

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.452/Bang/2024
Assessment Year: 2017-18

Kotekar Vyavasaya Seva Sahakara Sangha Niyamitha 5-4(5) Raitha Sadana NH 66, Beeri Kotekar Mangalore Karnataka PAN NO : AAAAK2844D	Vs.	ACIT Circle-2(1) Mangalore
APPELLANT		RESPONDENT

ITA No.453 & 454/Bang/2024
Assessment Years: 2018-19 & 2020-21

Kotekar Vyavasaya Seva Sahakara Sangha Niyamitha Mangalore Karnataka	Vs.	DCIT Circle-1(1) & TPS Mangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Srikrishna, A.R.
Respondent by	:	Sri Narendra Kumar Naik, D.R.

Date of Hearing	:	01.05.2024
Date of Pronouncement	:	01.05.2024

O R D E R

PER BEENA PILLAI, JUDICIAL MEMBER:

All these appeals by assessee against different orders of NFAC for the assessment years 2017-18, 2018-19 & 2020-21 all are dated 7.3.2024. The issue in all these appeals is common except change in figures, which reads as follows:

Grounds of appeal in ITA No.452/Bang/2024:

1. *The order of the learned Commissioner passes 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 1,40,79,450/- as against the total income reported by the Appellant's of Rs. NIL on the facts and circumstances of the case.*

3. *The learned commissioner of Income Tax (Appeals) erred in applying the ratio of judgment of Supreme Court in the case of Totgars Co-operative sales Society reported in 322 ITR 283(SC) which are distinguishable on facts of the Appellant's case.*

(a) 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 and:

(b) The Appellant is a Cooperative society and not engaged in marketing of agriculture produce:

4. *The learned Commissioner of Income Tax (Appelas) erred is not considering the principles laid down by the judgement of the Hon'ble Supreme Court in the case of the Mavilayi Service Cooperative Bank Ltd., & Ors v/s Commissioner of Income Tax, Calicut & Anr. [2021] 123 taxmann.com 1 where the primary agricultural credit societies are entitled to the benefit of deduction contained in section 80P(2)(a)(i) of the Act on interest income earned from lending to members including nominal members.*

5. *The learned Commissioner of Income Tax(Appeals) erred in considering interest income earned by the Appellant from investment into other co-operative societies as taxable under the head "Other sources" and not Business income"; thus rending deduction u/s80P(2)(d) not applicable.*

6. *The learned Commissioner of Income Income-tax (Appeals) erred in not considering Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co- operative Ltd. V. Income Tax officer ward-v, Tumkur reported in 120151 55 taxmann.com 447 and Bangalore ITAT decisions in the case of Totagars Co- op sale Society, Sirsi vs The Asst. Commissioner of Income tax, circle-1(1) & TPS, Hubli in ITA No.376 to 379/Bang/2023 where interest income earned from investment in Co-opeartive Bank by multi purpose Cooperative Society is eligible for deduction u/s 80P(2)(d) of the Act.*

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

8. 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 the justice and equity.

2. We consider the facts in ITA No.452/Bang/2024 for the AY 2017-18. Facts of the case are the assessee is an agricultural credit Cooperative Society which is engaged in the business of acceptance of deposits from members and lending the same to its members. The assessee filed its return of income for the AY 2017-18 on 07/11/2017 declaring total income at Rs.17,22,190/- after claiming deduction of Rs.1,23,57,259/- u/s 80P of the Act. The case was selected for Scrutiny under CASS. During the assessment proceedings, the assessee furnished the details and explanation as called for by the AO. After careful examination of the submissions made, the AO found that the assessee has earned total interest income of Rs.3,50,17,502/- from the deposits made with the Cooperative bank. The assessee treated all of the interest income received from the aforesaid as its operational income and claimed deduction u/s 80P of the Act. In this connection, the assessee was asked to clarify how the interest receipts from Cooperative Bank can be claimed as deduction u/s 80P of the Act. In response the assessee furnished written submissions. Subsequently, after considering the facts and submission of the assessee, the Id. AO has completed the assessment proceedings wherein disallowance of Rs.3,50,17,502/-(interest received from Co-operative bank) was made. The AO has relied on the various decision of the Hon'ble Supreme Court and Hon'ble High Court in the case of M/S Totagars Co-operative sale society and also relied on Citizens Co-operative Society reported in 397 ITR 1 (SC). Further the Id. AO noted that the assessee society has two types (Ordinary and nominal) of members having different kind of rights and also the different-work culture/work allotted according to the type of member. After considering the facts of the case and the submission made by the assessee, the AO held that the assessee was

not following the principle of mutuality and accordingly the entire deduction claimed by the assessee at Rs.1,23,57,259/- was disallowed by the AO.

3. The Id. CIT(A) observed on this issue that the facts in the present case are not in dispute. It is significant to point out that the main reason for disentitling the assessee from getting the deduction provided under Section 80P of the Act is that the claim is alternate to the 'Test of Mutuality'. What has been noticed by the AO, after analyzing in detail the activities of the assessee is that the activities of the assessee are in violation of the provisions of the section 80P. It is pointed out by the AO that the assessee is catering to two distinct categories of members (Ordinary and Nominal). These types of members were having different kind of rights and also the different work culture/work allotted according to the type of member. With indulgence in such kind of activity by the assessee, it was noted by the Id. AO that the activity of the assessee is in violation of the Co-operative Societies Act. Hence, it was held by the AO that the assessee society is not following the principle of mutuality and accordingly is not entitled to claim the benefit of the deduction u/s 80P of the Act. He observed that the Id. AO has relied on the decision of the Hon'ble Supreme Court of India in the case of Citizens Cooperative Society and disallowed the entire deduction claimed u/s 80P of the Act.

3.1. The Id. CIT(A) further observed that in view of the above decision of Hon'ble Supreme Court and also the facts narrated above by the AO, it appears that the Id. AO has correctly disallowed the deduction u/s 80P of the Act as there is a lack of concept of mutuality between two types of members of the society. It is evident that the assessee society is having two types of members and these members were having different kind of rights and also the different work culture/work allotted according to their membership. Therefore, respectfully following the aforesaid decisions, it appears that the

action taken by the ld. AO is in order and accordingly there is no need to interfere with the order passed by the AO. The contention of the assessee is therefore rejected and the grounds raised by the assessee were dismissed by the ld. CIT(A). Against this assessee is in appeal before us claiming deduction u/s 80P(2)(a)(i) of the Act.

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(2)(a)(i) of the Act to the file of the A.O. for de novo consideration.

5. Next issue in this appeal is with regard to granting of deduction u/s 80P(2)(d) of the Act.

5.1 Facts of the case are the assessee has earned interest income from the funds invested in the Co-operative banks other than the Co-operative societies which was held non-operational income by the AO as the same was not attributed to the business activities of the assessee. The AO during the assessment proceedings relied upon the decision of Hon'ble High Court of Karnataka in the case of Principal Commissioner of Income-tax, Hubballi Vs Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 (Karnataka) and has disallowed the deduction claimed u/s 80P of the Act.

5.2. The Id. CIT(A) observed that in the above decision the Hon'ble Karnataka High Court has held that *'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 scheduled bank or a co-operative bank and, thus, section 80P of the Act would not apply'*. In the present case the assessee has earned interest income from the deposit made out of the surplus funds in the co-operative banks and accordingly the same do not qualify for the purpose of claiming deduction u/s 80P of the Act.

5.3. Further, the Id. CIT(A) observed that the issue regarding the word "attributable" has been discussed elaborately by the Hon'ble Supreme Court in the case of M/s. Totagar's Cooperative Sale Society (2010) wherein it is held by the Hon'ble Supreme Court that the deduction u/s 80P of the Act is available only to the income which is attributable to the business operation. Since the interest income received by the assessee was not attributable to the main business of the assessee the same should not be allowed as deduction u/s 80P of the Act.

5.4. In view of the above facts, he observed that the interest earned from surplus invested/deposited in the Co-operative banks is not attributable to main business of the assessee, hence needs to be assessed as "income from other sources" and not as "business profits." Accordingly, he observed that the observations and the findings of the AO appear to be in order which does not permit to take a divergent view. Accordingly, the disallowance made by the AO in respect of the interest income earned from the deposits made in Cooperative Bank was upheld and the grounds raised in respect of this issue were dismissed by the Id. CIT(A). Against this assessee is in appeal before us seeking relief u/s 80P(2)(d) of the Act.

6. 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.

6.1 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 Id. AO for de-novo consideration with the above observations.

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

Order pronounced in the open court on 1st May, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Beena Pillai)
Judicial Member

Bangalore,
Dated 1st May, 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.