

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

**Before Shri Waseem Ahmed, Accountant Member
and
Shri Prakash Chand Yadav, Judicial Member**

ITA No. 1016/Bang/2024 (Assessment Year: 2018-19)		
Gonikoppal Primary Rural Agricultural Credit Co-op. Society Ltd. Main Road, Gonikoppal Virajpet Taluk, Kodagu 571213 PAN – AAAAG1109M	vs.	The Income Tax Officer Ward - 1, Madikeri
(Appellant)		(Respondent)

Assessee by:	Smt. Sunaiana Bhatia, CA
Revenue by:	Shri Chinmay Anand Jain, JCIT-DR

Date of hearing:	02.07.2024
Date of pronouncement:	04.07.2024

ORDER

Per: Prakash Chand Yadav, J.M.

This appeal filed by the assessee challenges the DIN & order No. ITBA/NFAC/S/250/2004-25/1064689295(1) of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 07.05.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2018-19.

2. The brief facts of the case are that the assessee is a primary agricultural credit co-operative society registered under the Karnataka State Co-operative Societies Act, 1959 and engaged in providing credit facilities to its members. It has filed its return of income (ROI) on 13.09.2018 declaring an income of Rs. 1,41,320/-. The case of the assessee was selected for scrutiny and proceedings u/s. 143(3) of the Act were initiated by the Assessing Officer (AO).

3. The AO applying the ratio of the decision of Hon'ble Apex Court in *Totagars Co-Operative Sale Society v. ACIT* [2023] 188 taxmann.com 282 (SC) has held that the interest income earned by the assessee is not eligible for deduction u/s. 80P(2)(a)(i) of the Act. While holding so, the AO in para 5.17, of the order, has observed that depositing/investing funds in a co-operative bank/commercial bank is not a part of business of providing credit facilities to its members. The AO took a view that such income is not the operational income of the assessee society and hence not available for deduction u/s. 80P(2)(a)(i) of the Act (the order of the AO is silent on CRR point). Here it is pertinent to note that the AO has ignored that the submissions of the assessee stating that it has kept these deposits as per the mandate of government guidelines for carrying out its activities smoothly. AO also not pondered on the submission of the assessee that only 25% of the net profit has been compulsory deposited in the co-operative banks as the Mandate of the Co-operative Society Bye laws.

4. The AO has also denied the benefits s. 80P(2)(d) of the Act to the assessee on the ground that the assessee has derived interest income from co-operative banks and hence in view of the verdict of *Totagars Co-Operative Sale Society* (supra) the assessee is not entitled for deduction of s. 80P(2)(d) (order of the AO whether those co-operative banks have RBI licence or not is silent).

5. Aggrieved with the order of the AO the assessee filed appeal before the CIT(A), who in turn affirmed the order of the AO making following observations: -

"4.4. The facts in present appeal, are that the appellant is registered as a Credit Cooperative Society with the Registrar of Co-operative Societies of Karnataka Further, the appellant is not having any banking license issued by RBI to carry on the business of a banker. Thus, the appellant is out of the harm's way and is not hit by the provisions of Section 80P (4) of the Act. Once it is established that the appellant is out of the purview of Section 80P (4), then it becomes eligible for deduction u/s.80P of the Act subject to the fulfilment of other conditions as to the nature of activity carried on, source of income and the persons with whom such activities are carried on or investment is held etc. as prescribed under various clauses of Section 80P(2) of the Act."

6. After making the aforesaid observations the CIT(A), while concluding has ultimately dismissed the appeal of the assessee.

7. Feeling aggrieved with the order of the CIT(A) the assessee has come up in appeal before us and has raised the following grounds: -

- “1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
 2. The learned CIT[A] is not justified in upholding the disallowance of Rs. 1,82,08,694/- from out of the deduction claimed u/s 80P[2][a][i] of the Act on the ground that the said income represented interest earned by the appellant from co-operative banks and thus, the same did not form part of the eligible income for deduction u/s. 80P[2][a][i] of the Act.
 - 2.1 The learned CIT[A] ought to have appreciated that the interest income earned by the appellant was from out of investments required to be statutorily maintained by the appellant and thus, the appellant was entitled to the deduction u/s 80P[2][a][i] of the Act towards the same under the facts and in the circumstances of the appellant's case.
 3. Without prejudice to the above, the learned CIT[A] ought to have appreciated that the interest income earned by the appellant to the tune of Rs. 1,82,08,694/- qualified for deduction u/s.80P[2][d] of the Act since the aforesaid interest was earned from co-operative banks/societies under the facts and in the circumstances of the appellant's case.
 4. Without prejudice to the above, the learned CIT[A] ought to have allowed deduction u/s. 57 of the Act and he ought not to have taxed the gross interest income and therefore, the income assessed is excessive and liable to be reduced substantially.
 5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234-B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.
 6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”
8. The Id. Counsel of the assessee appeared virtually and prayed that the matter may be restored to the AO for a fresh examination in line with the orders of the coordinate benches in the cases of co-operative societies.
9. The learned D.R. relied on the orders of the authorities below.
10. After considering the rival submissions we observe that the coordinate bench in the case of Basaveshwaranagara Co-opera society case, in ITA Nos. 329 to 333/Bang/2024 dated 23.04.2024 under identical facts has observed as under:-

“2.1 The assessee claimed deduction on interest received on investment with banks and co-operative banks under section 80P(2)(a)(i) of the Act. Similar is the position in other assessment years, which is as follows:

Sl. No.	Assessment year	Interest received on investment with banks and co-operative banks
1.	2011-12	81,60,055/-
2.	2012-13	1,24,94,050/-
3.	2013-14	1,68,28,561/-
4.	2017-18	2,34,70,800
5.	2018-19	2,67,08,210/-

2.2 The same has been denied. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. The Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr.* (123 taxman.com 161) had held that the co-operative societies providing credit facilities to its members is entitled to deduction u/s 80P(2)(a)(i) of the Act. The Hon'ble Apex Court after considering the judicial pronouncements on the subject, had stated the term "member" has not been defined under the Income-tax Act. It was, therefore, stated by the Hon'ble Apex Court that the term "member" in the respective State Co-operative Societies Acts under which the societies are registered have to be taken into consideration. The Hon'ble Apex Court held that if nominal / associate member is not prohibited under the said Act, for being taken as a member, the income earned on account of providing credit facilities to such member also qualify for deduction u/s 80P(2)(a)(i) of the Act. It was further held by the Hon'ble Apex Court that section 80P(4) of the I.T. Act is to be read as a proviso. It was stated by the Hon'ble Apex Court that section 80P(4) of the Act now specifically excludes only co-operative banks which are co-operative societies engaged in the business of banking i.e. engaged in lending money to members of the public, which have a license in this behalf from the RBI. The Hon'ble Apex Court had enunciated various principles in regard to deduction u/s 80P of the Act. On identical factual situation, the Bangalore Bench of the Tribunal in the case of *M/s. Ravindra Multipurpose Cooperative Society Ltd. v. ITO* in ITA No.1262/Bang/2019 (order dated 31.08.2021) had remanded the issue to the files of the A.O. for de novo consideration. The Tribunal directed the A.O. to follow the dictum laid down by the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr.* (supra). The relevant finding of the Co-ordinate Bench of the Tribunal in the case of *M/s. Ravindra Multipurpose Cooperative Society Ltd. v. ITO* (supra), reads as follows:-

"6. Grounds 2-4 & additional Ground No.1: In respect of associate / nominal members, Hon'ble Supreme Court in the case of *Mavilayi Service Co-operative Bank Ltd. v. CIT* (2021) 123 taxmann.com 161 (SC) has held that the expression "Members" is not defined in the Income-tax Act. Hence, it is necessary to construe the expression "Members" in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. In view of this, the facts are to be examined in the light of principles laid down by the Hon'ble Supreme Court in *Mavilayi Service Cooperative Bank Ltd.* (surpa).

Accordingly, we remit this issue of deduction u/s 80P(2)(a)(i) of the Act to the files of Ld.AO to examine the same de novo in the light of the above judgment.

Needless to say that proper opportunity of being heard is to be granted to assess in accordance with law.”

3.1 In view of the order of the ITAT, which is identical to the facts of the case, we restore the issue of claim of deduction u/s 80P of the Act to the files of the A.O. to decide in the light of above order of Tribunal cited (supra).

3.2 Alternatively, assessee raised ground that the assessee earned interest income from deposit with scheduled banks and co-operative banks. Facts regarding this ground are that the assessee earned interest income from deposits with Scheduled banks and Cooperative banks, which has been assessed as “income from other sources” and no deduction u/s 80P(2)(d) of the Act has been granted to the assessee. Now the contention of the assessee is that this income is to be assessed as “business income” and deduction u/s 80P(2)(d) of the Act to be granted. Without prejudice to this, it was submitted that the assessee is entitled for deduction u/s 57(iii) of the Act with regard to cost of funds incurred if the income is assessed as “income from other sources” u/s 56 of the Act.

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 Id. AO for de-novo consideration with the above observations.”

11. Perusal of the above observations of Coordinate Bench, would show that the Coordinate Bench has restored the matter to the file of the AO for considering the purport of the decision of Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC)*. Coordinate Bench has held that 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. Lastly the Coordinate Bench has also held that in case interest income to be charged as Income from Other sources then cost of funds to the assessee would have to considered as expenses in term of section 57 of the Act.

12. In view of the above observations of the decision of Coordinate Bench, we remit the matter back to the file of the AO for examining the issue afresh in the light of the above view of the Coordinate Bench. And also direct the AO that he should decided the allowance of cost of funds to the assessee u/s 57 of the Act in accordance with law. AO will provide meaningful opportunities to the assessee in fresh proceedings and assessee will also file necessary details with AO.

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

Order pronounced in the open Court on 4th July, 2024.

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bengaluru, Dated: 4th July, 2024
n.p.

Copy to:

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

By Order

//True Copy//

Assistant Registrar
ITAT, Bangalore