

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

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

ITA No.738/Bang/2024
Assessment year : 2020-21

Alnavar Credit Souhardha Co-operative Ltd., 01, Indira Nagar, Alnavar, Alnavar – 581 103. <b>PAN : AADAA 0459P</b>	Vs.	The Income Tax Officer, Ward 1(1), Hubli.
APPELLANT		RESPONDENT

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

Date of hearing	:	30.05.2024
Date of Pronouncement	:	28.06.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against order dated 23.02.2024 of the Addl./Jt.CIT(Appeals)-8, Mumbai for the AY 2020-21 on the following grounds:-

“1. That the order of the Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing the deduction u/s. 80P(2)(a)(i) of the Act with respect to interest income from investments even though such investments are made out of the surplus funds available with the appellant.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the interest earned from the investments in Co-operative Banks is not allowable as deduction u/s. 80P(2)(d) of the Act.

4. Without prejudice to the above grounds, that the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing expenditure incurred for earning the interest income from the investments.

Each of the above grounds is without prejudice to one another, the appellant craves the leave of Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify all or any of the grounds of appeal either before or at the time of hearing of this appeal.”

2. Briefly stated the facts of the case are that assessee filed return of income declaring NIL income after claiming deduction under Chapter VIA of Rs.53,57,009. The case was selected for scrutiny and statutory notices were issued to the assessee. From the financial statements the AO noticed that assessee received interest of Rs.12,07,983 as interest from its investments from other cooperative banks and it was included in the deductions claimed u/s. 80P(2)(a)(i) of the Act. The AO after discussing the issue in detail allowed deduction u/s. 80P(2)(a)(i) to the extent of Rs.41,49,984 and the rest amount of Rs.12,07,983 which is interest earned on fixed deposits with cooperative bank/commercial bank was not allowed relying on the

Hon'ble Apex Court judgment in the case of Totgars Cooperative Sale Society Ltd. reported in 322 ITR 283 (SC).

3. Aggrieved from the above order the assessee filed appeal before the CIT(Appeals) and detailed written submissions were filed. The CIT(A) notice that the assessee earned interest as under:-

Sl.no.	Investments	Amount of Interest earned
1.	KCC Bank FD & RFD	6,15,441/-
2.	Sueo bank-FD	1,47,212/-
3.	Vikas Souhardha Co-operative Bank	3,10,829/-
4.	Interest Receivable	1,34,501/-
	<b>Total</b>	<b>12,07,983/-</b>

4. The Id. CIT(Appeals) confirmed the order of the AO relying on judgment of Totgars Cooperative Sale Society Ltd. (supra). Aggrieved, the assessee is in appeal before the Tribunal.

5. The Id. AR reiterated submissions made before the lower authorities and submitted that interest income received on its investments were surplus funds of the society, therefore it should be treated as business income and deduction should be allowed u/s. 80P(2)(a)(i) of the Act. She further submitted that if it is not allowed 80P(2)(a)(i), interest received from cooperative bank is eligible for deduction u/s. 80P(2)(d) of the Act because cooperative bank is basically a cooperative society registered under the Karnataka Co-operative Societies Act, 1959. Alternatively, she submitted that cost of funds should be allowed to the assessee towards earning of interest

income because the revenue authorities have taxed the entire interest income as income from other sources u/s. 56.

6. 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.

7. 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 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 operational income as held by the Hon'ble Apex court in the case of Totgars Co-operative Sales Society vs ITO reported in 322 ITR 283(SC). The Karnataka Co-operative Society Act and Rules cannot override the income tax provisions.

8. 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 made out of its surplus funds made with District co-operative banks and other . The Ld.CIT(A) has not accepted the claim of the assessee by relying on the judgment of Hon'ble Apex Court in case of Totgars' Co-operative Sales Society Ltd. reported in [2010] 188 Taxman 282 (SC) and he has also relied on judgement in the case of Pr. CIT vs Totgars Co-operative Sales Society (2017) 83 taxmann.com 140(Karnataka). During the course of hearing it was brought into the notice of both the parties that a similar issue has been decided by the Co-ordinate bench of the ITAT Bangalore Bench in the case of Mudur Vyavasaya Seva Sahakari Sangha Ltd. vs ITO in ITA No. 78/Bang/2024 order dated 29.05.2024 in which it has been held as under:-

*17. Further in respect of deduction u/s 80P(2)(d), 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) 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 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 ld. 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) Honnali Credit Co-opp. Society Ltd. ITA No.2752 & 2753/Bang/2017.*

*(vi) Trapaj Vibhageeya Khet Udyog Mal Rupantar Food Processing Sahakari Mandali Ltd. v. DCIT, Cir. 2, Bhavnagar.*

*18. We note from plain reading of Circular No. 18/2015 dated 02.11.2015 it is applicable to those co-operative societies / cooperative 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.*

*19. We note from the submissions of the ld. AR that the assessee has invested 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 received. In the judgment of Hon'ble Apex Court in the case of Kerala State Cooperative 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 ld. DR has not been denied by the ld. 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 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, 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 cooperative 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.*

20. 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 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' Cooperative 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 Souharda 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).

9. Respectfully following the above judgement, we direct the AO to allow cost of funds in above terms.

10. In the result the appeal of the assessee is allowed for statistical purpose

Pronounced in the open court on this 28<sup>th</sup> day of June, 2024.

Sd/-  
( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 28<sup>th</sup> 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.