

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

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| ITA Nos.329 to 333/Bang/2024 |
| Assessment Years: 2011-12 to 2013-14, 2017-18 & 2018-19 respectively |

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| Basaveshwaranagara Coopera No.159/J, 4 th Main Road 3 rd Stage, 3 rd Block Basaveshwaranagar Bangalore 560 079 PAN NO : AAAJB0390C | Vs. | ITO Ward-6(2)(4) Bangalore |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Ms. Lakshmi S., A.R. |
| Respondent by | : | Shri V. Parithivel, D.R. |

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| Date of Hearing | : | 23.04.2024 |
| Date of Pronouncement | : | 23.04.2024 |

O R D E R

PER BENCH:

All these appeals by assessee are emanated from different orders of the NFAC for the assessment years 2011-12, 2012-13, 2013-14, 2017-18 are dated 6.1.2024 and for the AY 2018-19 dated 15.1.2024. The issues in all these appeals is common in nature but only varies in figures. Hence, we consider the grounds raised by the assessee in assessment year 2011-12, which reads as follows:

- 1. The Order of the learned Commissioner passed under section 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*
- 2. The Appellant denies to be assessed to tax on total income as determined by the learned AO of Rs. 81,81,055/- as against the total income reported by the Appellant of Rs. 21,000/- on the facts and circumstances of the case.*
- 3. The learned Commissioner of Income-tax (Appeals) erred in applying the ratio of judgement of Karnataka High Court in the case of M/S Totgars Co-*

operative Sales Society reported in 83 Taxmann.com 140 for charging interest income as Income from Other Sources which are distinguishable on facts of the Appellant' case:

- i. The Appellant is a credit co-operative society and not engaged in marketing of agricultural produce; and*
 - ii. The Appellant has earned interest from investment of its operational funds used in business of investing and lending to members and not by investing surplus funds in short term deposits.*
- 4. The learned Commissioner of Income-tax (Appeals) erred in applying the principles laid down by the Supreme Court in case of Totgar's Co-Operative Sale Society Ltd. v. ITO [2010] 322 IT R 283 in so far as the interest income earned from Cooperative Banks are not attributable to business operations, hence not eligible for deduction u/s 80P(2)(a)(i) of the Act in the facts and circumstances of the case.*
- 5. The learned Commissioner of Income-tax (Appeals) erred in not considering that investment made in Co-operative Banks is statutorily required under the Karnataka Co-operative Societies Act, 1959; hence it is attributable to carrying on the business of society eligible for deduction u/s 80P(1) of the Act in the facts and circumstances of the case.*
- 6. The learned Commissioner of Income-tax (Appeals) erred in not considering Karnataka High Court in the case of Tumkur Merchan Souharda Credit Cooperative Ltd. v. Income tax officer Ward-V, Tumkur reported in 120151 55 taxmann.com447 and M/S Honnalli Credit Co-operative Society Ltd dated 31/01/2018 where interest income earned from investment in co-operative Bank by a primary agricultural credit co-operative society is eligible for deduction u/s 80P(1) of the Act in the facts and circumstances of the case.*
- 7. The learned Commissioner of Income-tax (Appeals) erred in considering interest income earned by the Appellant from investment into Co-operative Banks of Rs. 81,60,055/- as taxable under the head "Other sources" and not "Business income", thus rendering deduction u/s 80P(2)(d) not applicable in the facts and circumstances of the case.*
- 8. The learned Commissioner of Income-tax (Appeals) failed to appreciate that SCDCC Bank is a co-operative Society which is registered under Karnataka State Co-operative Societies Act, 1959, then it is no a bank per-se governed by RBI, then interest income earned from deposits with SCDCC Bank is eligible for deduction u/s 80P(2)(d) of the Act in the facts and circumstances of the case.*
- 9. Without prejudice, the Appellant is entitled to cost of funds u/s 57 of the Act if interest income is taxed u/s 56 of the Act as "Income from Other Source" in the facts and circumstances of the case.*

10. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

11. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.*

2. First, we will take up the grounds relating to section 80P(2)(a)(i) of the Act in all these assessment years. This is the second round of litigation in assessment year 2011-12. Facts as narrated in assessment year 2011-12 on this issue are as follows.

2.1 The assessee claimed deduction on interest received on investment with banks and co-operative banks under section 80P(2)(a)(i) of the Act. Similar is the position in other assessment years, which is as follows:

| Sl.No. | Assessment year | Interest received on investment with banks and co-operative banks |
|--------|-----------------|---|
| 1. | 2011-12 | 81,60,055/- |
| 2. | 2012-13 | 1,24,94,050/- |
| 3. | 2013-14 | 1,68,28,561/- |
| 4. | 2017-18 | 2,34,70,800/- |
| 5. | 2018-19 | 2,67,08,210/- |

2.2 The same has been denied. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. The Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (123 taxman.com 161) had held that the co-operative societies providing credit facilities to its members is entitled to deduction u/s 80P(2)(a)(i) of the Act. The Hon'ble Apex Court after considering the judicial pronouncements on the subject, had stated the term "member" has not been defined under the Income-tax Act. It was, therefore, stated by the Hon'ble Apex Court that the term "member" in the respective

State Co-operative Societies Acts under which the societies are registered have to be taken into consideration. The Hon'ble Apex Court held that if nominal / associate member is not prohibited under the said Act, for being taken as a member, the income earned on account of providing credit facilities to such member also qualify for deduction u/s 80P(2)(a)(i) of the Act. It was further held by the Hon'ble Apex Court that section 80P(4) of the I.T. Act is to be read as a proviso. It was stated by the Hon'ble Apex Court that section 80P(4) of the Act now specifically excludes only co-operative banks which are co-operative societies engaged in the business of banking i.e. engaged in lending money to members of the public, which have a license in this behalf from the RBI. The Hon'ble Apex Court had enunciated various principles in regard to deduction u/s 80P of the Act. On identical factual situation, the Bangalore Bench of the Tribunal in the case of M/s. Ravindra Multipurpose Cooperative Society Ltd. v. ITO in ITA No.1262/Bang/2019 (order dated 31.08.2021) had remanded the issue to the files of the A.O. for de novo consideration. The Tribunal directed the A.O. to follow the dictum laid down by the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra). The relevant finding of the Co-ordinate Bench of the Tribunal in the case of M/s. Ravindra Multipurpose Cooperative Society Ltd. v. ITO (supra), reads as follows:-

“6. Grounds 2-4 & additional Ground No.1:

In respect of associate / nominal members, Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC) has held that the expression “Members” is not defined in the Income-tax Act. Hence, it is necessary to construe the expression “Members” in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. In view of this, the facts are to be examined in the light of principles laid down by the Hon'ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. (surpa).

Accordingly, we remit this issue of deduction u/s 80P(2)(a)(i) of the Act to the files of Ld.AO to examine the same de novo in the light of the above judgment. Needless to say that proper opportunity of being heard is to be granted to assess in accordance with law.”

3.1 In view of the order of the ITAT, which is identical to the facts of the case, we restore the issue of claim of deduction u/s 80P of the Act to the files of the A.O. to decide in the light of above order of Tribunal cited (supra).

3.2 Alternatively, assessee raised ground that the assessee earned interest income from deposit with scheduled banks and co-operative banks. Facts regarding this ground are that the assessee earned interest income from deposits with Scheduled banks and Co-operative banks, which has been assessed as “income from other sources” and no deduction u/s 80P(2)(d) of the Act has been granted to the assessee. Now the contention of the assessee is that this income is to be assessed as “business income” and deduction u/s 80P(2)(d) of the Act to be granted. Without prejudice to this, it was submitted that the assessee is entitled for deduction u/s 57(iii) of the Act with regard to cost of funds incurred if the income is assessed as “income from other sources” u/s 56 of the Act.

4. We have heard the rival submissions and perused the materials available on record. As regards the claim of deduction u/s 80P(2)(d) of the I.T. Act, we direct the A.O. to verify whether interest / dividend is received by the assessee out of investments made with Cooperative Societies. If the assessee earns interest / dividend income out of investments with co-operative society, as observed by Hon’ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. in Civil Appeal No.10069 of 2016, order dated 14.09.2023, the same is entitled to deduction u/s 80P(2)(d) of the I.T. Act.

4.1 Without prejudice to the above, we make it clear that if the interest earned by assessee from the banks is considered under the

head "Income from other sources", relief to be granted to the assessee u/s 57 of the Act in accordance with law. Accordingly, the issue is restored to the file of ld. AO for de-novo consideration with the above observations.

4.2 Accordingly, the issue in dispute in these appeals are remitted to the file of ld. AO for fresh consideration.

5. In the result, appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 23rd Apr, 2024

Sd/-
(Keshav Dubey)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 23rd Apr, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.