

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

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

ITA No. 1301/Bang/2024
Assessment year : 2018-19

Sumangala Credit Co-operative Society, Bye Pass Panemangalore, Bantwal – 574 231. PAN : AABAS 2732B	Vs.	The Income Tax Officer, Ward 2(3), Mangaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri A. Shiva Rao, CA
Respondent by	:	Smt. Kumutha D., Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.09.2024
Date of Pronouncement	:	13.11.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order u/s. 263 of the Act dated 03.11.2023 of the Principal Commissioner of Income Tax, Panaji [Pr.CIT] for the AY 2018-19.

2. Briefly stated the facts are the assessee filed return of income on 12.9.2018 declaring Nil income after claiming deduction of Rs.90,75,459 u/s. 80P of the Act. The case was selected for scrutiny and statutory notices issued to the assessee. The assessee is registered under the Karnataka Cooperative Societies Act, 1959 and the primary

object is to provide credit facilities to its members. The AO accepted the returned Nil income and passed order on 15.04.2021. Later, the Pr.CIT exercised his jurisdiction u/s. 263 of the Act and noted that the assessee has received interest from SCDCC Bank and other banks and has claimed deduction u/s. 80P(2)(a)(i) of the Act which was allowed by the AO. The Id. Pr.CIT after considering the submissions of the assessee held that interest income received from SCDCC Bank and other Banks amounting to Rs.39,07,351 is not eligible for deduction u/s. 80P(2)(a)(i) and u/s. 80P(2)(d) of the Act relying jurisdictional High Court reported in 395 ITR 611 and directed the AO to pass fresh order. Aggrieved, the assessee is in appeal before the ITAT.

3. The Id. AR vehemently argued that the assessee was required to deposit certain amount for maintaining liquidity as SLR as per the statutory requirement of Karnataka Cooperative Societies Act and direction issued by the Registrar of Cooperative Societies. Therefore interest received on such interest income should be treated as operational income and assessee is eligible for deduction u/s. 80P(2)(a)(i) of the Act on such deposits. He also submitted that the assessee is also eligible for deduction u/s 80P(2)(d) on interest received from Banks. Primarily the SCDCC Bank is a cooperative bank, therefore it is covered u/s. 80P(2)(d). The assessee has also provided details of interest received on FD of Rs.48,87,879 and interest on SB Account of Rs.5,74,299, dividend of Rs.11,970 and interest received from members for pre-mature deposits of Rs.10,139. Resultantly the total interest received is Rs.54,84,287. He further

submitted that as per Rule 28 of the Karnataka Cooperative Societies Rules, 1960 fluid resources cannot be lent to the members for interest and such funds are required to be invested in cooperative institutions instead of keeping the same as cash in hand. Therefore the investment and interest and dividend thereon are primarily attributable to assessee's business of providing credit facilities to its members. In support of his argument, he relied on the judgments in the case of Totagars Co-operative Sale Society [2010] 322 ITR 272 (Kar) and [2010] 322 ITR 283 (SC). The Id. AR also referred to the Circular which is placed at page 28-29 of PB.

4. The Ld. DR relied on the order of the Id.Pr.CIT 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. The Id. DR further 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 business income even if is compulsion for investments. The Karnataka Co-operative Society Act and Rules cannot override the income tax provisions. The Id. DR further submitted that the Act should be read with literal interpretation. Section 80{P}(2)(a)(i) is very clear that income earned from carrying on the business of banking or providing credit facilities to its members is eligible for deduction and there is no ambiguity in the section.

5. Considering the rival submissions, the Id. Pr. CIT has exercised his jurisdiction u/s 263 and directed to AO for passing consequential order denying deduction u/s 80P(2)(a)(i)/80P(2)(d) on interest received from its investments of Rs. 39,07,351/-. 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 amount made with District co-operative banks. The Ld. Pr.CIT 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).

6. 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 as per rule 28 of the Karnataka Cooperative Society Rules 1960. 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 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 Totgars Co-operative Sale Society in ITA No.376 to 379/Bang/2023.
- (iv) Guttigedarara Credit Co-op. Society Ltd., Mysore, ITA 29/2015
- (v) Savanoor Primary Agricultural Cooperative Society. ITA No.919/Bang/2023.
- (vi) M/s Shree Cheerumba Credit Co-operative Society Ltd. vs ITO in ITA NO. 547,548 & 599/Bang/2024

7. 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/Rules

28 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.

8. 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(2)(a)(i), 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. 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. 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.

9. The assessee has also raised issue that the deduction should be allowed to the assessee u/s 80P(2)(d) on such interest income received

from its investments. For the sake of convenience we are reproducing the section 80P(2)(d) as under:-

“**80P.** (1)

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(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;”

We note from the submission of the assessee that the assessee has invested its funds in various societies 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 “derived” under the said provision. 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. However, 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 section 5(b). 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.

10. We further note that the assessee has received interest from other co-operative banks/commercial banks on its investments. The Id. Pr.CIT has held that the interest amount of Rs.39,07,350 is not eligible for deduction u/s. 80P(2)(a)(i) or 80P(2)(d) and during the course of assessment proceedings the AO has not examined the issue in the light of the judgment of Hon'ble jurisdictional High Court as relied by the Id. Pr.CIT. Accordingly we hold that the Id. Pr.CIT has rightly exercised his jurisdiction u/s. 263 of the Act and held the order of AO is erroneous and prejudicial to the interest of revenue. However, we direct the AO to pass consequential order considering our findings noted above.

11. During the course of argument the Id. AR also raised alternative plea that if the assessee is not allowed deduction u/s. 80P(2)(a)(i) / 80P(2)(d) on the interest income received from co-operative bank, then the cost of funds should be allowed to the assessee. 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. Therefore we direct the AO to grant of cost of funds towards earning of interest income from cooperative banks which are not part of qualifying amount of deduction u/s. 80P(2)(a)(i) or 80P(2)(d).

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

Pronounced in the open court on this 13th day of November, 2024.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 13th November, 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.