

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 1106/Bang/2024
Assessment year : 2018-19

Vividhodesha Prathamika Grameena Krashi Sahakara Sangha Niyamita, Targod. Sirsi. 581 402. PAN : AABAH 1070P	Vs.	The Income Tax Officer, Ward 1, Sirsi.
APPELLANT		RESPONDENT

Appellant by	:	Shri Prakash Hegde, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	31.07.2024
Date of Pronouncement	:	21.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 3.5.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2018-19.

2. Briefly stated the facts of the case are that the assessee is a primary agricultural cooperative society registered on 27.4.1979 under the Karnataka Co-operative Societies Act, 1959. The assessee filed return of income declaring Nil income and claimed amount of Rs.27,28,085 as deduction u/s. 80P of the Act. The case was selected

for scrutiny and statutory notices issued to the assessee. In response the assessee filed reply. It was noticed that assessee earned interest out of investments from Karnataka Dist. Central Coop. Bank Ltd. (KDCC) of Rs.4,21,606, from Axis Bank Rs.25,045 and Rs.32,992 from Totgars Co-op. Sale Society totalling to Rs.4,79,643 and claimed deduction u/s. 80P(2)(a)(i) of the Act. The AO noted that earning of interest from bank and other receipts is not business activity of cooperative society associated with its members. Deduction u/s. u/s. 80P(2)(d) is also not to be allowed since the interest received by the assessee is from bank which is not an income earned from investments with any other co-op. society. The AO treated Rs.4,46,650 as income from other sources and completed the assessment. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

3. The Id. FAA after considering the detailed submissions and arguments and relying on various judgments and confirmed the order of the AO. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR reiterated submissions made before the lower authorities and submitted that interest income received on its investments were surplus funds of the society, therefore it should be treated as business income and deduction should be allowed u/s. 80P(2)(a)(i) of the Act. He further submitted that if it is not allowed 80P(2)(a)(i), interest received from cooperative bank is eligible for deduction u/s. 80P(2)(d) of the Act because cooperative bank is basically a cooperative society registered under the Karnataka Co-

operative Societies Act, 1959. The assessee was required to maintain the liquidity ratio as per the Karnataka Co-operative Society Act. 1959 accordingly the assessee deposited its funds on which interest income was received. Alternatively, he submitted that cost of funds should be allowed to the assessee towards earning of interest income because the revenue authorities have taxed the entire interest income as income from other sources u/s. 56.

5. The Ld. DR relied on the order of the Ld.CIT(A) and he submitted that the interest income received by the assessee is not to be considered as a business income since the Hon'ble Jurisdictional High Court of Karnataka has settled this issue in the case of Totgars' Co-operative Sales Society Ltd. reported in (2017) 395 ITR 611 (Karnataka) dated 16.06.2017.

6. The Id. DR also submitted that in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. Assessing Officer, (2023) 154 taxmann.com 305 the Hon'ble Supreme Court has clearly held that if the payer bank holds licence from RBI for carrying out banking business, then the interest received from such bank is not eligible for deduction u/s. 80P(2)(d), though the co-operative bank may be primarily formed as co-operative society and that the activity of the entity should be seen. He submitted that the interest received from co-operative bank is governed by Banking Regulation Act, 1949. . The case law relied by the Id. AR is not applicable in the present facts of the case. The character of interest

income received from its investments cannot be treated as operational income as held by the Hon'ble Apex court in the case of Totgars Co-operative Sales Society vs ITO reported in 322 ITR 283(SC). The Karnataka Co-operative Society Act and Rules cannot override the income tax provisions.

7. Considering the rival submissions, we note that the assessee is registered under Karnataka Co-operative Society Act 1959, we note that here the issue is that whether the assessee is eligible to claim of deduction u/s. 80P(2)(a)(i) and/or 80P(2)(d) on the interest income earned on its investments made out of its funds made with District co-operative banks and other . The Ld.CIT(A) has not accepted the claim of the assessee by relying on the judgment of Hon'ble Apex Court in case of Totgars' Co-operative Sales Society Ltd. reported in [2010] 188 Taxman 282 (SC) and he has also relied on judgement in the case of Pr. CIT vs Totgars Co-operative Sales Society (2017) 83 taxmann.com 140(Karnataka). During the course of hearing it was brought into the notice of both the parties that a similar issue has been decided by the Co-ordinate bench of the ITAT Bangalore Bench in the case of Primary Agricultural Credit Society Ltd vs ITO in ITA No. 947/Bang/2024 order dated 03.07.2024 for the AY 2017-18 in which it has been held as under:-

10. Further in respect of deduction u/s 80P(2)(d), considering the rival submissions, we note that here the issue is that whether the assessee is eligible to claim of deduction u/s. 80P(2)(a)(i) and/or 80P(2)(d) on the interest income earned on its investments amount made with District co-operative banks. The Ld.CIT(A) has not accepted the claim of the assessee by relying on the judgment of Hon'ble Karnataka High Court in case of Totgars' Co-operative

Sales Society Ltd. (supra) and Hon'ble Apex Court in the case of Citizens Co-operative Society Ltd. noted supra. During the course of hearing, the Ld.AR of the assessee relied on the Circular No. 18/2015 dated 02.11.2015 and submitted that as per the provisions of the Karnataka Co-operative Societies Act, the assessee is required to maintain SLR from the deposits received from the members and has to invest 100% from the general reserve and 25% from the deposits collected from members. Accordingly, assessee has invested in the fixed deposits. As per the circular, the income received from the investments should be treated as business income u/s. 28 of the Income Tax Act and assessee is eligible to make a claim of deduction u/s. 80P(2)(a)(i) as business income. Further, the assessee also submitted that the investments were made in co-operative banks which are co-operative society. It is submitted by the Id. AR that interest received on such investments are to be allowed for deduction u/s. 80P(2). In support of his argument, the assessee relied on the following decisions:

- (i) Mavilayi Service Co-op. Bank Ltd. [2021] 123 taxmann.com 1 (SC).
- (ii) Tumkur Merchants Souharda Credit Co-op. Ltd. reported in 55 taxmann.com 447.
- (iii) ITAT decision in ITO vs M/s Irula Snake Catchers Industrial Co-operative Society Ltd. [TS-5808- ITAT-2022 9 Chennai)-O]
- (iv) M/S Kerala State Co-operative Agricultural & Rural Development Bank Ltd. vs AO [2023] 154 taxmann.com 305 (SC).
- (v) Saptagiri Pattina Souhadra Sahakari Sangha Niyamitha vs ITO [2024] 162 taxmann.com 855 (Bangalore Trib.).

11. We note from plain reading of Circular No. 18/2015 dated 02.11.2015 it is applicable to those co-operative societies / co-operative banks in which the Banking Regulation Act, 1949 applies. During the course of hearing the assessee was asked to submit the requirement of SLR as per Karnataka Cooperative Societies Act and the quantum and period for calculating SLR, the assessee was unable to give reply. Rule 23 of the Karnataka Co-operative Societies Rules states that reserve fund belongs to the society and is intended to meet the unforeseen losses. Further if the cooperative society wants to invest reserve fund or any portion thereof for any other purpose as prescribed under section 58 (a) to (d) of the Karnataka Co-operative Societies Act permission is to be taken from the Registrar of Co-operative Societies. Therefore the argument of the assessee that interest income on such investment is operational income is rejected. Even if the maintainability of SLR requirement is out of internal fund/external funds then no deduction shall be allowed u/s. 80P(2)(a)(i), since the interest income received on such investments from co-operative banks is not attributable to main business of the appellant. The issue regarding the word "attributable" has been discussed elaborately by the Hon'ble Apex Court in the case of M/s Totgar's Co-operative Sales Society (2010) reported in [2010] 188 Taxman 282 (SC) where it is held by the

Hon'ble Supreme Court that the deduction u/s 80P is available only to the income which is attributable to the business operation.

11.1 Admittedly, it is a matter of fact borne from the record that the legislature in all its wisdom had inserted the provisions of Section 80P(2)(a)(i) of the Act as a part of deductions from carrying on the business of banking or providing credit facilities to its members by a Co-operative Society. Although the contention of the Ld. AR that interest received from deposit under compulsion is to be considered u/s 80P(1)(a)(i), the AO considered it as income u/s 56 of the Act. As per our considered opinion, going by the rule of literal interpretation that has to be adopted while construing the scope and gamut of a statutory provision, the same does not merit acceptance. As Section 80P(2)(a)(i) does not carve out any exception as regards the applicability of the same in a case where the investments are made under compulsion or as per any direction from Registrar of co-operative society, the aforesaid contention of the Ld. AR that the same could be considered for deduction u/s. 80P(2)(a)(i) cannot be accepted. This view of ours that statutory provision has to be construed as per the rule of literal interpretation is supported by the judgment of the Hon'ble Supreme Court in the case of *New Noble Educational Society v. Chief CIT* [2022] 143 taxmann.com 276/[2023] 290 Taxman 206/[2023] 448 ITR 594/[CA No. 3793 to 3795 of 2014 dated 19-10-2022]. The Hon'ble Apex Court observed that if the language is unambiguous and capable of only one meaning, that alone should be applied and not any other, based on the surmise that the legislature intended it to be so. In other words, it is only in case of ambiguity that the court can use other aids to discern the true meaning, but where the statute is clear and the words are plain, the legislation has to be given effect in its own terms. Since, in the case of the assessee interest income received is from investments from Banks which cannot be attributed to the main business of providing credit facilities to its members, same cannot be held to be allowable as deduction u/s 80P(2)(a)(i) of the Act.

12. We note from the submissions of the Ld. AR that the assessee has invested its fund in commercial bank as well as in co-operative banks and earned interest thereon. Section 80P(2)(d) describes that if the assessee has received interest from the co-operative society, then the assessee is eligible for claim of deduction on such interest received. In the judgment of Hon'ble Apex Court in the case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. (KSCARDB) vs. The Assessing Officer, Trivandrum & Ors.* (2023) 154 taxmann.com 305 (Supreme Court) it has been discussed in detail the definition of co-operative banks and co-operative society. If the payer bank falls under the definition of co-operative bank/ bank in the light of the judgment of Hon'ble Apex Court then the assessee is not eligible to get deduction u/s. 80P(2)(d) on such interest income received from co-operative banks. We note that the assessee has also received interest from co-operative banks which is governed by the Banking Regulation Act of 1949 and this

argument of the Id. DR has not been denied by the Id. AR of the assessee. The Section 80P(2)(d) describes that if the assessee has received interest/dividend from the co-operative society, then the assessee is eligible for claim of deduction on such interest/dividend, however we note that the assessee has received interest from co-operative bank but it is not clear whether the interest payer (co-operative bank) is a bank and registered with Reserve Bank of India and holding licence from RBI for carrying out banking business as per RBI Act. In addition, the judgment of Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors. (supra) in which it has been discussed in detail the definition of co-operative banks and co-operative society. If the payer bank falls under the definition of co-operative bank in the light of the judgment of Hon'ble Apex Court then the assessee is not eligible to get deduction u/s. 80P(2)(d) on such interest income received from co-operative banks, therefore this issue is also remitted back to the AO for verification of interest received from co-operative bank in above terms. If AO finds that the co-operative bank is carrying its banking business activities in the light of the above judgment, the deduction u/s. 80P(2)(d) on such interest income should not be granted.

13. We further note that the assessee has received interest from other co-operative banks/commercial banks on its investments. The revenue authorities have considered the entire interest as income from other sources u/s. 56 including the interest received from co-operative bank and no expenses u/s. 57(iii) has been allowed to the assessee for earning of such income. While calculating the income, the net income should be considered as taxable income after reducing the expenditure incurred towards earning of such income. Therefore relying on the judgment of Hon'ble Jurisdictional High Court in case of Totgars' Co-operative Sales Society Ltd. vs ITO Sirsi, reported in (2015) 58 taxmann.com 35 (Karnataka), the assessee is eligible for claim of its cost of funds on the interest income received from banks. Reliance is also placed on the judgment of Co-ordinate Bench of the Tribunal in case of The West Coast Paper Mill Employees Souharda Credit Co-op. Ltd. Accordingly, the assessee is directed to provide the details of cost of funds before the assessing officer. Therefore for allowing cost of funds, we are remitting this issue to the assessing officer for determining the cost of funds for earning entire interest income from bank (co-operative bank and scheduled bank).

8. Respectfully following the above judgement we direct the AO to decide the case in the above terms.

9. In the result the appeal of the assessee is allowed for statistical purpose .

Pronounced in the open court on this 21st day of August, 2024.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st August, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.