IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE

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

ITA No. 513/Bang/2024
Assessment Year : 2017-18

M/s. Kumbra Vyavasaya Seva Sahakary Bank Ltd., 01 Kumbra P A C C S Ltd., Post Kumbra, Puttur Taluk, D.K. Puttur, Karnataka – 574 210. **PAN: AAALK0352K**	**Vs.**	The Income Tax Officer, Ward – 1, Puttur.
APPELLANT		**RESPONDENT**

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Shri Srinath S, JCIT –DR

Date of Hearing	:	09-05-2024
Date of Pronouncement	:	29-05-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order passed by NFAC dated 29.01.2024 for A.Y. 2017-18 on following grounds of appeal:

Grounds of Appeal		*Tax effect relating to each ground of appeal (see note below)*
1.	*The learned CIT(A) erred in passing the order in the manner*	*Gen*

	he did.	
2.	*On the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in law by disallowing deduction u/s.80P(2)(d) of the Act*	*40,97,493/-*
3.	*The learned CIT appeals failed to appreciate that if interest/Dividend income is treated as income from other sources then expenditure under section 57 should be allowed as per the jurisdictional High Court decision.*	*40,97,493*
4.	*The learned CIT(A) erred in not upholding the deduction u/s 57 of the Act in respect of cost of funds and proportionate administrative expenses incurred in earning interest/Dividend from scheduled and co-operative banks assessed as income from other sources.*	*40,97,493*
5.	*The learned CIT (Appeal) failed to appreciate that if expenditure is allowed under section 57 of the act then accordingly it should go in increasing the deduction under section 80P(2)(a)(i).*	*40,97,493*
6.	*The learned CIT (A) erred in law in denying the Appellant deduction u/S.80P(2)(a)(i).*	*83,79,258/-*
7.	*The learned CIT failed to appreciate the ratio laid down by the Honourable Supreme Court in the case of Mavilayi service cooperative bank Ltd versus Commissioner of income tax, Calcutta.*	*83,79,258/-*
8.	*The learned CIT appeal failed to appreciate that the assessee is not involve in the business of banking and it is only a cooperative society legislated*	*Gen*

	under cooperative society act and involving provided credit facility only to members as provided in the act hence ought to have allowed to same.	
9.	*Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*	*Gen*
10.	*For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed.*	*Gen*

2. Brief facts of the case are as under:

2.1 The assessee is a co-operative society duly registered under the Karnataka Co-operative Societies Act, 1959 and is engaged in carrying out the objects as stipulated in Bye Laws approved by the Registrar of Co-Operative Societies. The assessee filed its return of income declaring total income of Rs. 1,09,860/- after claiming deduction of Rs.74,80,060/- u/s. 80P of the Act. Subsequently, the assessee's case was selected for scrutiny under CASS and Notices u/s 143(2) and 142(1) was served on the assessee. The assessee filed all details called for during the course of assessment proceedings. The assessee made submissions as to why the deduction u/s 80P should be allowed and how the facts of *The Citizen Cooperative Society Limited Vs ACIT (2017) 84 Taxmann 114 (SC) dt 08.08.2017, Totgars Co-operative Sale Society Ltd. Vs. ITO (2010) 322 ITR 283/188 Taxmann 282 (SC) dt 08.02.2010* and the *PCIT vs the Totagars Co-Operative Sale Society (I.T.A No. 100066 of 2016) dt 16.06.2017* are distinguishable from the facts of the assessee. The Ld.AO

however applied the Citizens case to the assessee and denied entire deduction of Section 80P to the assessee on the ground that, there exist associate members and nominal members in the capital structure of the assessee although the bye laws of the assessee and the Act under which the assessee is registered permits the admission of such classes of members. The assessee also earned Rs.40,97,493/- as interest on fixed deposit kept with Co-operative banks during the assessment year 2017-18. The Ld.AO disallowed the said interest income on the ground that it is not an operational income. Thus, the Ld.AO has made a total addition of Rs.83,79,258/- in the hands of the assessee.

2.2 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.3 Before the Ld.CIT(A), assessee submitted that assessee is eligible for 80P(2)(a)(i) deduction in respect of the interest earned on credit facilities provided / extended to the members. It also submitted that assessee is eligible for deduction u/s. 80P(2)(d) on the interest / dividend earned from investments made in other co-operative societies / co-operative banks. In support of the claim, the assessee relied on the decision of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in *431 ITR 1* and other decisions of this *Tribunal.* The Ld.CIT(A) however relying on the decision of *Hon'ble Supreme Court* in case of *Citizen Co-operative Society Ltd. vs. ACIT* reported in *(2017) 84 taxmann.com 114* disallowed the claim of assessee

u/s. 80P(2)(a)(i) / 80P(2)(d) of the act for both the years under consideration.

2.4 The primary observation of the Ld.CIT(A) for disallowing the claim u/s. 80P(2)(a)(i) was that, the assessee was dealing with the members of different classes such as regular / nominal / associate members. It was held that in respect of the nominal members / associate members who did not have certain rights in the society, the principle of mutuality did not exist.

2.5 In respect of the disallowance u/s. 80P(2)(d) of the act, the Ld.CIT(A) relied on the decision of *Hon'ble Karnataka High Court* in case of *Totagars Co-operative Sales Society vs. ACIT* reported in *(2017) 395 ITR 611* and upheld the disallowance by the Ld.AO.

2.6 Aggrieved by the orders of the Ld.CIT(A), assessee is in appeal before this *Tribunal.*

3. The Ld.AR submitted that, the assessee being a primary agricultural credit co-operative society is engaged in the business of providing credit facilities to its members. It is submitted that, the assessee claims 80P(2)(a)(i) in respect of the interest/dividend earned from deposits made with other cooperative societies/cooperative banks etc., which was disallowed by the authorities below relying on the ratio of *Hon'ble Supreme Court* in case of *Citizen Co-operative Society Ltd. (supra).* The Ld.AR submitted that the present assessee is a co-operative society

registered under Karnataka Co-operative Societies Act, whereas Citizen Co-operative Society has been observed by the *Hon'ble Supreme Court* to be a mutually aided co-operative society and was functioning as a bank that had RBI approval. He thus submitted that the ratio laid down by *Hon'ble Supreme Court* therein is not applicable to the present assessee as it do not have RBI approval to function like a bank.

4. The Ld.AR submitted that insofar as the associate and nominal members and applicability of proncipal of mutuality is concerned, the ratio of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT (supra)* would be applicable to the facts of the case. He referred to the relevant observations by *Hon'ble Supreme Court* that reads as under:

> *"**45.** To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section*

80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

46. *It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions' Federation Ltd. v. CIT [1997] 11 SCC 287 referred to section 80P of the IT Act and then held:*

> *"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:*
>
> > *"2. (n) 'Member' means a person who joined in the a pplication for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;""*
>
> *Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).*

47. *Further, unlike the facts in Citizen Cooperative Society Ltd. (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:*

"59. Restrictions on loans.— (1) A society shall not make a loan to any person or a society other than a member:
Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.
(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.
(3) Granting of loans to members or to non-members under sub-section (2) and recovery thereof shall be in the manner as may be specified by the Registrar."
Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra).”

He thus submitted that, the interest/dividend earned by the assessee from investment made with other cooperative societies/cooperative bank etc is eligible for deduction under section u/s. 80P(2)(a)(i).

5. Alternatively he submitted that the deduction may be considered u/s. 80P(2)(d) is available to assessee. He placed reliance on the decision of *Coordinate Bench of this Tribunal* in following cases:-

a) *Hon’ble Supreme Court* in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors.* in *Civil Appeal Nos. 10069 of 2016* dated *14.09.2023.*
b) *M/s. Mangalore Yanthrika Meenugarara Prathamika Sahakari Sangha vs. ITA Nos. 1096 to 1098/Bang/2023 vide order dated 01.04.2024*
c) *M/s. Mudur Vyavasaya Seva Sahakari Sangha Ltd., Mudur vs. ITO in ITA No. 1038/Bang/2023 vide order dated 22.03.2024*

6. On the contrary, the Ld.DR vehemently opposed the arguments of the assessee by submitting that, principle of mutuality is not satisfied as assessee extends credit facilities to

nominal / associate members who do not have any right in the assessee society. In respect of 80P(2)(d) deduction, the Ld.DR submitted that interest / dividend income earned by assessee by making investments which has been simply accrued falls out the ambit of 80P and therefore the Ld.AO rightly treated the entire interest as income from other sources. He thus vehemently supported the orders passed by the authorities below on both these accounts for the years under consideration.

We have perused the submissions advanced by both sides in the light of records placed before us.

6.1 On merits of the case, we note that the the present assessee is a co-operative society and therefore any interest earned from investment made in other co-operative society/cooperative bank etc cannot be considered to be income attributable to the business of the assessee and therefore deduction u/s. 80P(2)(a)(i) cannot be granted.

6.2 In respect of deduction on interest/dividend earned from fixed deposit / investments, *Hon'ble Supreme Court* in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors. (supra), Hon'ble Supreme Court* analysed applicability of section 80P(2)(d) deduction to an assessee in great detail.

6.3 At the outset, the assessee invested in SCDCC Bank to meet the statutory requirement as provided u/s. 58 of the Karnataka Co-operative Societies Act, 1959 as it is imperative to carry on the business of providing banking or credit facilities to the members. It is submitted that, the investments are made out of Reserve funds of the society. It was thus submitted that the case law relied on by the Ld.CIT(A) is *M/s. Totgars Co-operative Sales Society* reported in *322 ITR 283 (SC)* which are distinguishable on facts being:

- It is primarily engaged in the business of providing credit facilities to its members and marketing their agricultural produce.
- At the time of marketing the produce, the sale proceeds are retained, and as the funds are not immediately required, the same was deposited and interest is earned. The funds used for investment are out of amount payables to the members retained by them.
- As interest was earned on money due to the members, that was deposited with the Bank, the same was held to be taxed as 'IFOS' u/s 56 of the Act (emphasis drawn from paras 10-11 of the judgment).

6.4 Now coming to the merits of the disallowance made u/s. 80P(2)(d) by the authorities below, the word *'attributable'* used in the said Section is of great importance. *Hon'ble Supreme Court* considered the meaning of the word *'attributable'* as supposed to derive from its use in various other provisions of the statute, in the case of *Cambay Electric Supply Industrial Co. Ltd.* v. *CIT* [1978] 113 ITR 84 (at page 93) as under:—

> *"As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor- General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."*
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> *(emphasis supplied)*

6.5 Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Co-operative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the

said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

6.6 In this context when we look at the decision of *Hon'ble Supreme Court* in case of *Totgars Co-operative Sale Society's* case reported in *(2010) 188 Taxman 282*, relied by the Ld.DR. *Hon'ble Supreme Court* was dealing with a case where the assessee therein, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such amount retained by the assessee therein was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. On these facts *Hon'ble Supreme Court* held the assessing

officer was right in taxing the interest income indicated above under Section 56 of the Act. *Hon'ble Supreme Court*, also clarified that, they are confining the said judgment to the facts of that case.

6.7 In the instant case, there is nothing on record to come to the conclusion that the amount which was invested in banks to earn interest was amount due to its members, and that, it was a liability. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for objects of the society, but was required to be invested as required by the Karnataka Co-operative Societies Act, 1959. Therefore they had deposited the money out of which interest was earned. The said interest is thus attributable to carrying on the business of the assessee and therefore it is liable to be deducted in terms of Section 80P(2)(d) of the Act. In fact similar view is taken by the *Hon'ble Andhra Pradesh High Court* in the case of *CIT* v. *Andhra Pradesh State Co-operative Bank Ltd.* reported in *[2011] 12 taxmann.com 66.*

6.8 We note that recently *Hon'ble Supreme Court* in the case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO* reported in *(2023) 154 taxmann.com 305* has in detail analysed the allowability of deduction u/s. 80P(2)(d) of the Act. *Hon'ble Court* observed and held as under:

"15.8 Since the words 'bank' and 'banking company' are not defined in the NABARD Act, 1981, the definition in sub-clause (i) of clause (a) of section 56 of the BR Act, 1949 has to be relied upon. It states that a co-operative society in the context of a co-operative bank is in relation to or as a banking company. Thus, co-operative bank shall be construed as references to a banking company and when the definition of banking company in clause (c) of section 5 of the BR Act, 1949 is seen, it means any company which transacts the business of banking in India and as already noted banking business is defined in clause (b) of section 5 to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Thus, it is only when a co-operative society is conducting banking business in terms of the definition referred to above that it becomes a co-operative bank and in such a case, section 22 of the BR Act, 1949 would apply wherein it would require a licence to run a co-operative bank. In other words, if a cooperative society is not conducting the business of banking as defined in clause (b) of section 5 of the BR Act, 1949, it would not be a co-operative bank and not so within the meanings of a state co-operative bank, a central co-operative bank or a primary co-operative bank in terms of section 56(c)(i)(cci). Whereas a co-operative bank is in the nature of a banking company which transacts the business of banking as defined in clause (b) of section 5 of the BR Act, 1949. But if a co-operative society does not transact the business of banking as defined in clause (b) of section 5 of the BR Act, 1949, it would not be a co-operative bank. Then the definitions under the NABARD Act, 1981 would not apply. If a co-operative society is not a co-operative bank, then such an entity would be entitled to deduction but on the other hand, if it is a co-operative bank within the meaning of section 56 of BR Act, 1949 read with the provisions of NABARD Act, 1981 then it would not be entitled to the benefit of deduction under sub-section (4) of section 80P of the Act.

15.9 section 56 of the BR Act, 1949 begins with a non-obstante clause which states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to certain modifications. The object of section 56 is to provide a deeming fiction by equating a co-operative society to a banking company if it is a co-operative bank within the

meaning of the said provision. This is because Chapter V of the BR Act, 1949, deals with application of the Chapter to co-operative societies which are co-operative banks within the meaning of the said chapter. For the purpose of these cases, what is relevant is that throughout the BR Act, 1949, unless the context otherwise requires, - references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank. Therefore, while considering the meaning of a co-operative bank inherently, such a co-operative society must be a banking company then only it would be construed as a co-operative bank requiring a licence under section 22 of BR Act, 1949 in order to function as such a bank.

15.10 Further, while considering the definition of a co-operative bank under section 56(cci) of the BR Act, 1949, to mean a state co-operative bank, a central co-operative bank and a primary co-operative bank which is defined in (ccviii) thereof, to have meanings respectively assigned to them in the NABARD Act, 1981 would imply that if a state co-operative bank is within the meaning of NABARD Act, 1981 then it would be excluded from the benefit under section 80P of the Act. Conversely, if a co-operative society is not a cooperative bank within the meaning of section 56 of the BR Act, 1949, it would be entitled to the benefit of deduction under section 80P of the Act."

6.9 We therefore 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. Cited (supra)*, the same is entitled to deduction u/s 80P(2)(d) of the I.T. Act.

6.10 Without prejudice to the above, we make it clear that if the interest earned by assessee from the banks, the same be considered under the head "Income from other sources",

necessary relief to be granted to the assessee u/s 57 of the Act in respect of cost of funds and proportionate administrative and other expenses in accordance with law. Accordingly, the issue is restored to the file of Ld.AO for *denovo* consideration with the above observations.

Accordingly, the appeal filed by the assessee stands partly allowed for statistical purposes.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 29th May, 2024.

Sd/-	Sd/-
(LAXMI PRASAD SAHU)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 29th May, 2024.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore