

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 301/Bang/2024
Assessment Year : 2020-21

M/s. Mahaveera Credit Co-operative Society Ltd., Thakshila Building, BallalBagh, Mangaluru – 575 003. PAN: AAEAM3398Q	Vs.	The Income Tax Officer, Ward – 1(1), Mangaluru.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Roopa Arun, Advocate
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Department

Date of Hearing	:	27-05-2024
Date of Pronouncement	:	08-07-2024

ORDER

PER KESHAV DUBEY, JUDICIAL MEMBER

This appeal at the instance of the assessee is directed against the CIT(A)/NFAC order dated 26.12.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059076618(1) passed u/s. 250 of the I.Tax Act, 1961 (The Act) for the A.Y. 2020-21.

2. The assessee has raised the following grounds.

“1. The impugned order dated 26.12.2023 passed by the learned Commissioner of Income Tax (Appeals) (CIT(A)) is contrary to law and to the facts of the present case and hence it is liable to be set aside.

2. The Learned CIT(A) has grossly erred in holding that the deduction is available to the Appellant under Section 80P(2)(d) as against the deduction claimed under Section 80P(2)(a)(i) of the Income Tax Act. The Learned CIT (A) has also erred in disallowing the deduction on the interest received from Scheduled Commercial Banks. The said findings are contrary to the rulings of the Apex Court and various High Courts and hence are liable to be set aside.

3. The Learned CIT (A) has failed to appreciate the fact that the only business of the Appellant is providing credit facilities to its members and the only source of income of the Appellant is interest income. In view of the same, earning interest is an integral part of the business of the Appellant and hence the said interest income is eligible for deduction u/s 80P(2)(a)(i) of the IT Act.

4. The learned CIT(A) has grossly erred in not appreciating that the income from investments of the Appellant are incidental to the business of the Appellant and hence is normal business income, qualifying for deduction in u/s 80P(2)(a)(i). Hence the impugned order is liable to be set aside.

5. The learned CIT(A) has grossly erred in overlooking the fact that the entire interest income of the Appellant is attributable to its business of providing credit facilities to its members and has thus erred in not extending the deduction u/s 80P(2)(a)(i).

6. It is submitted that Rule 28 of the Karnataka Co-operative Societies Rules 1960 mandates that every Co-operative Society maintain "Fluid Resource". Such resources cannot be lent to members and are hence re-invested with Co-operative Institutions to earn interest income. Further Section 58 of Karnataka Co-operative Societies Rules 1959 read with Rule 23 of the Karnataka Co-operative Societies Rules 1960, stipulates that co-operative societies must invest their reserve funds only in Government saving banks or co-operative bank or a scheduled bank. In view of the aforementioned statutory requirements, the Appellant made investments and income

there from being directly attributable to its business, are covered u/s 80P(2)(a)(i).

7. The Appellant being subject to Karnataka Co-operative Societies Act, 1959, the investments made by the Appellant are in compliance with the statutory provisions and are an integral part of its business. In view of the same, the Learned CIT(A) was not justified in holding that the said income qualifies for deduction u/s 80P(d) as against Sec 80P(2)(a)(i). Hence, the impugned order is liable to be set aside.

8. The Learned CIT (A) has misconstrued the ruling of the Apex Court in Totgars Co-operative Societies Ltd reported in (2010) 3 SCC 223 in passing the impugned order and hence the same is liable to be set aside.

9. The Learned CIT (A) has also misconstrued the various rulings mentioned in the impugned order vis-à-vis their applicability to facts of the present case and has erroneously passed the impugned order and hence the same is liable to be set aside.

10. The Appellant craves leave to urge additional grounds at the time of hearing of the above appeal.

11. Wherefore, the Appellant most humbly prays that this Hon'ble Tribunal may be pleased to allow the present appeal and set aside the orders of both the CIT(A) dated 26.12.2023 and the order passed by the Assessing Officer dated 21.09.2022 and accept the retuned income declared by the Appellant, by extending the benefit of Sec 80P(2)(a)(i) of the IT Act to the Appellant, in the interest of justice and equity.”

3. The brief facts of the case are that the appellant is a Credit Co-operative Society, registered under the Karnataka Co-operative Societies Act, 1959 and engaged in the business of providing credit facilities to its members. The appellant had filed its return of Income for the Asst. Year 2020-21 on 29.06.2021 declaring Gross total Income of Rs.26,99,014/- and the same was claimed as deduction U/s 80P(2)(a)(i) of the Act and accordingly declared the net Income of Rs.NIL. Thereafter, the case was selected for

complete scrutiny on the issues of "Deduction u/s 80P". The notices were issued and served to the appellant accordingly. During the course of assessment proceedings it was noticed that the appellant had declared gross total income amounting to Rs.26,99,014/- and the same was claimed for deduction u/s 80P(2)(a)(i) of the Act. On perusal of P&L A/c, it was noticed that the appellant had received interest on investment amounting to Rs.13,80,255/-, which was also included in the aforesaid deduction claimed U/s 80P(2)(a)(i) of the Act. Based on the above facts and relying upon the various case laws, the AO had disallowed the deduction amounting to Rs.13,80,255/- claimed u/s 80P(2)(a)(i) of the Income Tax Act, 1961 and added the same to the total income of the appellant. 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 Tax Act, 1961.

4. Being aggrieved by the Assessment completed U/s 143(3) r.w.s. 144B of the Income Tax Act, 1961, the assessee preferred an appeal before the CIT(A)/NFAC.

5. The ld. CIT(A) partly allowed the Appeal of the assessee society by following the decision of this Bangalore Bench in the case of University of Agricultural v ACIT in ITA No. 319/Bang/2023 dated 18/05/2023 & held as under:-

“In view of above mentioned facts, legal provisions and following decisions in above mentioned cases, i hereby, direct the AO that appellant should be granted deduction u/s 80P(2)(d) on the interest received from deposits/savings account kept with other cooperative societies/ banks which are not governed by RBI Banking Regulation Act. However, such deduction will not be available to interest received from scheduled commercial banks. While giving appeal effect; AO will allow these deductions looking into respective amounts/figures from appellant's books of accounts. Accordingly, grounds of appeal are partly allowed.”

6. Aggrieved by the orders of the Ld.CIT(A), assessee is in appeal before this Tribunal. The Assessee has also filed a Memo for citation enclosing therein Order in ITA No.124 and 125/Bang/2024 relied upon by the Assessee.

7. Before us The Ld.AR of the Assessee submitted that the Authorities below erred in not allowing deduction amounting to Rs. 13,80,255/- out of the total claimed of Rs. 26,99,014/- 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” whereas the ld CIT(A) by partly allowing the Appeal held that deduction u/s 80P(2)(d) on the interest received from deposits/savings account kept with other cooperative societies/banks which are not governed by the RBI Banking regulation Act will be allowed and no deduction will be available on Interest received from scheduled commercial banks. 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 First Appellate Authority and vehemently opposed the arguments of the assessee by relying upon the decision of this Tribunal in the case of University of Agricultural v ACIT (supra).

9. Heard both the rival parties, perused the entire material on record and the orders of the Authorities below. The assessee is a credit co-op. society registered with Karnataka Co-op. Societies Act, 1959 and providing credit facilities to its members and accepting deposits from its members. Out of the total deduction claimed u/s 80P(2)(a)(i) amounting to Rs.26,99,014/- the AO has not allowed deduction of Interest on Investment either u/s. 80P(2)(a)(i) or 80P(2)(d) of the Act amounting to Rs. 13,80,255/- & 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 Ld CIT(a) however direct the AO to grant deduction U/s 80P(2)(d) of the Act on the interest received from deposits/Savings account kept with other Cooperative Societies/banks which are not governed by the RBI Banking Regulation Act. Further the CIT(A) was of the view that no such deduction will be allowed on interest received from scheduled commercial banks.

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 ld. 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.

In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 08th July, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(KESHAV DUBEY)
Judicial Member

Bangalore,
Dated, the 08th July, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore