

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

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

ITA No. 597/Bang/2024
Assessment Year: 2017-18

The Asst. Commissioner of Income Tax, Circle - 1, Mangalore.	Vs.	Dakshin Kannada Co-operative Milk Producers Union Limited, Nandini, Kulashekar, Mangaluru.
APPELLANT		PAN – AAAAD 0202 C RESPONDENT

Assessee by	:	Shri A Shiva Rao, CA
Revenue by	:	Shri Subramanian S, JCIT

Date of hearing	:	15.07.2024
Date of Pronouncement	:	23.07.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the order passed by the NFAC, Delhi dated 08/02/2024 in DIN No. ITBA/NFAC/S/250/2023-24/1060669162(1) for the assessment year 2017-18.

2. The only grievance raised by the Revenue is that the Id. CIT(A) erred in allowing 100% deduction u/s 80P(2)(d) of the Act in respect of

its income by way interest earned on the deposits/investments with cooperative bank

3. Briefly stated facts are that the assessee is a Co-operative Society and engaged in procurement and sale of milk and milk products. It also sells cattle feeds to the members. For the Assessment Year 2017-18, the return of income was filed on 30.10.2017 declaring income of Rs. 28,88,59,010/- only. During assessment proceedings, it was noticed that assessee had earned interest and dividend income of Rs. 4,63,49,465/- from its investments with M/s South Canara District Central Co-operative Bank Limited (SCDCC Bank). The AO completed assessment after an making of interest income and the dividend income received from SCDCC Bank as it not entitled to deduction under section 80P(2)(d) of the Act, since the same was received from Co-operative Bank and not Co-operative Society.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who deleted the disallowance made by the AO and allowed the appeal of the assessee. The Id. CIT(A) followed the order of the Bangalore Bench (Tribunal) in the case of University of Agricultural Vs. ACIT in ITA No. 319/Bang/2023 dated 18.05.2023. The Id. CIT(A) held that assessee is entitled to deduction under section 80P(2)(d) of the Act in respect of interest / dividend income received from investments kept with Co-operative Societies/ Co-operative Banks which are not governed by RBI Regulation Act. The relevant finding of the CIT(A) reads as follows:

"6.2 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/dividend 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 allowed.

5. Being aggrieved by the order of the Id. CIT(A), the Revenue has filed the present appeal before the Tribunal.
6. The learned DR, apart from supporting the grounds raised in the memorandum of appeal, submitted that payer Bank viz., SCDCC Bank has got license from RBI to conduct the banking business under the Banking Regulation Act, 1949. Therefore, it was contended that SCDCC Bank cannot be considered as a Co-operative Society, hence, would not be entitled to deduction under section 80P(2)(d) of the Act in view of dictum laid down by the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd., reported in 395 ITR 611.
7. On the other hand, the Id. AR vehemently supported the order of the Id. CIT(A) and submitted that in view of the latest judgment of the Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural Rural Development Vs. AO reported in 458 ITR 384 (SC) and the decision in assessee's own case for Assessment Year 2020-21 in ITA No. 49/Bang/2024 (order dated 23.04.2024), the issues needs to be restored to the AO. It was submitted that payer Bank viz., SCDCC Bank is in essence is a co-operative society, hence, the interest / dividend income received from it would be entitled to deduction under section 80(P)(2)(d) of the Act.
8. We have heard the rival submissions of both the parties and perused the materials available on record. We find that in the assessee's own case cited above for Assessment Year 2020-21, the Tribunal had restored the matter to the AO to examine whether the payer bank viz.,

SCDCC Bank is a Co-operative Bank or Co-operative Society. The Tribunal in assessee's own case held that if it is found that the payer bank is a Co-operative Society, the same shall be entitled to deduction under section 80P(2)(d) of the Act. Further, it was held by the Tribunal that in the event the assessee is not entitled to deduction under section 80P(2)(d) of the Act, and the interest income is assessed as "Income from Other Sources" assessee shall be entitled to deduction of cost of funds under section 57 of the Act. The relevant finding of the Tribunal in assessee's own case reads as follows:

"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."

9. In view of the aforesaid order of the Tribunal in assessee's own case, we restore the matter to the AO. The AO is directed to examine whether payer bank viz., SCDCC Bank is a Co-operative Society and if so, the interest income received from such Co-operative Society shall be entitled to deduction under section 80P(2)(d) of the Act. In the event it is found that assessee's income is not entitled to deduction under section 80P(2)(d) of the Act, the AO shall consider the claim of assessee for deduction of cost of funds for earning such interest income. It is ordered accordingly.

10. In the result, the appeal of the Revenue is hereby allowed for statistical purposes.

Order pronounced in court on 23rd day of July, 2024

Sd/-

(SUNDARARAJAN K)

Judicial Member

Sd/-

(WASEEM AHMED)

Accountant Member

Cochin

Dated, 23rd 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