

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.600/Bang/2024
Assessment Year : 2021-22

M/s. Shri Neelakanteshwar Pattina Sahakari Sangh Niyamit Guledgudd, No. Ward No.4 Colleg Road, Guledgudd – 587 203, Karnataka. PAN : AAWAS 7201 C	Vs.	ITO, Ward – 1, Bagalkot.
APPELLANT		RESPONDENT

Assessee by	:	S/Shri. Deepak Gunashekar, CA, Prasanna N. Urala, Advocate
Revenue by	:	Shri. Ganesh R Ghale, Standing Counsel.

Date of hearing	:	30.05.2024
Date of Pronouncement	:	03.06.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the order of CIT(A) dated 07.02.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2021-22.

2. The grounds raised read as follows:

1. *The Commissioner of Income tax ((Appeals) erred in upholding the addition of Rs871,150/ made by the AO by treating the Interest on Investment received is taxed under the head Income from Other Sources U/S 56 of the Income Tax Act, 1961.*
2. *The CIT(A) erred in not applying the ratio of the decision of the Hon'ble High Court of Karnataka in ITA No 307 of 2024 in the case of Tumkur Merchants Souharda Credit Co Operative Ltd., Vs I T 0 W(1) Tumkur.*
3. *Without prejudice to the above the CIT(A) erred in not applying the ratio of the decision of the Hon'ble ITAT "A" Bench, Bengaluru in ITA No 453/Bang/2020 in the case of Vasavamba Co Operative Society Ltd., Mysuru Vs The Pr. CIT, Mysuru.*
4. *Each of the above grounds is without prejudice to one another and the appellant craves leave to add, delete, amend or otherwise modify or withdraw one or more of the above grounds either before or at the time of hearing of this appeal.*

3. Brief facts of the case are as follows:

Assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. It is engaged in the business of providing credit facilities to its members. For the Assessment Year 2021-22, the return of income was filed on 10.02.2022 declaring 'Nil' income after claiming deduction under section 80P(2)(a)(i) of the Act amounting to Rs.23,86,245/-. The AO, during the course of assessment proceedings, found that assessee had received interest income of Rs.8,71,153/- from investments with co-operative banks. The AO concluded assessment under section 143 r.w.s. 144B of the Act vide order dated 08.12.2022. In the said Assessment Order, a sum of Rs.8,71,153/- was treated as "Income from Other Sources" and was denied the deduction under section

80P(2)(a)(i) of the Act by placing reliance on the judgment of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd., Vs. ITO [2010] 322 ITR 283 (SC). Further the AO, by placing reliance on the judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd., reported in [2017] 395 ITR 611 (Karnataka) also did not grant deduction under section 80P(2)(d) of the Act. Accordingly, the income of the assessee was assessed at Rs.8,71,150/- instead of 'Nil' return of income filed by the assessee.

4. Aggrieved by the Order of Assessment denying partly the deduction claimed under section 80P of the Act, assessee preferred appeal before the CIT(A). The CIT(A) confirmed the view taken by the AO and dismissed the appeal of the assessee. The CIT(A), in addition to the judicial pronouncements relied on by the AO, also relied on the order of the ITAT, Bangalore, in the case of M/s. Vasavamba Co-operative Society Ltd., in ITA No.453/Bang/2020 (Order dated 13.08.2021).

5. Aggrieved by the order of the CIT(A), assessee has preferred this appeal before the Tribunal. The learned AR, by placing reliance on the judgment of Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural Rural Development Vs. AO reported in 458 ITR 384 (SC), submitted that payer bank if it is a co-operative society the interest income received from such co-operative societies would be entitled to deduction under section 80P(2)(d) of the Act. Further, the learned AR also submitted that if assessee is denied the benefit of deduction under section 80P(2)(d) of the Act for the interest income received from co-operative bank /societies, the cost of funds for earning such interest income ought to be allowed as deduction under section 57 of the Act. In support of his

contention, the learned AR relied on the following Orders of the Bangalore Bench of the Tribunal:

- i. In the case of GSSS Credit Co-operative Society Ltd., Vs. ITO in ITA No.248, 249 and 250/Bang/2024 (order dated 06.05.2024) for Assessment Years 2017-18, 2018-19 and 2020-21.
- ii. In the case of M/s. Saptagiri Pattina Souharda Sahakari Sangha Niyamitha Vs. ITO in ITA Nos.592 and 593/Bang/2024 (order dated 22.05.2024) for Assessment Year 2017-18.

6. The learned DR supported the Orders of AO and CIT(A).

7. We have heard the rival submissions and perused the material on record. We find that the Tribunal, on identical fact in the case of Dakshina Kannada Co-operative Milk Producers Union Ltd., in ITA No.49/Bang/2024 (order dated 23.04.2024) for Assessment Year 2020-21, had restored the matter to the AO to examine whether the payer bank viz., SCDCC Bank is a Co-operative Bank or Co-operative Society. The Tribunal held that if it is found that the payer bank is a Co-operative Society, the interest income received from such societies shall be entitled to deduction under section 80P(2)(d) of the Act. Further, it was held by the Tribunal that in the event it is found that the assessee is not entitled to deduction under section 80P(2)(d) of the Act, assessee shall be entitled to deduction of cost of funds under section 57 of the Act for earning such interest income. The relevant finding of the Tribunal reads as follows:

“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."

8. In view of the aforesaid order of the Tribunal in the case of Dakshina Kannada Co-operative Milk Producers Union Ltd., (supra), we restore the matter to the AO. The AO is directed to examine whether payer bank viz., SCDC Bank is a Co-operative Society and if so, the interest income received from such Co-operative Society shall be entitled to deduction under section 80P(2)(d) of the Act. In the event it is found that assessee's income is not entitled to deduction under section 80P(2)(d) of the Act, the AO shall consider the claim of assessee for deduction of cost of funds for earning such interest income. It is ordered accordingly.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(WASEEM AHMED)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 03.06.2024.

/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.