

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

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

ITA Nos. 388 & 389/Bang/2024
Assessment years : 2018-19 & 2020-21

Puttur Mahila Vividdoddesha Sahakari Sangha N, Sri Radhakrishna Mandira Road, Puttur – 574 201. PAN : AADAP 2751K	Vs.	The Income Tax Officer, Ward 1, Puttur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Srikrishna, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	02.04.2024
Date of Pronouncement	:	07.05.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

These appeals are filed by the separate orders dated 28.02.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AYs 2018-19 & 2020-21.

2. The sole issue raised by the assessee in both the appeals is regarding not allowing deduction u/s. 80P(2)(a)(i) / 80P(2)(d) of the Act on the interest received on investments with co-operative banks and commercial banks.

3. The assessee has filed common additional grounds of appeal for both the years. The additional grounds for AY 2018-19 are as under:-

“ 1. The Appellant denies to be assessed to tax on total income as determined by the learned AO of Rs. 27,32,010/- as against the total income reported by the Appellant of Rs. NIL on the facts and circumstances of the case.

2. The learned Commissioner of Income-tax (Appeals) erred in applying the ratio of judgment 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 and circumstances of the Appellant' case.

3. The Appellant is a Taluk level women's multi-purpose co-operative society established by the Government of Karnataka engaged mainly in the business of providing credit facilities to its members and distribution of ration articles and not engaged in marketing of agricultural produce; and

- 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 ITR 283 in so far as the interest income earned from Co- operative 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 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

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. 27, 32, 010/-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) erred in not considering the judgement of 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 has held that Central Co-operative Bank is a Co-operative Society which is registered under the Kerala State Co-operative Societies Act, then it is not a bank per se governed by RBI.

9. The learned Commissioner of Income-tax (Appeals) ought to have held that levying interest under section 234A, 234B and 234C of the act and levying Fee under section 234F of the act and is bad in law and 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.”

Besides, for AY 2020-21 additional ground No.9 is as under:-

“9. The learned Commissioner of Income-tax (Appeals) erred in by not giving enough time for opportunity of being heard, as per standard of practice issued by department dated 03-08-2022 would indicate that in terms of N.1.3 for conducting faceless assessment at least 7 day's time must be given for submitting response in the show-cause notice dated 29/03/2022, date of compliance was 30/03/2022. honorable jurisdictional high court of karnataka in case of Theos metals trade private limited vs National faceless assessment centre quashed the order of income tax department in the similar case of short notice issue.”

4. The additional grounds for both the years for deduction u/s. 80P are elaborated to the main grounds and hence accepted and grounds of appeal and additional grounds are taken up together for consideration.

5. Since the issues raised in both the appeals are similar, we are taking first ITA No.388/Bang/2024 and the decision in this appeal shall apply mutatis mutandis to ITA No.389/Bang/2024.

6. The brief facts for AY 2018-19 are that the assessee filed return of income on 31.10.2018 declaring NIL total income after claiming deduction u/s. 80P. The case was selected for scrutiny and statutory notices issued to the assessee. The assessee submitted reply and the AO observed that the assessee is a cooperative society registered under Karnataka Co-operative Societies Act, 1959 and assessee has received interest from its investments in scheduled banks and co-operative banks, other than co-operative societies, at Rs.27,32,010 and claimed deduction u/s. 80P(2) on such interest received. The AO relying on M/s. Totagars Co-operative Sale Society decisions of the Hon'ble Supreme Court and Hon'ble jurisdictional High Court reported in 395 ITR 611 (Kar) noted that assessee has three types of members, Regular, Associate and Nominal members, having different kinds of rights and different work/culture and held that principle of mutuality was not followed and hence disallowed deduction of Rs.27,32,010. The AO relied on the decision of Hon'ble Supreme Court in the case of Citizens Co-operative Society Ltd. (2017) 397 ITR 1 (SC) and denying deduction u/s 80P(2)(a)(i) on such interest received. Further the AO noted that the interest received on investments with District Central Co-operative Bank which is a co-operative bank governed by the Banking Regulation Act of 1949, accordingly deduction u/s 80P(2)(d) also cannot be granted to the assessee .

7. On appeal, the CIT(Appeals) dismissed the appeals of the appeals of the assessee.

8. The Id. AR reiterated submissions made before the lower authorities and submitted that assessee is eligible for deduction u/s 80P(2)(a)(i) as per judgment of Hon'ble Apex Court in Mavilyai Service Co-op. Bank Ltd. [2021] 123 taxmann.com 1 (SC) wherein it is held that primary agricultural credit societies are entitled to the benefit of deduction u/s. 80P(2)(a)(i) of the Act on interest income earned from lending to members including nominal members. He submitted that interest income received on assessee's investments to another co-operative society are also eligible for deduction u/s. 80P(2)(d) because the co-operative banks are primarily co-operative societies as specified in section 80P(2)(d). He further submitted that the Id. CIT(A) has not considered the judgment in the case of Tumkur Merchants Souharda Credit Co-op. Ltd. reported in 55 taxmann.com 447 and the ITAT decision in Totagars Co-operative Sale Society in ITA No.376 to 379/Bang/2023 wherein interest income earned from investment in co-operative bank by multipurpose co-operative society is eligible for deduction u/s. 80P(2)(d) of the Act. He further submitted that the assessee is a taluk level womens multipurpose co-operative society engaged mainly in the business of providing credit facilities to its members and distribution of ration articles and not engaged in marketing of agricultural produce. The assessee has earned interest on investments out of its operational fund used in business of lending to its members and not by investing surplus funds in short term

deposits. The Id. CIT(A) has wrongly applied the judgment of Hon'ble Apex Court in the case of Totgars Co-operative Sale Society [2010] 322 ITR 283 and not considered that investment in co-operative bank is a statutory requirement under Karnataka Co-operative Societies Act, 1959. Hence it is attributable to carrying on of business and society is eligible for deduction u/s. 80P of the Act. He further submitted that interest income earned should not be taxed under the head income from other sources and it should be considered as business income. Even the assessee has not been granted deduction u/s. 80P(2)(d). The Id. CIT(A) has also not decided the issue in the light of Hon'ble Supreme Court judgment in the case of Kerala State Cooperative Agricultural and Rural Development Bank Ltd. in Civil Appeal No.10069/2016, order dated 14.09.2023 in which it has been held that central co-operative bank is a co-operative society which is registered under Kerala Co-operative Societies Act and it is not a bank per se governed by RBI.

9. 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.

10. The Id. DR also submitted that the assessee has violated the principle of mutuality and relied on the judgment of Hon'ble Apex

Court in the case of Citizen Co-operative Society Ltd. reported in (0217) 397 ITR 1 (SC). Accordingly the assessee is not eligible for deduction as observed by the lower authorities u/s 80P(2)(d)(i). He further submitted that in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. Assessing Officer, (2023) 154 taxmann.com 305 the Hon'ble Supreme Court has clearly held that if the payer bank holds licence from RBI for carrying out banking business, then the interest received from such bank is not eligible for deduction u/s. 80P(2)(d), though the co-operative bank may be primarily formed as co-operative society and that the activity of the entity should be seen. In this case, the AO has observed that the interest received from co-operative bank is governed by Banking Regulation Act, 1949 in para 7.6 of assessment order.

11. 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 District 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 Apex Court in the case of Citizens Co-operative Society Ltd. noted 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 also submitted that the investments were made in co-operative banks which are co-operative society. It is submitted by the Id. AR that 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) Mavilyai Service Co-op. Bank Ltd. [2021] 123 taxmann.com 1 (SC).
- (ii) Tumkur Merchants Souharda Credit Co-op. Ltd. reported in 55 taxmann.com 447.
- (iii) ITAT decision in Totagars Co-operative Sale Society in ITA No.376 to 379/Bang/2023.

12. We note from plain reading of Circular No. 18/2015 dated 02.11.2015 it 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. Rule 23 of the Karnataka Co-operative Societies Rules states that reserve fund belongs to the society and is intended to meet the unforeseen losses. Further if the cooperative society wants to invest

reserve fund or any portion thereof for any other purpose as prescribed under section 58 (a) to (d) of the Karnataka Co-operative Societies Act permission is to be taken from the Registrar of Co-operative Societies. Therefore the argument of the assessee that interest income on such investment is operational income is rejected. Even if the maintainability of SLR requirement is out of internal fund/external funds 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”. 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 is not allowable as deduction u/s 80P(2)(a)(i) of the Act.

13. 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 received. 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/ 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. We note that the assessee has also received interest from co-operative banks which is governed by the Banking Regulation Act of 1949 as observed by the AO at Para No. 7.6 of his order and this finding has not been denied by the Id. AR of the assessee. The Section 80P(2)(d) describes that if the assessee has received interest/dividend from the co-operative society, then the assessee is eligible for claim of deduction on such interest/dividend however we note that the assessee has received interest from co-operative bank/Scheduled Bank but it is not clear whether the interest payer (co-operative bank) 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 to 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. (supra) in which 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 for verification of interest received

from co-operative bank in above terms. If AO finds that the co-operative bank is carrying its banking business activities in the light of the above judgment, the deduction u/s. 80P(2)(d) on such interest income should not be granted.

14. We further note that the assessee has received interest from other co-operative banks/commercial banks on its investments. The revenue authorities have considered the entire interest as income from other sources u/s. 56 including the interest received from co-operative bank as noted in para 13 above and no expenses u/s. 57(iii) has been allowed to the assessee for earning of such income. 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 interest income received from banks. 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 entire interest income from bank (co-operative bank and scheduled bank).

15. Since we are remitting the entire issues to the AO in above terms, additional ground No.9 raised in AY 2020-21 does not require separate adjudication. The additional ground regarding interest u/s. 234A, 234B & 234C are consequential in nature.

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

Pronounced in the open court on this 07th day of May, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 07th May, 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.