

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.1147/Bang/2024
Assessment Years : 2017-18

Padubidri Co-operative Agricultural Society, Head Office Sahakara Sangama, NH 66A, Padubidri, Kaup Taluk, Udupi-574 111.  <b>PAN – AAAAP 1649 K</b>	Vs.	The Income Tax Officer, Ward - 2, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravishankar S.V, Advocate
Revenue by	:	Shri Subramanian S, JCIT

Date of hearing	:	16.07.2024
Date of Pronouncement	:	23.07.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 20/02/2024 in DIN No. ITBA/NFAC/S/250/2023-24/1061218885(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in not allowing deduction u/s 80(2)(d) of the Act with respect to the interest income from co-operative banks/societies.

3. The assessee before us has filed an application for condonation of delay of 52 days which is supported by the Affidavit. It was stated in the application that at the relevant point of time, the order passed by the Id. CIT(A) u/s 250 of the Act was not available for download in the portal. Likewise, the employee who received the order of the Id. CIT-A on his email missed his attention due to the large volume of emails. Thus, it was requested that there was sufficient cause which prevented the assessee from filing the appeal within the specified time. Accordingly, the assessee requested for the condonation of the delay in filing the appeal and for adjudication of the appeal on merit.

4. At the time of hearing, the Id. AR also submitted that the AO has passed the order giving effect to the direction of the CIT(A) ex-parte to the assessee. As such, the assessee was not offered opportunity of furnishing the details for the cost incurred by it against the income from other sources. In view of the above, the Id. AR contended that as such, the assessee has not aggrieved by the order of the Id. CIT(A) passed u/s 250 of the Act but since the consequential order has been passed by the AO without affording an opportunity to the assessee, the present appeal was preferred to the ITAT with the delay of 52 days. Accordingly, the Id. AR prayed to condone the delay in filing the appeal and decide the issue on merit of the case.

5. On the other hand, the Id. DR did not raise any objection if the delay is condoned and matter is decided on merit.

6. We have perused the records and heard the rival submissions of both the sides. Considering the reasons furnished by the assessee for the delay in filing the appeal, we are inclined to condone the delay in filing the appeal in the interest of justice and fair play. Accordingly, we proceed to adjudicate the issue on merit.

7. The AO during the assessment proceedings found that the assessee has claimed deduction u/s 80P(2)(d) of the Act on the income of Rs. 2,93,85,868/- representing the interest from commercial banks/co-operative banks/co-operative societies. As per the AO, such income was not available for deduction u/s 80P(2)(d) of the Act and accordingly the AO disallowed the same by adding to the total income of the assessee.

8. On appeal, the Id. CIT(A) confirmed the order of the AO but directed the AO to allow the cost incurred by the assessee against the impugned income. The relevant extract of the order of the Id. CIT(A) is as under:

*"7.8 Next question is the quantum of deduction allowable u/s 80P(2)(a)(i). The AO has mentioned that apart from lending and borrowing, the assessee was also in receipt of interest from banks on Fixed Deposits. Such interest is not business income and is not deductible u/s 80P(2)(a)(i) in view of the decision of the Hon'ble jurisdictional High Court in the case of Pr. Commissioner of Income-tax & Anr. v. Totagars Co-operative Sale Society 395 ITR 611 (Kar.). However, proportionate costs, administrative expenses incurred in respect of deposits are allowable as deduction u/s 57 as per decision of the Hon'ble jurisdictional High Court in the case of Totagars Co-operative Sale Society Ltd. v. ITO reported in [2015] 58 Taxmann.com 35 (Karnataka) (judgment dated 25.03.2015). Accordingly, the A.O. is directed to examine whether assessee has incurred any expenditure for earning interest income, which is to be assessed under the head 'income from other sources'. If so, the same shall be allowed as deduction u/s 57 of the I.T. Act and net interest income will not be considered for calculating amount eligible for deduction u/s 80P(2)(a)(i). Ground No. 4 is partly allowed.*

8.1 Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

9. The Id. AR before us has not challenged the finding of the Id. CIT(A) but submitted that the AO has not given the liberty to the assessee in the consequential order passed in compliance with the direction given by the Id. CIT(A). It was also submitted that there was also interest earned by the assessee from the co-operative societies which has not been considered for deduction u/s 80P(2)(d) of the Act. As such, the Id. AR submitted that a direction can be issued to the AO for allowing the cost incurred by the assessee against the impugned interest income after giving opportunity to the assessee and as per the provisions of law.

10. On the other hand, the Id. DR did not raise any adjudication if such direction is given to the AO for allowing the cost incurred by the assessee against the impugned income after giving opportunity to the assessee and as per the provisions of law.

11. We have heard the rival contentions of both the parties and perused the materials available on record. There is no ambiguity to the fact that the interest income earned by the assessee from nationalized bank/co-operative banks are not available for deduction u/s 80P(2)(d) of the Act, but the cost incurred against such income should be considered for calculating the amount of interest income from nationalized bank/co-operative banks. As such the net interest income should only be disallowed and not gross interest income while calculating the eligible

amount of deduction u/s 80P(2)(d) of the Act. Therefore, in the interest of justice and fair play, we are setting aside the issue to the file of the AO to calculate the cost incurred by the assessee against the impugned income after giving opportunity to the assessee.

11.1 It is not out of place to mention that the interest earned by the assessee from the co-operative society is eligible for deduction u/s 80P(2)(d) of the Act. While calculating the interest from the co-operative society, the principles laid down by the Hon'ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Bank Ltd., Vs. ACIT reported in 154 taxmann.com 305, should also be considered by the AO. With this observation, the ground of appeal filed by the assessee is hereby allowed for statistical purposes.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in court on 23<sup>rd</sup> day of July, 2024

Sd/-

**(SOUNDARARAJAN K)**  
Judicial Member

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Cochin  
Dated, 23<sup>rd</sup> July, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore