

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

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| ITA Nos.1346 to 1348/Bang/2024 |
| Assessment years : 2018-19, 2020-21 & 2022-23 |

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| Vipra Vividhodesha Souharda Sahakari Sangha Niyamitha, Raaga, 1 st Stage, 5 th Cross, Vinobanagar, Shivamogga – 577 204. PAN : AAAAV 3948F | Vs. | The Income Tax Officer, Ward 1 & TPS, Shivamogga. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Vivek A.R. Advocate |
| Respondent by | : | Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru. |

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| Date of hearing | : | 21.08.2024 |
| Date of Pronouncement | : | 03.09.2024 |

ORDER

Per Bench

All these appeals are filed by the assessee against the order dated 21.05.2024, 13.05.2024 & 21.05.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the AY 2018-19, 2020-21 & 2022-23 respectively.

2. Since the issues raised in all the appeals are similar, we are first taking ITA No.1346/Bang/2024 for AY 2018-19 and the decision in this appeal shall mutatis mutandis apply to ITA Nos.1347 & 1348/Bang/2024.

3. For the sake of brevity, we are reproducing the grounds raised for AY 2018-19 as under:-

“ 1. The appellate order passed by the learned Commissioner of Income-tax [Appeals], NFAC, Delhi, under Section 250 of the Act dated 21/05/2024, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case, may be quashed.

2. The appellant denies itself liable to be assessed on a total income of Rs.2,13,08,964/-determined by the learned assessing officer as against the total income returned / reported by the appellant of Rs.11,95,970/-, on the facts and circumstances of the case.

3. The learned Commissioner of Income tax (Appeals) erred in enhancing the assessment by directing AO to disallow Income from cooperative Bank U/s.80(P)(d) of the Act, which was not a part of original Assessment without giving the reasonable opportunity of being heard U/s.251(2) of the Income tax Act. Entire order is against the principles of natural justice and need to be set-aside.

4. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the learned Assessing Officer was not justified in passing the order of assessment under the status of Artificial Judicial Person, when the appellant was registered as a co-operative Society and the learned assessing officer ought not to have changed the status of the appellant and consequently the order of assessment passed under section 143 [3] r.w.s. 144B of the Act is bad in law, on the facts and circumstances of the case.

5. The learned Commissioner of Income-tax [Appeals] and the learned assessing officer failed to appreciate that the interest income earned from investment in Banks and Co-operative banks were attributable to the business of the appellant, since the funds belonged to the members of the appellant and eligible to claim deduction under section 80P[2][a][i] of the Act, on the facts and circumstances of the case.

6. The learned Commissioner of Income-tax [Appeals] and the learned assessing officer were not justified in not allowing the deduction on account of interest earned by the appellant from

deposits in Shimoga District Co-Operative Credit Banks, Karnataka State Cooperative Et Rural Development Bank, Shree Ganapathi Urban Cooperative Bank, Punjab & Maharashtra Coopt Bank, SucoSouhardaSahakari Bank Ltd., which are co-operative society of Rs. 34,00,134/- under the provisions of section 80P[2][d] of the Act and erroneously treated such interest income as income from other sources and brought the entire amount to tax, which is not in accordance with law, on the facts and circumstances of the case.

7. Without prejudice, the learned Commissioner of Income-tax [Appeals] and the learned assessing officer were not justified in not allowing the cost of funds under section 57 [iii] of the Act, on the deposits which were maintained to earn interest, while treating the interest earned as income from other sources, on the facts and circumstances of the case. The learned AO ought to have allowed cost of funds of Rs.33,13,204/- as per computation attached.

8. Without prejudice, to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 A, 234 B & 234 C of the Income Tax Act on the facts and circumstances of the case. The appellant contends that the levy of interest under section 234 A, 234 B & 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.

9. The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.

10. For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

4. Briefly stated the facts of the case are that the assessee is registered under Karnataka Souharda Sahakari Act, 1997 and filed its return of income on 23.10.2018 declaring income of Rs.11,95,970 after claiming deduction u/s. 80P of Rs.2,01,12,994. The case was selected

for scrutiny and statutory notices issued to the assessee. The assessee filed documents and submitted that assessee has claimed deduction u/s. 80P(2)(a)(iii) which is income from marketing of agricultural produce grown by members and further submitted that assessee is registered under Karnataka Souharda Sahakari Act, 1997 falls under co-operative society as per section 2(19) of the Karnataka Souharda Sahakari Act, 1912 and it is eligible for deduction u/s. 80P on its income earned. The assessee relied on the judgment of jurisdictional High Court, The AO did not accept the plea of assessee and held that assessee is not covered under the definition of co-operative society and observed that deduction u/s. 80P is available only to co-operative society. He also relied on other judgments quoted in his order and disallowed the deduction claimed by the assessee u/s. 80P of Rs.2,01,12,994. The AO also treated the assessee as AOP. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

5. The ld. FAA after considering the submissions of the assessee and relying on the judgment of Hon'ble Apex Court in the case of Mavilayi Service Cooperative Bank (2021) 123 taxmann.com 161 (SC) observed as under:-

“8.5 Hence, respectfully following the decision of the Supreme Court (supra) and the ITATs discussed above, the AO is directed to allow the deduction u/s. 80P(2)(d) of the Income-tax Act, 1961 to the extent of interest earned from the Co-operative Societies/ Cooperative Banks not holding the License issued by the RBI alone.

8.6 Further, the AO is directed to assess the interest earned on the deposits held with the Scheduled Banks/Co-operative Banks

holding License issued by RBI, Commercial Banks and the financial institutions other than the mentioned in Para 8.5 under the head Income from Other Sources as per Section 56 of the Income-tax Act, 1961. This ground of the appellant is partly allowed.”

6. Aggrieved from the order of the FAA, the assessee is in appeal before the ITAT.

7. The Id. AR reiterated the submissions made before the lower authorities and strongly contested that the AO has wrongly held the assessee as AOP, whereas as per the judgment of jurisdictional High Court in the case of Government of India Ministry of Finance vs Karnataka State Souhadra Dedral Co-operative Ltd reported in [2022] 134 taxmann.com 170 (Karnataka) [2022] in which it has been held that society registered under Karnataka Souharda Sahakari Act, 1997 is also eligible for deduction u/s. 80P of the Act.

8. Considering the rival submissions, both the parties relied on the decision of the coordinate Bench of Tribunal Primary Agricultural Credit Co-operative Society Ltd in ITA No.947/Bang/2024 dated 03.07.2024 in which it has been held as under:-

“9. Considering the rival submissions, we note that the assessee is registered under Karnataka Co-operative Society Act 1959. During the course of assessment proceedings, the AO asked to submit details as per notice u/s 142(1) and the AO noted as per Bye-laws that there are regular/normal members and nominal members. The regular members participate in day to day affairs, and nominal members have no role in the management of society, have no voting rights & no entitlement for share in the assets or profits. The sec. 20(2)(a) of the Karnataka Co-operative Society Act denies any right to vote to a nominal or associate

members. Further the Nominal/Associate members are not entitled to attend the general meetings of the society, not eligible to contest on election. The assessee is doing business with non-members and the profit from such business is divided among the regular members of the society. The Id. DR submitted that as per the Karnataka Co-operative Society Act sec. 18 amended by the Act 2014, the associated/nominal members should not exceed 15% of the regular members, if it exceeds, then it has to be regularized within the period of six months. We note that the lower authorities have disallowed deduction on interest income received from providing credit facilities from all the members by following the judgment of Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd., Hyderabad Vs. ACIT noted supra. The decision relied on by the Id. AR in the case of Mavilayi Service Co-operative Bank Ltd., (supra) is under Kerala Co-operative Societies Act in which it has been held that proportionate deduction u/s. 80P(2)(a)(i) should be granted to the assessee from the interest income received from providing credit facilities to its members but not from the non-members. The Para 33 of the said judgement says as under:-

“.....Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.”

The ratio of Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., (supra) is very much applicable for computing the income attributable to the business of the assessee among the members and non-members. The assessee is governed by Karnataka Co-operative Societies Act, 1959 and assessee has to follow section 18 (amended) Act of 2014 and bye-laws of the society. We note that AO in para 5 has observed that nominal members do not have a right in share of profits of the assessee. The AO has to examine with the bylaws of the Society in regard to classification of members, their rights, sharing of profits of the

society among the members (Regular/Nominal). In the event it is found that the nominal/associate members are not members and they are not entitled from share of profits earned by the assessee, then the proportionate deduction u/s 80P(2)(a)(i) to be granted in terms of the judgment of Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., (supra) on such income. The assessee is directed to produce the quantum of interest income received from all the categories of members for AO to carry out necessary verification. Accordingly we remit this issue to the AO for afresh consideration and determination of the interest received from members and non-members from providing credit facilities and decide the issue as per law. The AO shall grant deduction on such interest income u/s 80P(2)(a)(i) of the Act that satisfies principle of mutuality as per bye-laws. Accordingly this issue is partly allowed for statistical purpose.

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 ld. DR has not been denied by the ld. 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)."

9. Respectfully following the above decision, we send back the issue to the AO for decision in the light of above judgment.

10. In the result, all the appeals of the assessee are allowed for statistical purposes.

Pronounced in the open court on this 03rd day of September, 2024.

Sd/-
(SOUNRARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 03rd September, 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.