ld.CIT(A) and he submitted that the interest income received by the assessee is not to be considered as a business income since the Hon'ble Jurisdictional High Court of Karnataka has settled this issue as relied on by the Ld.CIT(A) and he has also submitted that the Hon'ble Gujarat High Court on similar facts had decided the issue in favour of the revenue as relied by the Ld.CIT(A) in the

case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. (supra).

9. He also submitted that the status of the payer of interest also should be seen whether it is co-operative bank or co-operative society. He relied on the judgment of Hon'ble Apex Court in case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. (KSCARDB) vs. The Assessing Officer, Trivandrum & Ors. reported in (2023) 154 taxmann.com 305 (Supreme Court). He further submitted that the interest received from Co-operative bank is also not eligible for deduction u/s 80P(2)(d) of the Act because it was not received from the co-operative bank which is carrying banking business of banking.

10. Considering the rival submissions, we note that here the issue is that whether the assessee is eligible to claim of deduction u/s. 80P(2)(a)(i) or 80P(2)(d) on the interest income earned on its investments amount made with co-operative banks. During the assessment year, the assessee has earned interest income from deposits with co-operative banks of Rs.35,18,407/- in which the Ld.CIT(A) has not accepted the claim of the assessee by relying on the judgment of Hon'ble Karnataka High Court in case of Totagars' Co-operative Sales Society Ltd. (supra) and Hon'ble Gujarat High Court in case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. (supra). The interest income earned from surplus investments is not eligible for deduction u/s. 80P. During the course of hearing, the Ld.AR of the assessee relied on the Circular No. 18/2015

dated 02.11.2015 submitted that as per the provision of the Karnataka Co-operative Societies Act, the assessee is required to maintain SLR from the deposits received from the members and he has to invest 100% from the general reserve and 25% from the deposits collected from members. Accordingly, he has invested in the fixed deposits. Accordingly, as per the circular, the income received from the investments should be treated as business income u/s. 28 and assessee is eligible to make a claim of deduction u/s. 80P(2)(a)(i) as business income. Further, the assessee submitted that the investments were made in co-operative banks which are co-operative society. Therefore the interest received on such investments are to be allowed for deduction u/s. 80P(2)(d). In support of his argument, the assessee relied on the following decisions.

- a) M/s. Sumantha Pathina Souharda Sahakari Niyamita vs. ITO in ITA No. 158/Bang/2024 vide order dated 27.02.2024 for A.Y. 2020-21
- b) M/s. Machina Service Co-operative Society Ltd. vs. ITO in ITA Nos. 124 & 125/Bang/2024 vide order dated 22.02.2024 for A.Ys. 2017-18 and 2020-21.
- c) NTI Housing Co-operative Society vs. ACIT in ITA Nos. 827 to 829/Bang/2023 vide order dated 28.02.2024 for A.Ys. 2011-12, 2015-16 & 2017-18.

11. We note from the circular that it is applicable to the co-operative banks. As per our considered opinion, this circular is applicable to those co-operative societies / co-operative banks in which the Banking Regulation Act, 1949 applies. But here in

this case, the Ld.Counsel could not show before us that the banking regulation Act is applicable to the assessee society or not. Therefore we are remitting the matter to the assessing officer for examining whether the Banking Regulation Act, 1949 is applicable or not to the assessee.

12. We note from the submissions of the ld. AR that the assessee has invested in various commercial banks as well as in co-operative banks and earned interest thereon. Section 80P(2)(d) describes that if the assessee has received interest from the co-operative society, then the assessee is eligible for claim of deduction on such interest however we note that the assessee has received interest from co-operative banks but it is not clear whether the interest payer is a bank and registered with Reserve Bank of India and holding licence from RBI for carrying out banking business as per RBI Act. In addition to the judgment of Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors. (supra) in which it has been discussed in detail the definition of co-operative banks and co-operative society. If the payer bank falls under the definition of co-operative bank in the light of the judgment of Hon'ble Apex Court then the assessee is not eligible to get deduction u/s. 80P(2)(d) on such interest income received from co-operative banks, therefore this issue is also remitted back to the Ld.AO.

13. We further note that the assessee has received interest from other commercial banks on its investments to the extent of

Rs.23,01,742/- as per para No. 03 of its written synopsis. In this regard, the Ld.CIT(A) has not given benefit of deduction u/s. 80P(2)(d) relying on the judgment of the Jurisdictional High Court and Hon'ble Gujarat High Court (supra). We also concur with the Ld.CIT(A) on this issue. However, the revenue authorities have considered the entire interest as income from other sources u/s. 56 however no cost of expenses u/s. 57 has been allowed to the assessee. While calculating the income, the net income should be considered as taxable income after reducing the expenditure incurred towards earning of such income. Therefore relying on the judgment of Hon'ble Jurisdictional High Court in case of Totagars' Co-operative Sales Society Ltd. vs ITO Sirsi, reported in (2015) 58 taxmann.com 35 (Karnataka), the assessee is eligible for claim of its cost of funds on the entire interest income. The assessee has relied on the judgment of Co-ordinate Bench of the Tribunal in case of The West Coast Paper Mill Employees Souhardha Credit Co-op. Ltd.. Accordingly, the assessee is directed to provide the details of cost of funds before the assessing officer. Therefore for allowing cost of funds, we are remitting this issue to the assessing officer for determining the cost of funds for earning interest income.

14. Since the issues involved in Assessment Year 2020-21 in ITA No. 140/Bang/2024 are similar, therefore we are sending back to the Ld.AO the entire issues in terms of the decision of ITA No. 139/Bang/2024 for A.Y. 2018-19.

To sum up, both the appeals of the assessee are allowed for statistical purposes. A common order passed shall be kept in respective files.

Order pronounced in the open court on this 04th day of April, 2024.

Sd/-
(GEORGE GEORGE K)
Vice - President

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, the 04th April, 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