

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA Nos.1147, 1148 and 1149/Bang/2023
Assessment Years : 2017-18, 2018-19 and 2020-21

ITO, Ward –1, Udupi.	Vs.	M/s. Kota Co-operative Agricultural Society Ltd., National Highway – 66, Kota Udupi, Karnataka – 576 221. PAN : AAAAK 4339 D
APPELLANT		RESPONDENT

Assessee by	:	Shri. Mahesh R. Uppin, Advocate
Revenue by	:	Shri. Subramanian S, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.04.2024
Date of Pronouncement	:	15.04.2024

ORDER

Per George George K, Vice President :

These appeals at the instance of the Revenue are directed against three separate orders of CIT(A), passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Years are 2017-18, 2018-19 and 2020-21.

2. Common issues are raised in these appeals; hence, they were heard together and are disposed off by this consolidated order. Identical grounds are raised in all these appeals. All the grounds relate to the solitary issue whether the CIT(A) is justified in directing the AO to grant deduction under section 80P(2)(d) of the Act in respect of interest income earned by the assessee on investments held with Co-operative Banks.

3. Brief facts of the case are as follows:

Assessee is a primary agricultural 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 Assessment Years 2017-18, 2018-19 and 2020-21, assessments were completed by denying claim of deduction under section 80P of the Act. The reasons for denying the claim of deduction under section 80P of the Act was that assessee was transacting with nominal members (non-members). It was also stated by the AO that interest income that is received from Co-operative Banks and Scheduled Banks is to be assessed as 'Income from Other Sources' under section 56 of the Act which is not entitled to deduction under section 80P(2)(a)(i) or under section 80P(2)(d) of the Act.

4. Aggrieved by the Assessment Orders for Assessment Years 2017-18, 2018-19 and 2020-21, assessee preferred appeals before the First Appellate Authority (FAA). The CIT(A) allowed the appeals of the assessee. The CIT(A), by following the judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, reported in 431 ITR 1, directing the AO to verify and determine the proportionate deduction under section 80P(2)(a)(i) of the Act with regard to income earned from assessee's dealings with its regular members. As regards the interest income received from Co-operative Bank, the CIT(A) by following the judgment of the Hon'ble Kerala High Court in the case of PCIT Vs. Peroorkada Service Co-operative Bank Ltd., reported in (2022) 442 ITR 141 and the Order of the Bangalore Bench of the Tribunal in the case of Totgars' Co-operative Sale Society Ltd., Vs. ACIT in ITA Nos.376 to 379/Bang/2023 (Order dated 18.07.2023) held that interest income received from Co-operative Bank is to be assessed as 'Income from Other Sources' under section 56 of the Act. However, the CIT(A) directed the AO to grant deduction under section 80P(2)(d) of the Act with respect to the interest / dividend income received

from Co-operative Banks. The relevant finding of the CIT(A) directing the AO to allow relief under section 80P(2)(d) of the Act for the Assessment Year 2017-18 reads as follows:

“7.5.5. To sum up, even though such interest and dividends as received from entities registered with Karnataka Cooperative Societies Act is income from other sources, it is eligible for deduction u/s 80P(2)(d) of the Act.

Therefore Interest and dividends which is received from entities registered with Karnataka Cooperative Societies Act will be allowed by the AO as eligible for deduction u/s 80P(2)(d) of the Act. However, interest & dividend income from other entities (viz. Government treasury /commercial banks etc.) which are not registered under the Karnataka Co-operative Societies Act is not eligible for deduction u/s 80P(2)(d).

In view of above the appellant is eligible for deduction u/s 80P(2)(d) on interest/dividend receipts from entities provided appellant produces the copy of registration documents of the entities under Karnataka Co-operative Societies Act, 1959 before the AO and the said registration was valid at the time of making such deposits and receipt of interest/dividend.

However, as the concerned details/bifurcation of interest income received from investment during the year are not available in the records available with the undersigned, The AO is directed to verify and relief is allowed to appellant subject to the condition that it will produce before the AO the copy of certificate of registration under Karnataka co-operative Societies Act,1959 of all the entities from which it has derived any interest or dividend income.

*7.6 The assessing officer is directed to allow relief to the appellant in terms of para 7.5.5 & para 7.4.4. above. Accordingly, the Grounds (Ground No. 3 to 7) raised by the appellant regarding this issue are, accordingly, **allowed.**”*

5. Similar finding was rendered by the CIT(A) for the Assessment Years 2018-19 and 2020-21 [refer pages 34 and 35 of the impugned order of the CIT(A) for Assessment Year 2018-19 and pages 22, 23 for the Assessment Year 2020-21].

6. Aggrieved by the above findings of the CIT(A), the Revenue has filed the present appeals before the Tribunal. The learned DR relied on the grounds raised.

7. The learned AR, on the other hand, submitted that the interest income received out of investment made with District Co-operative Bank, are in compliance with requirements under the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. It was submitted that if the amounts are invested in compliance with Karnataka Co-operative Societies Act, the same necessarily needs to be assessed as 'income from business' which entails the benefit of deduction under section 80P(2)(a)(i) of the Act. The learned AR further relying 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) stated that assessee is entitled to benefit of deduction under section 80P(2)(d) of the Act. It was further contended that if the interest income is assessed as 'income from other sources' and is not granted the benefit of deduction under section 80P(2)(d) of the Act, the assessee ought to be granted deduction of the cost of funds for earning such interest income.

8. We have heard the rival submissions and perused the material on record. For the relevant Assessment Years, it is the claim that substantial interest income was received from Central District Co-operative Bank. The Hon'ble jurisdictional High Court in the case of PCIT Vs. Totgars' Sales Society Ltd., reported in 395 ITR 611 (Karnataka) had categorically held that when interest income is received from Co-operative Bank, the same is to be assessed under 'Income from Other Sources' under section 56 of the Act and cannot be entitled to deduction under section 80P(2)(a)(i) of the Act. Further, the Hon'ble jurisdictional High Court also held that since the interest income is received from a Co-operative Bank and not

from Co-operative Society, the same cannot be entitled to deduction under section 80P(2)(d) of the Act.

9. However, we notice that the Registrar of Co-operative Society had directed all the primary co-operative societies to mandatorily invest 25% of the deposits as liquid funds (Statutory Liquidity Ratio or SLR) and 3% of the total deposits as Cash Reserve Ratio (CRR) with the concerned Central District Co-operative Banks to run credit facilities by a primary agricultural credit co-operative society in the State of Karnataka. The relevant directions of the Registrar of Karnataka Co-operative Societies reads as follows:

ORDER

04. Every co-operative society, registered under the Karnataka Co-operative societies Act, 1959, collecting deposits and sanctioning cash loans, shall maintain the Cash reserve and Fluid Resources as shown below,

Cash Reserve : At least 3% of the deposits collected by the society should be kept in cash. This cash shall be kept upto the financial limit prescribed in the byelaw of each society and the balance should be deposited either in their respective financial institution or the savings account of the post office located at the place of the head office of the society.

Liquid Assets : Funds not less than 10% of the deposits in the society shall be kept as mentioned in Section 58(d) of the Karnataka Co-operative Societies Act. Permission should be obtained from the Registrar to deposit in commercial banks.

05. Every co-operative society collecting deposits and sanctioning cash loans shall comply with the minimum limits prescribed above.

06. Violation of limits specified above shall be punishable offence u/ss 15 of Sec 109 of the Karnataka Co-operative Societies Act, 1959.

07. Every society shall report about the compliance of these limits by submitting a report on the situation on the last Friday of every month in the form given below to the respective District Central Co-operative Bank.”

10. The CBDT Circular No.18/2015 dated 02.11.2015 has clarified that interest income from SLR/non-SLR investment by banking company and a co-operative society shall be chargeable under the head “profit and gains of business or profession”. On identical factual situation, we find the Bangalore bench of the Tribunal in the case of M/s. Kachur Credit Co-operative Society Ltd., Vs. ITO in ITA No.478/Bang/2023 (order dated 26.09.2023), by following earlier orders of the Tribunal, had held as follows:

“8. I have heard the rival submissions and perused the material on record. The solitary issue for adjudication is whether a sum of Rs.5,07,822/- can be allowed as a deduction under sections 80P(2)(a)(i) of the Act. Admittedly, the amount of Rs.5,07,822/- has been received by the assessee from South Canara District Central Co-operative Bank Ltd. It is the claim of the assessee that the amounts are invested in compliance with the relevant Acts and Rules. On identical facts, the Bangalore Bench of the Tribunal in the case of Bharat Co-operative Credit Society Vs. ITO (supra) by following the Co-ordinate Bench’s order in the case of Vasavamba Co-operative Society Ltd., Vs. PCIT in ITA No.453/Bang/2020 (order dated 13.08.2021) had stated that if the investments made with the Central Co-operative Bank is out of compulsions under Karnataka State Co-operative Societies Act, 1959 and Rules, the income received from such investments would be entitled to the benefit of deduction under section 80P(2)(a)(i) of the Act. The relevant finding of the Tribunal in the case of Bharat Co-operative Credit Society Vs. ITO (supra) reads as follows:

“7.1 In the instant case, it was contended that majority of the interest income is earned out of investments made with Cooperative

Banks and is in compliance with the requirement under the Karnataka Co-operative Societies Act and Rules. If the amounts are invested in compliance with the Karnataka Co-operative Societies Act, necessarily, the same is to be assessed as income from business, which entails the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act. Insofar as deduction u/s 80P(2)(d) of the I.T.Act is concerned, we make it clear that interest income received out of investments with cooperative societies is to be allowed as deduction.”

9. *In view of the above order of the Tribunal, I restore the issue to the files of the AO to examine whether interest income received amounting to Rs.5,07,822/- from South Canara District Central Co-operative Bank Ltd., is out of compulsions and in compliance with the Karnataka State Co-operative Societies Act, 1959 and the relevant Rules. If it is so, the same interest income is to be assessed as income from business which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act. With the aforesaid observation, I restore the matter to the AO. It is ordered accordingly.”*

11. In light of the above orders of the Tribunal, we direct the AO to examine whether the interest income received on investment with Central Co-operative Bank is out of compulsions under the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. If it is so, the same may be considered as ‘business income’ and entitled to deduction under section 80P(2)(a)(i) of the Act. In other words, if assessee society does not comply with the relevant provisions of the Act, and the Rules of Karnataka Co-operative Societies Act, 1959, it cannot carry on its co-operative activities, namely carry on the business of banking or providing credit facilities to its members. Therefore, if the investments are out of compulsion under the Act and relevant Rules, necessarily it is part of assessee’s business activity entailing the benefit of section 80P(2)(a)(i) of the Act. It is ordered accordingly.

12. In the event it is found that assessee is not entitled to get the benefit under section 80P(2)(a)(i) of the Act, the AO shall also examine whether it is entitled to deduction under section 80P(2)(d) of the Act in light of the recent judgment of the

Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural Rural Development Vs. AO (supra). If the assessee is not entitled to benefit of deduction either under section 80P(2)(a)(i) or under section 80P(2)(d) of the Act, the AO shall consider the claim of deduction under section 57 of the Act in respect of the cost of funds for earning such interest income which is assessed as income under the head 'income from other sources'. For the direction to grant deduction for the cost of funds, we rely on the judgment of the jurisdictional High Court in the case of Totgar's Co-operative Sales Society Ltd., Vs. ITO reported in (2015) 58 taxmann.com 35 (Karnataka) (judgment dated 25.03.2015).

13. In the result, appeals filed by the Revenue are allowed for statistical purposes.

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

Sd/-

(CHANDRA POOJRAI)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 15.04.2024.

/NS/*

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

By order

Assistant Registrar,
ITAT, Bangalore.