

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1775/Bang/2024
Assessment Years : 2020-21

Raithara Arecanut Marketing and Processing Co-operative Society Ltd., No.1, RAMPCOS, Channagiri Road, APMC Yard, Bhadravathi. PAN – AAAJR 0486 M	Vs.	The Income Tax Officer, Ward - 1, TPS, Shimoga.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vasant Kumar, CA
Revenue by	:	Shri V Parithivel, JCIT

Date of hearing	:	24.10.2024
Date of Pronouncement	:	25.10.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 27/08/2024 in DIN No.ITBA/NFAC/S/250/2024-25/1068023661(1) for the assessment year 2020-21.

2. The only interconnected issue raised by the assessee is that the Id. CIT(A) erred in confirming the disallowance made by the AO for Rs. 60,67,580/- under the provisions of section 80P(2)(a)(i) of the Act.

3. The assessee in the year under consideration has claimed a deduction of Rs. 60,67,577/- under the provisions of sec. 80P(2)(d) of the Act. However, the AO found that the assessee has also earned interest income from non-members amounting to Rs. 1,00,41,224.00 which is not eligible for deduction u/s 80P(2)(a)(i)/(d) of the Act. Therefore, the AO disallowed the deduction claimed by the assessee under section 60,67,577/- of the Act and added to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal before the Id. CIT(A), who confirmed the order of the AO by giving detailed findings and after referring to the judgments of various Hon'ble Courts.

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

6. The Id. AR before us contented that the assessee should be allowed the deduction of the corresponding cost against the interest income from non-members before making the disallowance of the deduction under section 80P(2)(d) of the Act.

7. On the other hand, the Id. DR vehemently supported the order of authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the deduction claimed by the assessee with respect to the interest earned from the non-members was denied by the AO, which was subsequently

confirmed by the Id. CIT(A) as discussed above. However, we find that this Tribunal in the case of GSSS Credit Co-operative Society Limited., Vs. ITO in ITA No. 248/Bang/2024 involving identical facts and circumstances has allowed the appeal of the assessee vide order dated 06-05-2024 for statistical purposes. The relevant extract of the order is reproduced below:

10. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the deduction claimed by the assessee u/s 80P(2)(d) of the Act with respect to the interest earned on the investment made in the nationalized/co-operative bank of Rs. 50,76,760/- was denied by the AO, which was subsequently confirmed by the Id. CIT(A) as discussed above.

11. As far as the interest income earned by the assessee on the investment made with the nationalized bank is concerned, there is no dispute that the same is not eligible for deduction u/s 80P(2)(d) of the Act as held by the Hon'ble Karnataka High Court in the case of **Totagars Co-operative Sale Society cited above** but in our considered view, the corresponding interest cost incurred by the assessee against such interest income should be allowed as deduction. Accordingly, we direct so.

12. Regarding the interest income earned from the Co-operative Bank, in this regard, we are of the opinion that we have to see whether the Co-operative Bank is carrying on the business of bank as provided under the Bank Regulation Act. In simple words, if the Co-operative Bank is not carrying out any banking business, then in our considered view, the deduction on account of interest on the investment made in such Co-operative Bank cannot be denied for the reason that such Co-operative Bank is not a bank as per the judgment of 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, wherein it was observed that the assessee was a state-level agricultural and rural development bank and governed under the Kerala Co-operative Societies Act, 1969 as a co-operative society. The activity of the assessee was to provide credit facilities to its members. Accordingly, the assessee claimed a deduction under Section 80P(2)(a)(i) of the Act in the return of income. But the AO disallowed the same on the reasoning that the assessee was a cooperative bank and, therefore, it was hit by the provisions of section 80P(4) of the Act and thus would not be eligible for claiming deduction under section 80P(2) of the Act. Finally, the issue reached the Hon'ble Apex Court where it was held that banking is defined under section 5(b) of the Banking Regulation Act, 1949 to mean accepting, for the purpose of lending or investment, deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Therefore, a banking company must transact banking business with the public. If a co-operative society would not transact the business of banking as defined in Section 5(b), it would not be a co-operative bank within the meaning of section 56 of Banking Regulation Act and would be entitled to the benefit of deduction under Section 80P(2) of the Act. Since, the

assessee society was an apex co-operative society within the meaning of Kerala State Co-Operative Agricultural Development Banks Act, 1984 (State Act, 1984) whose primary object was to provide financial accommodation to its members who were all other co-operative societies and not members of the public, it was not a co-operative bank within the meaning of section 5(b) read with Section 56 of Banking Regulation Act. Accordingly, the deduction under Section 80P could not be denied to the assessee by invoking Section 80P(4) of the Act.

13. In view of the above, we hold that if the Co-operative Bank is not functioning the business of banking as defined u/s 5(b) of Banking Regulation Act, then such Co-operative Bank shall be considered as Co-operative Society for the purpose of the deduction claimed u/s 80P(2)(d) of the Act. Therefore, in our considered view, such interest income will be eligible for deduction u/s 80P(2)(d) of the Act.

14. However, if the Co-operative Bank is carrying out banking activities as defined u/s 5(b) of the Bank Regulation Act, then the assessee shall not be entitled for the deduction with respect to the interest earned on the investments made with such bank under the provisions of sec. 80P(2)(d) of the Act. However, corresponding interest cost incurred by the assessee shall be eligible to be adjusted against such interest income at par with nationalized bank.

15. We also note that this Tribunal in the case of **Bee Co-op Credit Society Ltd., cited above** involving identical facts and circumstances has set aside the issue to the file of the AO for fresh adjudication as per the provision of law. The relevant extract is reproduced as under:

"6. We have pursued the submissions advanced by both the sides in the light of the records placed.

6.1 The solitary issue raised for contention is regarding eligibility of exemption of income received by the assessee from cooperative banks/banks during the year under consideration and that has been listed herein above in the preceding paragraphs. In the recent decision by the coordinate bench of this Tribunal in the case of M/s University of Agricultural Employees House Building CO-op Society Ltd., in ITA No.319/Bang/2023 for the assessment year 2016-17 vide order dated 18/05/2023 observed and held as under:-

4.1 the claim of deduction u/s 80P(2)(d) of the Act, the has been considered by the coordinate bench of this Tribunal in the case of M/s.The Jayanagar Cooperative Society Ltd. v. ITO in ITA No.3254/Bang/2018 by order dated 23.07.2019, on similar facts, had restored the matter to the files of the Ld.AO for de novo consideration. The Ld.AR submitted that, identical issue was considered by the ITAT in ITA No.490/Bang/2021 in the case of M/s. Kakkabe VSSN Bank Ltd.vs. Pr.CIT by order dated 28.02.2022for assessment A 2015-16. The Ld.AR submitted that, this Tribunal in above cited case, directed the Ld.AO to consider the dictum laid down by the Hon'ble Supreme Court in case of Mavilayi Service Co- operative Bank Ltd. v. CIT reported in 431 ITR 1.

5. This Tribunal in case of M/s. Bhavasara Kshtriya Co-operative Credit Society Ltd. vs. ITO/ADIT in ITA Nos. 581 to 583/Bang/2022 by order dated 19.10.2022 wherein it was held as under:

2.6. We have heard both sides in light of records placed before us. The Ld.AO denied the claim of the assessee on the ground that interest income earned by making investment of surplus funds has to be assessed under the head "Income from Other Sources" and not income from business and since interest income is not assessed as business income, the claim for deduction under section 57 of the Act cannot be allowed. In upholding the above conclusions, the Ld.CIT(A), inter alia, relied on the decision of the Hon'ble Supreme Court in the case of The Totgar's Co-operative Sales Society Ltd., Vs. ITO reported in 322 ITR 283, wherein, Hon'ble Supreme Court held that the benefit of deduction under section 80P(2)(a)(i) of the Act is only on income which is assessable under the head "Income from Business". Interest earned on investment of surplus funds not immediately required in short term deposits and securities by a Co-operative Society providing credit facilities to members or marketing agricultural produce to members is not business income but income from other sources and the society is not entitled to special deduction.

2.7. While Ld.AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Credit Co-operative Ltd., reported in 230 taxman 309. We have carefully gone through the said judgment.

2.8. We have also considered, whether the co-operative bank wherein the assessee made deposits out of its surplus fund be considered as a co-operative society, for if a co-operative bank is considered to be a co-operative society than only the interest earned by the assessee on the deposits would be eligible for deduction u/s 80P(2)(d). We find that co-operative society is a broad and larger umbrella under which the co-operative banks do perform. We also note that all co-operative societies may not be banks, but all co-operative banks are deemed to be cooperative societies. According to banking Regulations Act, a co-operative society bank as the same meaning of the cooperative society. Further, we have also given a thought as to the interest earned by the surplus funds. Section 80P(2)(d) reads as under:

"Section 80P(2)..... (d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income."

2.9. On a plain reading of section 80P(2)(d), there is no such stipulation or prerequisite as to the nature of the funds. We also find that Section 80P(2)(d) of the Act, allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. Section 80P(2)(d) provides additional benefit of deduction under section 80P for those co-operative societies, which has surplus funds even unrelated to its main business activity, which are invested with other co-operative societies. Thus, Clause (d) of section 80P applies to all cooperative societies, whether or not, their main businesses banking and credit facilities to the members. Therefore, in our view, the section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society.

2.10. We have also considered the case of Totgars Cooperative Sale Society Ltd., reported in 322 ITR 283 relied upon by the Ld.DR, and find that, the Hon'ble Supreme Court has deliberated on the issue of deduction u/s 80P(2)(a)(i) but not on Section 80P(2)(d). We also observed that in the case of Totgars Co-operative Sale Society Ltd. itself the Hon'ble High Court of Karnataka has allowed the claim of deduction u/s 80P(2)(d) vide order dated

05.01.2017 and also in Tumukur Merchants Souharda Credit Co-operative Ltd., reported in 230 taxman 309.

2.11. Similar is the view taken by coordinate bench of this Tribunal in case of Thannirupantha Primary Agricultural Credit Co-operative Society Ltd vs. ITO in ITA no.276- 277/Bang/2020 by order dated 30/07/2021, wherein it was held as under:

9.1 As regards the claim of deduction u/s 80P(2)(d) of the I.T. Act, the Bangalore Bench of the Tribunal in the case of M/s. The Jayanagar Co-operative Society Ltd. (supra), on identical facts, had restored the issue to the files of the A.O. for de novo consideration. The narration of facts, contentions and the findings of the Tribunal in the case of M/s. The Jayanagar Co-operative Society Ltd. (supra) reads as follow:-

"4. The issues that arise for consideration in this appeal by the assessee are as to whether the Revenue authorities were justified in holding that the assessee was not entitled to the benefit of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (in short 'the Act') on interest income earned and under section 80P(2)(d) of the Act in respect of interest received from Co-operative institutions. The Assessing Officer (AO) denied the claim of the assessee on the ground that interest income earned by making investment of surplus funds has to be assessed under the head "Income from Other Sources" and not income from business and since interest income is not assessed as business income, the claim for deduction under section 57 of the Act cannot be allowed. In upholding the above conclusions, the CIT(A), inter alia, relied on the decision of the Hon'ble Supreme Court in the case of The Totgar's Co-operative Sales Society Ltd., Vs. ITO 322 ITR 283 (SC) wherein the Hon'ble Supreme Court held that the benefit of deduction under section 80P(2)(a)(i) of the Act is only on income which is assessable under the head "Income from Business".

Interest earned on investment of surplus funds not immediately required in short term deposits and securities by a Co-operative Society providing credit facilities to members or marketing agricultural produce to members is not business income but income from other sources and the society is not entitled to special deduction.

5. While learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Credit Co-operative Ltd., 230 taxman 309 (Karn), the DR relied on a subsequent decision of the Hon'ble Karnataka High Page Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd., 395 ITR 611 (Karn.). We have carefully gone through the said judgment. The facts of the case before the Hon'ble Karnataka High Court was that the Hon'ble Court was considering a case relating to Assessment Years 2007-08 to 2011-12. In case decided by the Hon'ble Supreme Court in the case of the very same assessee, the Assessment Years involved was Assessment Years 1991-92 to 1999-2000. The nature of interest income for all the Assessment Years was identical. The bone of contention of the Assessee in AY 2007-08 to 2011-12 was that M/s. Thannirupantha Primary Agri. Cr. Coop. So. Ltd. the deduction under Section 80P(2) of the Act is claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act which was the claim in AY 1991-92 to 1999-2000. The reason given by the Assessee was that in AY 2007-08 to 2011-12 investments and deposits after the Supreme Court's decision against the assessee Totgar's Co-operative Sale Society Ltd. (supra), were shifted from Schedule Banks to Cooperative Bank. U/s. 80P(2)(d) of the Act, income by way of interest or dividends

derived by a Co-operative Society from its investments with any other Co-operative Society is entitled to deduction of the whole of such interest or dividend income. The claim of the Assessee was that Co-operative Bank is essentially a Co-operative Society and therefore deduction has to be allowed under Clause (d) of Sec.80P(2) of the Act. The Hon'ble Karnataka High Court followed the decision of the supreme Court in *The Totgars Co-operative Sales Society Ltd. (supra)* and held that interest earned from Schedule bank or cooperative bank is assessable under the head income from other sources and therefore the provisions of Sec.80P(2)(d) of the Act was not applicable to such interest income. It is thus clear that the source of funds out of which investments were made remained the same in AY 2007-08 to 2011- 12 and in AY 1991-92 to 1999-2000 decided by the Hon'ble Supreme Court. Therefore whether the source of funds were Assessee's own funds or out of liability was not subject matter of the decision of the Hon'ble Karnataka High Court in the decision cited by the learned DR. To this extent the decision of the Hon'ble Karnataka High Court in the case of *Tumukur Merchants Souharda Co-operative Ltd. (supra)* still holds good. Hence, on this aspect, the issue should be restored back to the AO for a fresh decision after examining the facts in the light of these judgment of the Hon'ble Apex Court rendered in the case of *The Totgars Co-operative Sale Society Ltd. (supra)* and of Hon'ble Karnataka high Court rendered in the case of *Tumukur Merchants Souharda Co-operative Ltd. (supra)*."

9.2 In the light of the above order of the Tribunal, we deem it appropriate on the facts of the instant case, to restore the issue of claim of deduction u/s 80P(2)(d) of the I.T.Act to the files of the A.O. Hence ground Nos.6 and 7 are allowed for statistical purposes.

2.12. Thus we hold that the assessee is eligible for deduction under section 80P(2)(d) in respect of interest earned from deposits made on other Co-operative banks. However, we deem it appropriate on the facts of the instant case, to restore the issue of claim of deduction u/s 80P(2)(d) of the Act, to the files of the Ld.AO to allow the claim as indicated herein above, by granting proper opportunity of being heard to the assessee.

2.13. The Ld.AR also took the plea that, the expenditure incurred in earning of interest from the commercial banks be allowed while computing the taxable income. The provision of Section 57 reads as under:

"Section 57: The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:—

(i) in the case of [dividends, 94[other than dividends referred to in section 115-O.]] [or interest on securities], any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend [or interest] on behalf of the assessee; [(ia) in the case of income of the nature referred to in sub-clause (x) of clause (24) of section 2 which is chargeable to income-tax under the head "Income from other sources", deductions, so far as may be, in accordance with the provisions of clause (va) of subsection (1) of section 36 ;] (ii) in the case of income of the nature referred to in clauses

(ii) and (iii) of sub-section (2) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of section 30, section 31 and [sub-sections (1) [***] and (2)] of section 32 and subject to the provisions of [section 38]; [(iia) in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or [fifteen] thousand rupees, whichever is less. Explanation.—For the purposes of this clause, "family pension" means a

regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death ;]

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;

[(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section.]"

2.14. We have heard the submissions advanced by both sides on this aspect. We direct the Ld.AO to allow the expenditure incurred while computing income under the head, 'Income from Other Sources', in relation to earning of interest from the commercial banks. Accordingly the grounds raised by the assessee for assessment year 2015-16 stands allowed for statistical purposes."

5.1 We note that the facts and circumstances are identical in the present assessee's case, with that in the case of M/s. Bhavasar Kshtriya Co-operative Credit Society Ltd. vs. ITO/ADIT (supra)."

6.2 From the above discussion, we hold that the assessee is eligible for 80P(2)(d) deduction in respect of interest earned from co-operative banks based on the view taken in the above decision. It is directed that any interest earned by the assessee from commercial banks may be considered. under the head Income from other sources by granting benefit available to the assessee u/s. 57 of the Act.

6.3 We direct the Ld.AO to follow the directions therein and to compute the deduction in the hands of the assessee in accordance with law.

7. In the result, the appeal of the assessee stands allowed for statistical purpose."

16. The facts of the case on hand are identical to the facts of the case discussed above therefore, respectfully following the same, we are inclined to set aside the issue to the file of AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

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

9. The findings given in the case cited above are applicable to the facts of the case on hand as the facts of the case are identical. Hence, respectfully following the same, we are inclined to set aside the issue to the file of AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence, ground of appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in court on 25th day of October, 2024

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 25th October, 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