

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

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

ITA No.814/Bang/2024
Assessment year : 2020-21

Alankar Primary Agricultural Credit Co-operative Society, 01, Alankar. DK. 574 285 PAN : AAAAA 4471C	Vs.	The Income Tax Officer, Ward 1, Puttur.
APPELLANT		RESPONDENT

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

Date of hearing	:	30.05.2024
Date of Pronouncement	:	26.06.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

2. This appeal is filed by the assessee against the order dated 23.4.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2020-21 on the following grounds:-

“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 Assessing Officer Rs. 31,67,724/- 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(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 rendering deduction u/s 80P(2)(d) not applicable.

5. 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-opertive Bank by multi purpose Cooperative Society is eligible for deduction u/s 80P(2){d} of the Act.

6. Interest received from certain co-operative banks is on account of compliance with Rule 2S of the Karnataka Co-operative Societies Rules, 1960. Therefore, it constitutes income from business of providing credit facilities to its members and hence the same is eligible for deduction under section SOP(2)(a)(i) of the Act. This identical contention of the assessee has also been dealt with by the Bangalore Bench of the Tribunal in the case of Vasavamba Co-operative Society Ltd., Vs. PCIT (supra). The Bangalore Bench of the Tribunal, in the aforesaid

case, had restored to the AO for fresh examination. The relevant finding of the Bangalore Bench of the Tribunal reads as follows:

"18. The issue raised by the Assessee in the aforesaid grounds require examination because if there are statutory compulsions that the money should be invested in a particular manner to run business of the Assessee then the interest income arising from such investments have business nexus and should be considered as income derived from the business of providing credit facility to the members. This aspect requires examination by the AD as it has not been raised before the CIT. We therefore modify the order of the CIT by remanding the issue raised in ground NO.5 to 7 alone to the AD for examination afresh. In other respects we confirm the order of the CIT." 9.1.5 In light of the aforesaid order of the Bangalore Bench of the Tribunal, we direct the AO to examine whether interest income is earned out of investments which are in compliance under the relevant Karnataka Co-operative Societies Rules and Act. If the same is found to be out of compulsions, the interest income derived would be entitled to deduction under section 80P(2)(a)(i) of the Act. The same is held in case of Savanoor Primary Agricultural Cooperative Society (ITA No.919/Bang/2023) and we also invested funds as compulsion under state cooperative act and hence we are eligible for deduction u/s SOP 2(a)(i) of Income Tax Act.

7. Honorable Supreme court in case of Kerala State Cooperative Agricultural and Rural Development Bank Ltd., in civil appeal No.10069 of 2016, order dated 14.09.2023 has held that Central Cooperative Bank is a Cooperative Society which is registered under the Kerala State Cooperative Societies Act, then it is not a bank per se governed by RBI.

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

9. 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."

3. Briefly stated the facts of the case are that the assessee filed return of income on 10.2.2021 assessing income at Nil after claiming deduction u/s. 80(P)(2)(a)(i) of the Act of Rs.2,22,13,125. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings the assessee filed reply to the notices. From the documents the AO noticed that the assessee society has invested surplus funds with the co-operative bank/nationalised bank/shares and received interest/dividend on the said investment amounting to Rs.1,81,72,951. The AO noted that the amount invested by the assessee in cooperative bank is not a co-operative society. Therefore deduction u/s. u/s. 80P(2)(d) of the Act cannot be allowed on the said interest income. The AO also held that the deduction u/s. 80(P)(2)(a)(i) is also not allowable on such interest income relying on various judgments quoted in the assessment order. During the assessment proceedings the assessee filed cost of funds for earning such interest/dividend income. Out of total investments of Rs.1,18,47,106 the AO allowed cost of Rs.57,20,948 and other expenses attributable to income from investments (administrative expenses) of Rs.29,58,434. Resultantly there was taxable income of Rs.31,67,724 (118,47,106 – 86,79,382).

4. During the appellate proceedings, the assessee filed written submissions and the CIT(Appeals) confirmed the order of the AO. Aggrieved, the assessee is in appeal before the ITAT.

5. During the course of hearing, the Id. AR reiterated submissions made before the lower authorities and relied on judgment of coordinate Bench of the Tribunal in ITA No.547, 548 & 599/Bang/2024 for AYs 2017-18, 2018-19 & 2020-21, order dated 17.5.2024 and submitted that deduction should be allowed to the assessee u/s. 80P(2)(a)(i) because it was compulsion to make investment in Central Co-operative Bank under the Karnataka Co-operative Societies Act, 1959 and relevant rules.

6. 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 Mavilayi 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 Grain Merchants Souharda Credit Co-op. Ltd. reported in 55 taxmann.com 447 and the ITAT decision in Totgars 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 held eligible for deduction u/s. 80P(2)(d) of the

Act. He further submitted that the assessee is a primary agricultural co-operative society engaged mainly in the business of providing credit facilities to its members and providing financial aids as well as agricultural implements, seeds, fertilizers, pesticides etc. 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(2) 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 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.

7. 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.

8. The Id. DR also 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. He submitted that the interest received from co-operative bank is governed by Banking Regulation Act, 1949. The lower authorities have rightly allowed cost of funds. The case law relied by the Id. AR is not applicable in the present facts of the case. The character of interest income received from its investments cannot be treated as business income even if is compulsion for investments. The Karnataka Co-operative Society Act and Rules cannot override the income tax provisions. The Id. DR further submitted that the case law relied by the assessee in ITA No.547, 548, 599/Bang/2024 order dated 17.5.2024 is not applicable since the Act should be read with literal interpretation. Section 80(P)(2)(a)(i) is very clear that income earned from carrying on the business of banking or providing credit facilities to its members is eligible for deduction and there is no ambiguity in the section.

9. Considering the rival submissions, we note that the assessee is registered under Karnataka Co-operative Society Act 1959, we note that here the issue is that whether the assessee is eligible to claim of deduction u/s. 80P(2)(a)(i) and/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

10. 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 as per rule 28 of the Karnataka Cooperative Society Rules 1960. 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). In support of his argument, the assessee relied on the following decisions:

- (i) Mavilayi 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 Totgars Co-operative Sale Society in ITA No.376 to 379/Bang/2023.
- (iv) Guttigedarara Credit Co-op. Society Ltd., Mysore, ITA 29/2015
- (v) Savanoor Primary Agricultural Cooperative Society. ITA No.919/Bang/2023.
- (vi) M/s Shree Cheerumba Credit Co-operative Society Ltd. vs ITO in ITA NO. 547,548 & 599/Bang/2024

11. 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/Rules 28 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.

12. Admittedly, it is a matter of fact borne from the record that the legislature in all its wisdom had inserted the provisions of Section 80P(2)(a)(i) of the Act as a part of deductions from carrying on the business of banking or providing credit facilities to its members by a Co-operative Society. Although the contention of the Ld. AR that interest received from deposit under compulsion is to be considered u/s 80P(1)(a)(i), the AO considered it as income u/s 56 of the Act. As per our considered opinion, going by the rule of literal interpretation that has to be adopted while construing the scope and gamut of a statutory provision, the same does not merit acceptance. As Section 80P(2)(a)(i) does not carve out any exception as regards the applicability of the same in a case where the investments are made under compulsion or as per any direction from Registrar of co-operative society, the aforesaid contention of the Ld. AR that the same could be considered for deduction u/s. 80P(2)(a)(i) cannot be accepted. This view of ours that statutory provision has to be construed as per the rule of literal interpretation is supported by the judgment of the Hon'ble Supreme Court in the case of *New Noble Educational Society v. Chief CIT* [\[2022\] 143 taxmann.com 276/\[2023\] 290 Taxman 206/\[2023\] 448](#)

[ITR 594](#)/[CA No. 3793 to 3795 of 2014 dated 19-10-2022]. The Hon'ble Apex Court observed that if the language is unambiguous and capable of only one meaning, that alone should be applied and not any other, based on the surmise that the legislature intended it to be so. In other words, it is only in case of ambiguity that the court can use other aids to discern the true meaning, but where the statute is clear and the words are plain, the legislation has to be given effect in its own terms. Since, in the case of the assessee interest income received is from investments from Banks which cannot be attributed to the main business of providing credit facilities to its members, same cannot be held to be allowable as deduction u/s 80P(2)(a)(i) of the Act.

13. The assessee has also raised issue that the deduction should be allowed to the assessee u/s 80P(2)(d) on such interest income received from its investments. For the sake of convenience we are reproducing the section 80P(2)(d) as under:-

“**80P.** (1)

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;”

We note from the order of the AO that the assessee has invested its funds in commercial bank 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 “derived” under the said provision. 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 and this argument of the Id. DR has not been denied by the Id. AR of the assessee. However, 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. 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 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 and expenses u/s. 57(iii) has been allowed to the assessee for earning of such income to the extent of Rs. 86,79,382/-. While calculating the income, the net income should be considered as taxable income after reducing the expenditure incurred towards earning of such income. Before us, the Id. AR of the assessee has produced a computation sheet in which he has calculated cost of funds showing loss from investments of Rs. 14,67,949/- but this has not been examined. 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. Since in the case on hand the assessee has been allowed cost of funds to the extent of Rs.86,79,382 and taxable income under the head income from other sources is Rs.31,67,724, but the assessee has computed taxable income from investments of (-) 14,67,949. Therefore, we are remitting this issue to the file of AO for fresh computation of cost of funds. Accordingly, the assessee is directed to provide the details of cost of funds before the assessing officer.

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

Pronounced in the open court on this 26th day of June, 2024.

Sd/-

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 26th June, 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.