

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

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

ITA No.549/Bang/2024
Assessment Year: 2020-21

The Jamkhandi Taluk School Teacher Co-op Credit Society Behind Srinivas Talkies Mangawada Tal: Jamkhandi Dist. Bagalkot Karnataka 587301 PAN NO : AAALT0865A	Vs.	ITO Ward-1 Bagalkot
APPELLANT		RESPONDENT

Appellant by	:	Shri Ashok Mudnur, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for department.

Date of Hearing	:	23.04.2024
Date of Pronouncement	:	23.04.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2020-21 dated 11.3.2024. The assessee has raised following grounds of appeal:

- 1. The Ld. CIT(A) has erred in upholding the Assessing Officer's order u/s 143(3) which is opposed to the law and facts of the case.*
- 2. The Ld. CIT(A) erred in disallowing the deduction of Rs. 9,23,130/- claimed u/s 80P(2)(a)(i) ignoring submissions made and various court rulings in support of our appeal.*
- 3. The learned CIT[A] failed to appreciate that the appellant was bound by statutory provisions of Karnataka Co-operative Societies Act, 1959 & rules, hence is business income entitled to deduction u/s. 80P(2)(a)(i) of the Act. As held in:*

- *Supreme Court case of Commissioner of Income Tax Vs Nawshahar Central Cooperative Bank Ltd (2007) 289 ITR 6 (SC)*
 - *Canara Bank Staff Credit Co-operative Society Ltd. Vs ITO (ITAT Bangalore) 517/Bang/2023*
4. *The Ld. CIT(A) erred in misconceiving the facts of the case to suit his arguments and placed reliance on the judgement of Hon'ble jurisdictional High Court in the case of PCIT Vs. Totagars Co-operative Sales Society reported in 395 ITR 611 (Karn.) even when the facts and circumstances of this case are different from appellants.*
5. *Without prejudice to the above, the learned CIT[A] ought to have appreciated that the entire interest income of Rs. 9,23,130/- was alternatively entitled to deduction under section 80P(2)(d) of the Act since the said interest income was derived from co-operative banks as held by recent High court case of Thorapadi Urban Coop Credit Society Vs Income Tax Officer Madaras High Court (2023)*

2. Facts of the case are that the Assessing Officer has brought to tax the Gross Interest earned on Reserve Fund of Rs 9,23,130/- with Bagalkot District Cooperative Bank Ltd as Income from Other Sources and denied the exemption claimed u/s 80P(2) of the Act. The Assessing Officer has misconceived the facts to suit his arguments and applied principle laid down Court rulings-in parts. The Assessing Officer has made the simple issue complex by raising issues on mutuality which the assessee never raised. The facts of the Hon'ble Supreme Court case relied by the Assessing Officer is totally different. Totagars Coop Sale Society Vs Income Tax Officer, Karnataka (2010) 188 Taxman 282 (SC) case facts relate to marketing society retaining funds of members of sale of produce and treating it as liability and investing the same with banks etc. The interest so earned was held to be income from other sources and was brought to tax as Income from Other Sources. Also the Assessing Officer in applying the case of Pr CIT Vs Totagars Cooperative Sale Society (2017) 83 Taxmann.com 140 (Karnataka) failed to give fully effect to the principle laid down there. It was held that if interest on investments was taxable under section 56 of Income Tax Act under Income from Other Sources then deduction has to be allowed u/s 57

towards proportionate expenses to earn that income. The Assessing Officer has brought to tax the whole of Rs 9,23,132/- being interest on Reserve Fund from BDCC Bank Ltd without allowing proportionate expenses u/s 57 of the Act much against the Totagars. Court order, Assessing Officer is relying. The assessee would like that under the Karnataka Cooperative Societies Act and Rules it is mandated to set aside 25 percent of the profits as reserve funds year on year basis. As per the Section 57(2), 58 read with rules 22 and 23 of the Karnataka Cooperative Act 1959 -each cooperative society shall out of its net profits in any year transfer an amount not being less than twenty-five percent of the profits to the reserve fund. This amount has to be invested in District Cooperative Bank of that District as per the guidelines of Registrar of Cooperative Societies. The assessee is bound by the Act and guidelines made by the authority. As per the Balance Sheet the society, it has Reserve Funds of Rs 1,15,18,962/- against which they have invested Rs.1,06,96,145/- with Bagalkot District Cooperative Bank. They have earned a sum of Rs 9,23,132 on the investment with Bagalkot District Cooperative Bank. These are statutory provisions to be followed by any Cooperative Society registered in Karnataka. The assessee relied on the well settled Supreme Court Case of Commissioner of Income Tax Vs Nawnsahar Central Cooperative Bank Ltd (2007)289 ITR 6 (SC). Earlier 80P(2)(a) deduction was allowed to Cooperative Banks apart from Co-operative Societies-Prior to 2007 amendment to BOP. It was held that statutory provisions are to be followed by the Cooperative Bank and hence interest arising from such investments is attributable to the business of banking under the head Profits and Gains of Business and is deductible under section 80P(2)(a)(i) of the Act. The Assessing Officer has raised issues of mutuality which is never raised by the assessee. Against this assessee went in appeal before NFAC. NFAC once again

confirmed the order of Id. AO. Once again assessee is in appeal before us by way of above grounds.

3. The main crux of the aforesaid grounds is with regard to the ground relating to deduction claimed under section 80P(2)(a)(i) of the Act and 80P(2)(d) of the Act, which have been denied. Against this assessee is in appeal before us.

4. 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.”

4.1 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).

4.2. 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.

5. 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.

5.1 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.

5.2 Accordingly, the issue in dispute in this appeal is remitted to the file of ld. AO for fresh consideration.

6. In the result, appeal of the assessee is 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.**