

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “A” BENCH, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Prakash Chand Yadav, Judicial Member**

ITA No. 739/Bang/2024 (Assessment Year: 2017-18)		
Bangady Co-operative Agricultural Society Ltd. Indabettu Village, Bangady Post Belthangady 574214 PAN – AAEFB0377M (Appellant)	vs.	The Income Tax Officer Ward - 1, Puttur (Respondent)
Assessee by: Shri Sandeep Chalapathy, CA		
Revenue by: Ms. Neha Sahay, JCIT-DR		
Date of hearing:	27.06.2024	
Date of pronouncement:	01.07.2024	

ORDER

Per: Prakash Chand Yadav, J.M.

This appeal filed by the assessee challenges the DIN & order No. ITBA/NFAC/S/2003-24/1061393066(1) of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 23.02.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the assessee is multipurpose co-operative society engaged in the business of acceptance of deposits from members, lending of loans to members and providing public distribution services. For the year under consideration it has filed its return of income declaring total income of Rs. 2.96 crores on 02.11.2017. The case of the assessee was selected for scrutiny after issuing statutory notices. During the course of assessment proceedings the Id. Assessing Officer (AO), inter alia, observed that the assessee society is not governed by the principles of mutuality and hence deduction claimed

by the assessee in respect of interest earned on investment to be disallowed. The Id. AO has relied upon the judgement of the Hon'ble Karnataka High Court in the case of PCIT v. Totgars Co-operative Sale Society [2017] 395 ITR 611 (Kar). The Ld AO has finally assessed the interest income as income from other sources without providing deduction of corresponding expenses. The AO also disallowed certain provisions made by the assessee on the ground that the same are not ascertained liabilities and hence not allowable.

3. Aggrieved with the order of the AO the assessee filed appeal before the first appellate authority, who confirmed the order of the Id. AO relying upon the judgement in the case of Totgars Co-operative Sale Society (supra).

4. Aggrieved with the order of the CIT(A) the assessee has come up in appeal before us and argued number 2. The AR of the assessee did not press other grounds raised in appeal memo. The AR of the assessee further contended that assessee vide application dated 26.06.2024 has raised two additional grounds and prayed that disallowance of provisions would have to be considered as part of profits available for deduction u/s 80(P)(2)(a)(i).

5. Since the grounds raised by the assessee are purely legal and goes to the root of matter, we admit the same in view of the judgment of Hon'ble Apex Court in the case of NTPC -229 ITR 383 and Jute Corporation 187 ITR 688(SC)

6. The Ld AR mainly challenged that the Id. CIT(A) as well as the Id. AO on two counts.

a) In case interest income to be taxed under the head income from other sources the deduction of expenses to be allowed and remaining profits should be considered for deduction of 80(P)(2)(a)(i).

b) The disallowance made by the AO on account of provisions shall be considered as part of profits of section 80(P)(2)(a)(i).

7. The Ld AR relied on the judgment of Hon'ble Bombay High Court in the case of **Gem plus Jewellery India Ltd reported in 330 ITR 250 and other cases of this Tribunal for the proposition that any increase in the income of the assessee would be eligible for deduction u/s. 80P(2)(a)(i) of the Act.**

8. The learned D.R., on the other hand, relied upon the orders of the lower authorities.

9. After considering the rival submissions, we are of the view that it is settled position of law that in the case of the co-operative society if any disallowance is to be made and income of the assessee is increased then such income/profits are eligible for deduction u/s. 80P(2)(a)(i) of the Act. Similarly, if the interest income is to be taxed under the head income from other sources then expenses attributable to earning of such income is to be allowed the profits arrived after such allowance would be going to increase the deduction of 80P(2)(a)(i). Our view is fortified by various decisions of Coordinate Benches of the Tribunal, wherein the Coordinate Benches have consistently followed this view, relying on the judgement of the Hon'ble Bombay High Court in the case of **Gem plus Jewellery India Ltd** (supra). Therefore, the matter is remitted back to the AO for recomputation of the profit eligible for deduction u/s. 80P (2)(a)(i) of the Act to the present assessee.

10. The assessee has also filed an application for additional ground. However as we have already restored the matter to the AO, these grounds become academic.

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

Order pronounced in the open Court on 1st July, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bengaluru, Dated: 1st July, 2024
n.p.

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1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

By Order

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Assistant Registrar
ITAT, Bangalore