

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

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

ITA No.615/Bang/2024
Assessment Year: 2018-19

Ullooru Machattu Vyavasaya Seva Sahakari Sangha Ltd. Ullooru, Kundapura Taluk Udupi Dist. 576 229 PAN NO : AAAAU0586G	Vs.	ITO Wad-1 & TPS Udupi
APPELLANT		RESPONDENT

Appellant by	:	N O N E
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Department.

Date of Hearing	:	02.05.2024
Date of Pronouncement	:	02.05.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2018-19 dated 5.2.2024. The assessee has raised following grounds of appeal:

1. *Was CIT(A) justified in sustaining the addition for investment income of Rs.41,47,618/- derived by the appellant from SCDCC Bank (Interest Rs.37,67,143 + Dividend Rs.3,80,475) holding the same as chargeable u/s 56 of the Act.*
2. *Whether or not the interest on investments from SCDCC Bank that accrued to the appellant from its mandatory maintenance of fluid resources as required under its governing statute qualify for deduction u/s 80P(2)(d) of the Act.*
3. *Both the authorities below passed the impugned orders contrary to established principles laid down by the Hon'ble Supreme Court and jurisdictional High Court.*

2. The assessee claimed deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 (in short "The Act") at Rs.6,91,932/-, u/s 80P(2)(d) of the Act at Rs.41,47,818/- and u/s 80P(2)(c) of the Act at Rs.19,436/-, which was denied by the ld. AO. On appeal, NFAC allowed the deduction u/s 80P(2)(a)(i) of the Act. However, dismissed the deduction u/s 80P(2)(d) of the Act. Now the assessee is in appeal before us with regard to deduction u/s 80P(2)(d) of the Act.

3. On this issue, ld. CIT(A) observed that the claim of the assessee that an interest earned was incidental to the business is also invalid in the eyes of the law irrespective of the fact that it was claimed under section 80P (2)(a)(i) or 80P (2)(d) of the Act as the judgment of the Hon'ble Supreme court in the case of Totagars Co-operative Sale Society Ltd. vs. ITO (2010) 229 CTR (SC) 209 and the judgment of Karnataka High court in the case of PCIT vs Totgars Co-operative sale Society, state that no deductions shall be allowable in respect of interest earned on surplus or on interest earned on investment with co-operative/ scheduled banks respectively. He extracted the relevant para of the above judgment as below:

"23. Thus, the aforesaid judgments supports the view taken by this Court that character of income depends upon the nature of activity for earning that income and though on the face of it, the same may appear to be falling in any of the specified Clauses of Section 80P(2) of the Act, but on a deeper analysis of the facts, it may become ineligible for deduction under Section 80P(2) of the Act. The case in Udaipur Sahakari (supra) Was fiat of Section 80P(2)(e) of the Act, Whereas in the present case, it is under Section 80P(2)(d) of the Act. Hence, 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. schedule bank or a co-operative bank and thus, clause (d) of Section 80P(2) or the Act would not apply in the facts and circumstances of the present case. The person or body corporate from which such interest income ' is received will not change its character, viz. interest income not arising from its business operations, which made it ineligible for deduction under Section 80P of the Act, as held by the Hon'ble Supreme Court.

24. In view of the aforesaid; we are of the opinion that the appeals filed by the Revenue deserve to be allowed and the appeals filed by the assessee deserve to be dismissed "

3.1 In light of the same, the ld. CIT(A) found no infirmity with the order of the ld. AO and the same was confirmed with respect to addition made on the issue of interest earned on investment and the ld. CIT(A) dismissed ground relating to section 80P(2)(d) of the Act. Against this, the assessee is in appeal before us.

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.

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

Order pronounced in the open court on 2nd May, 2024

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 2nd 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.**