

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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.204/Bang/2024
Assessment year : 2020-21

Shree Channamaleshwara Credit Co-operative Society Ltd., Opp. Ram Mandir, Main Road, Shahabazar, Kalaburagi – 585 103. <b>PAN : AAETS 6333E</b>	Vs.	The Income Tax Officer, Ward 3, Kalaburagi.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Lakshmi S., Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	03.04.2024
Date of Pronouncement	:	22.04.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1059149420(1) dated 28.12.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2020-21.

2. The sole and substantive issue raised by the assessee is disallowance of deduction u/s. 80P of Rs.7,60,479.

3. Briefly stated the facts are that the assessee is a credit co-operative society engaged in the business of providing credit facilities to its members and filed return of income of gross total income of Rs.44,87,757 and declared NIL income after claiming deduction under Chapter VIA. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee filed reply. The AO observed that the assessee has deposited/invested in co-operative banks/commercial banks its surplus funds and interest arising from deposits has been treated as income u/s. 56 of the Act. The assessee claimed deduction u/s. 80P(2)(a)(i) of the Act which was not allowed by the AO after referring to various judgments and deduction u/s 80P(2)(d) was also disallowed in the assessment order. Aggrieved, the assessee filed appeal before the First Appellate Authority (FAA) which was also dismissed. Against this, the assessee is in appeal before the ITAT.

4. The Id. AR submitted that the only objective of the society is giving loans to its members and earning income. Out of surplus funds as per the mandatory requirement of the Karnataka Co-operative Societies Act, the amount is invested in co-operative bank as well as commercial banks. Therefore, the interest income received on such investment should be treated as business income and deduction u/s. 80P(2)(a)(i) should be allowed. In support of this argument, he relied on the judgments in the case of Totgar's Co-operative Sale Society Ltd. v. ITO [2010] 322 ITR 283, Tumkur Merchants Souharda Credit Co-operative Ltd. [2015] 55 taxmann.com 447 and Honnali Credit Co-operative Society Ltd. dated 31.1.2018.

5. 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 in the case of Totgars' Co-operative Sales Society Ltd. reported in (2017) 395 ITR 611 (Karnataka) dated 16.06.2017. He also submitted that the Hon'ble Gujarat High Court in Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. reported in (2022) 140 taxmann.com 602 (Gujarat) dated 04.01.2022 on similar facts had decided the issue in favour of the revenue.

6. 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 received from the co-operative bank which is carrying banking business of banking.

7. 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. 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 Totgars' Co-operative Sales Society Ltd. (supra) and Hon'ble Gujarat High Court in case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. (supra). During the course of hearing, the Ld.AR of the assessee relied on the Circular No. 18/2015 dated 02.11.2015 and submitted that as per the provisions of the Karnataka Co-operative Societies Act, the assessee is required to maintain SLR from the deposits received from the members and has to invest 100% from the general reserve and 25% from the deposits collected from members. Accordingly, assessee has invested in the fixed deposits. 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.

- (i) 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
- (ii) 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.
- (iii) 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.

8. We note from plain reading of Circular No. 18/2015 dated 02.11.2015 it is applicable to the 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. During the course of hearing the assessee was asked to submit the requirement of SLR as per Karnataka Cooperative Societies Act and the quantum and period for calculating SLR, the assessee was unable to give reply. Accordingly the assessee is directed to submit the details of SLR requirement before the AO. We further make it clear that if the maintainability of SLR requirement is out of reserve fund then no deduction shall be allowed u/s. 80P(2)(a)(i). Since the interest income received on such investments from co-operative banks is not attributable to main business of the appellant, hence needs to be assessed as 'income from other source'. The issue regarding the word "attributable" has been discussed elaborately by the Hon'ble Apex Court in the case of M/s Totgar's Co-operative Sales Society (2010) reported in [2010] 188 Taxman 282 (SC) where it is held by the Hon'ble Supreme Court that the deduction u/s 80P is available only to the income which is attributable to the business operation. Since the interest income received by the appellant was not attributable to the main business of the appellant the same should not be allowed as deduction u/s 80P of the Act. The AO is further directed that while adjudicating this issue, the provisions of Karnataka Cooperative Societies Act, Chapter VII section 57 and 58 is to be considered too.

9. 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, in 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. (2023) 154 taxmann.com 305 (Supreme Court) 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.

10. We further note that the assessee has received interest from other co-operative banks/commercial banks on its investments. In this regard, the Ld.CIT(A) has not given benefit of deduction u/s. 80P(2)(d) as per the judgment of the Jurisdictional High Court reported in 395 ITR 611 and Hon'ble Gujarat High Court (supra). The revenue authorities have considered the entire interest as income from other sources u/s. 56 and 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 Totgars' 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. Reliance is also placed 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.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 22<sup>nd</sup> day of April, 2024.

Sd/-

( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 22<sup>nd</sup> April, 2024.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.