

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-A”, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member
&
Shri Keshav Dubey, Judicial Member**

ITA No.596/Bang/2024: Asst.Year : 2020-2021

Shree Sharanbasaveshwar Credit Souharda Sahakari Niyamit, Halingali Taluk, Jamkhandi, District Bagalkot Halingal – 587 315, Karnataka [PAN: AAEAS6699C]	vs.	The Income Tax Officer Ward 1 & TPS, Bagalkot.
(Appellant)		(Respondent)

Appellant by: Sri.Monish Sowkar, Advocate
Respondent by: Sri.Ganesh R.Gale, Standing Counsel

Date of Hearing : 28.05.2024	Date of Pronouncement: 09.07.2024
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ORDER

Per Keshav Dubey, JM :

This appeal at the instance of the assessee is directed against the CIT(A)/NFAC order dated 06.02.2024 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1060542522(1) passed u/s. 250 of the Income Tax Act, 1961 (“the Act”) for the assessment year (A.Y.) 2020-2021.

2. The assessee has raised the following grounds:-

1. On the facts and circumstances of the case and In law the learned CIT(A) erred In confirming the addition made by A.O by disallowing deduction u/s 80P relating to interest income from co-operative bank of Rs.24,07,420/ deductible u/s 80P(2)(d) and holding it as income from other sources.

2. Without prejudice Interest income from Bagalkot District Co-op Bank is based on statutory requirement as per section 19

and rule 7 of The Souharda Sahakari Act 1997 and hence deductible.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred In confirming the addition made by A.O by disallowing deduction u/s 80P relating to interest income of Rs. 2,90,477/- from scheduled bank, interest income on saving deposits of Rs.2,05,219/- deductible u/s 80P(2)(a)(i) on the ground of attributable to. Without prejudice such Interest income is not taxable on gross basis and only net income after deducting expenses is taxable.

6. The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal.”

3. The brief facts of the case are that the appellant is a Co-operative credit Society, registered under the Karnataka Souharda Sahakari Act, 1997 and engaged in the business of providing credit facilities to its members. The appellant had e-filed its return of income for the Asst. Year 2020-21 on 07.12.2020 declaring the net Income of Rs.NIL. Thereafter, the case was selected for complete scrutiny. The statutory notices were issued and served to the appellant accordingly. During the course of assessment proceedings it was noticed that the appellant had received total interest on investment amounting to Rs.29,03,116/- (Rs.24,07,420/- from Bagalkot District Co-operative Bank, Rs.2,90,477/- from ICICI Bank & Rs.2,05,219/- from Savings Account) which was also included in the deduction claimed U/s 80P(2)(a)(i) of the Act. Based on the above facts and relying upon the various judicial pronouncement, the AO had disallowed the deduction amounting to Rs.29,03,116/- claimed u/s 80P(2)(a)(i) of the Income Tax Act, 1961 and added the same to the total income of the appellant as Income from Other Sources. Further the AO was also of the opinion that in view of the Order in the case of Principal Commissioner of Income-tax, Hubballi vs. Totagars Cooperative Sale

Society [2017] 83 taxmann.com 140 (Karnataka) the assessee society on deposit /Investment made in Co-operative bank is also not eligible for claim of deduction u/s 80P(2)(d) of the I.T.Act, 1961.

4. Being aggrieved by the Assessment completed U/s 143(3) of the Income Tax Act, 1961, the assessee preferred an appeal before the CIT(A)/NFAC. The ld. CIT(A) dismissed the Appeal of the assessee society by following the decision of the Hon'ble jurisdictional High Court in the case of PCIT v. Totagars Co-operative Sales Society 83 taxmann.com 140 (Kar.) (2021).

6. Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this Tribunal.

7. Before us the Ld.AR of the Assessee submitted that the Authorities below erred in not allowing deduction amounting to Rs.29,03,116 claimed U/s 80P(2)(a)(i) of the Act on the ground that the said Interest was not eligible for deduction U/s 80P(2)(a)(i) and the same was taxed by AO U/s 56 as "Income from other sources". The CIT(A) confirmed the addition made by the A.O. Without prejudice to this, it was submitted by the ld AR of the Assessee that the assessee is entitled for cost of funds incurred U/s 57 of the Act if the income is assessed as "income from other sources" u/s 56 of the Act.

8. On the contrary, the Ld. DR supported the Order of the Authorities below and vehemently opposed the arguments of the assessee by relying upon the decision of Hon'ble jurisdictional High Court in the case of PCIT v. Totagars Co-operative Sales Society (supra).

9. Heard both the rival parties, perused the entire material on record and the orders of the Authorities below. The assessee is a Co-operative credit Society, registered under the Karnataka Souharda Sahakari Act, 1997 and engaged in the business of providing credit facilities to its members. Out of the total deduction claimed u/s 80P(2)(a)(i) the AO has not allowed deduction of Interest on Investment amounting to Rs. 29,03,116/- either u/s. 80P(2)(a)(i) or 80P(2)(d) of the Act and added the same to the total Income. The assessee submits that it is operational income and therefore the AO should have allowed entire deduction 80P(2)(a)(i) of the Act. The learned Counsel for the assessee further submits that the Id.CIT(A) is not justified in upholding the view taken by the A.O.

10.1 We are also of the opinion that the interest received by the assessee from Investment held cannot be treated as operational income of the assessee because the interest received was not from the credit facilities provided to its members as envisaged in section 80P(2)(a)(i) of the Income Tax Act. This issue has been settled by the Hon'ble jurisdictional High Court in the case of PCIT v. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 (Karnataka) wherein it is held that the **source of funds are irrelevant**. Therefore the contention of the Assessee is not tenable & we agree completely with the view of the Id. CIT(A) that the deduction for Interest on investment can't be granted U/s 80P(2)(a)(i) of the Income Tax Act.

10.2 Further with regards to the allowable of 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.

10.3 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.

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

Order pronounced in the open court on 09th July, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore; Dated: 09th July, 2024
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(Appeals).
4. The CIT concerned.
5. The Sr. DR, ITAT, Bangalore.
6. Guard File.

Asst.Registrar
ITAT, Bangalore