

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

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

ITA No.1474/Bang/2024
Assessment Year: 2020-21

Murthedarara Seva Sahakari Sangha (N) Uppunda, Uppunda Post Byndoor, Udupi – 576 232.  <b>PAN – AAIAM 7616 H</b>	Vs.	The Income Tax Officer, Ward – 1 & TPS, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravindra Poojari, C.A
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Dept.

Date of hearing	:	05.09.2024
Date of Pronouncement	:	29.11.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee challenging the order of NFAC, Delhi dated 16.06.2024 vide DIN No.ITBA/NFAC/250/2024-25/10656843221(1) for the assessment year 2020-21.

2. The assessee has raised the following grounds of appeal:

*"1. On facts and Circumstances of the case and in law, the Ld. National Faceless Appeal Centre (NFAC) has erred in considering*

*interest income earned by the Appellant from investment into Co-operative Banks of Rs.7,03,058/- as taxable under the head "Other sources" and not "Business income"; thus the interest earned from the investments in Co-operative Banks is not allowable as deduction u/s. 80P(2)(d) of the Act without appreciated the fact that co-operative banks are also co-operative societies only, and interest earned from deposits with cooperative societies are eligible for deduction u/s 80P(2)(d) of the Income Tax Act, 1961.*

2. *On facts and circumstances of the case and in law, the Ld. National Faceless Appeal Centre (NFAC) has erred in not considering that investment made in Co-operative Banks is statutorily required under the Karnataka Co-operative Societies Act,, 1959; hence it is attributable to carrying on the business of society eligible for deduction u/s 80P(1) of the Act in the facts and circumstances of the case.*
3. *Without prejudice to the above grounds, the learned NFAC has erred on facts and in circumstances of the case and in law by confirming the order of the learned Assessing Officer who has held that interest income from cooperative banks and other banks are to be considered under income from other sources under section 56 of the Income Tax Act, 1961 without allowing expenditure incurred for earning the interest income from the investments under section 57 Income Tax Act,1961.*
4. *The Assessee craves leave to add, amend, alter or delete any or all the above grounds of appeal."*

3. The interconnected issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of deduction under section 80P of the Act on the interest income earned on statutory deposit made with cooperative bank.

4. The assessee is a cooperative society engaged in providing credit facilities to its members. During the relevant assessment year, the assessee earned interest income of ₹7,03,058/- from fixed deposits

(FDRs) maintained with South Canara District Central Cooperative Bank Limited (here after referred as SCDCC Bank), a cooperative bank licensed by the Reserve Bank of India (RBI). The said interest income was included in the total amount claimed as a deduction under section 80P of the Act.

5. The assessee contended during the assessment proceedings that the SCDCC Bank functions as a secondary cooperative society whose members include primary agricultural cooperative societies operating in the Dakshina Kannada district. The deposit with SCDCC Bank was made as a statutory obligation under the Karnataka Cooperative Societies Act, 1959, and hence the interest income derived from such deposit qualifies for deduction as it forms part of the assessee's activity of providing credit facilities to its members.

6. The Assessing Officer (AO) rejected the contention of the assessee and held that the interest income earned by the assessee from fixed deposits maintained with SCDCC Bank does not arise from the business of providing credit facilities to its members. Consequently, the said income is not eligible for deduction under Section 80P(2)(a)(i) of the Act. The interest income also does not fall within the ambit of Section 80P(2)(d) of the Act, as the deposits were made with a cooperative bank and not with a cooperative society. In arriving at the above conclusion, the AO relied on the judgment of the Hon'ble Karnataka High Court in the case of PCIT vs. Totagars Co-operative Sales Society (83 taxmann.com 140), which held that interest income earned from deposits with a cooperative bank is not eligible for deduction under Section 80P of the Act.

7. The AO further held that, even assuming that the deposits with the cooperative bank were made due to a statutory requirement under the Karnataka Cooperative Societies Act, 1959, the interest income earned from such deposits does not qualify for deduction under Section 80P of the Act for the reason that the income tax Act operate independently. The income is not derived from the assessee's business of providing credit facilities to its members, nor is it earned from deposits made with another cooperative society.

8. Based on the above findings, the AO disallowed the deduction claimed under Section 80P of the Act in respect of the interest income amounting to ₹7,03,058/- only. The said amount was added to the total income of the assessee as income from other sources.

9. The view of the AO was subsequently confirmed by the learned CIT(A) vide order dated 16-06-2024. Based on submission made by the assessee, The learned CIT(A) found that the impugned interest income of ₹7,03,058/- was earned on short term deposit of surplus fund with SCDCC Bank. The interest income, being earned on surplus funds, was held to be outside the scope of deduction under Section 80P(2)(a)(i) of the Act, as it was not income derived from the primary activity of providing credit facilities to members. The learned CIT(A) concurred with the AO's finding that the deposit was made with SCDCC Bank, a cooperative bank licensed by the Reserve Bank of India (RBI), and not with another cooperative society. Therefore, the interest income does not qualify for deduction under Section 80P(2)(d), in line with the ruling

of the Hon'ble Karnataka High Court in Totagars Co-operative Sales Society (supra).

10. The learned CIT(A) further referred to the judgment of Hon'ble Supreme Court in the case of Mavilayi Service Co-operating Society Bank Ltd reported in 123 taxmann.com 161 and in accordance with ruling of Hon'ble Supreme court held that the SCDCC Bank hold RBI licence to carry banking business therefore falls under the mischief of section 80P(4) of the Act. Accordingly, the interest income earned from such cooperative bank cannot be allowed as deduction under the provision of section 80P(2)(d) of the Act.

11. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

12. The learned AR before us submitted that the impugned deposits were made under the guidelines of Karnataka Cooperative Societies Act, 1959 and therefore the interest income earned from such deposits qualifies for deduction under Section 80P of the Act.

13. On the other hand, the learned DR vehemently supported the order of the authorities below.

14. We have heard the rival contentions of both the parties and carefully perused the materials placed on record. The facts, as undisputed are that the assessee, a cooperative society, earned interest income of ₹7,03,058/- on fixed deposits (FDRs) maintained with South Canara District Central Cooperative Bank Limited (SCDCC Bank). This interest income was claimed as eligible for deduction under Section 80P

of the Income Tax Act, 1961 ("the Act"). Both the AO and the learned CIT(A) rejected the claim on the grounds that the interest income did not arise from the business activity of providing credit facilities to members nor was it derived from investments made with another cooperative society.

14.1 The assessee before us contended that the cooperative banks are also cooperative society, and therefore interest income arising from deposit made with cooperative bank/society shall be eligible for deduction under section 80P(2)(d) of the Act. In our considered opinion we do not find merit in the contention of the assessee. There has been clear distinction made between cooperative societies and cooperative bank in statute by inserting sub-section 4 to section 80P of the Act. Any income derived from deposit/investment of idle or surplus fund with cooperative bank should not qualify for deduction under provision of section 80P(2)(d) of the Act. This view has been fortified by the decision of Hon'ble jurisdictional High Court of Karnataka in case of Totagars Co-operative Sales Society (supra). Further the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank vs. CIT reported in 123 taxmann.com 161 has observed that a cooperative society can be termed as cooperative bank falling under the mischief of subsection 4 to section 80P of the Act, if such cooperative societies is engaged in banking business i.e. lending money to member of public and for doing so hold license from RBI to carry banking business. The relevant observation of Hon'ble Supreme Court is extracted as under:

*39. The above material would clearly indicate that the limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary*

*agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.*

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*45. To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI.*

14.2 Coming to the case on hand, from the order of the authorities below we note that the SCDCC Bank hold RBI licence to carry banking business. Therefore SCDCC Bank in view of the ratio laid down by the Hon'ble Supreme Court falls under the mischief of provision of section 80P(4) of the Act. Accordingly, the interest arising on deposit of idle or surplus fund with SCDCC Bank in normal circumstances are not eligible for deduction under section 80P(2)(d) of the Act. Hence the contention of the assessee that the cooperative banks are also cooperative society hence income earned eligible for deduction is hereby rejected.

The next contention of the assessee is that the deposit with SCDSS Bank was made out of compulsory requirement under the provision of Karnataka Cooperative Society Act. Therefore, any income derived from the compulsory deposit shall be treated as income from activity of

business carried by the cooperative society i.e. providing credit facility to the member.

14.3 There is no ambiguity to the fact that if the assessee is liable to maintain certain reserve/deposits with the co-operative bank under the guidelines of Karnataka Co-operative Societies Act, then the interest thereon is eligible for deduction u/s 80P(2)(a)(i) of the Act. The Hon'ble Supreme Court in the case of CIT versus Karnataka State cooperative apex bank reported in 251 ITR 194 vide order dated 22 August 2001 has directed to allow deduction of the same under the provisions of section 80P(2)(a)(i) of the Act. The relevant extract of the judgement is reproduced as under:

*There is no doubt, and it is not disputed, that the assessee-co-operative bank is required to place a part of its funds with the State Bank or the Reserve Bank of India to enable it to carry on its banking business. This being so, any income derived from funds so placed arises from the business carried on by it and the assessee has not, by reason of section 80P(2)(a)(i), to pay income-tax thereon. The placement of such funds being imperative for the purposes of carrying on the banking business, the income derived therefrom would be income from the assessee's business. We are unable to take the view that found favour with the Bench that decided the case of M.P. Co-operative Bank Ltd. (supra) that only income derived from circulating or working capital would fall within section 80P(2)(a)(i). There is nothing in the phraseology of that provision which makes it applicable only to income derived from working or circulating capital.*

14.4 However, we note that the assessee before the authorities below has not submitted supporting evidence suggesting that the deposits were made with the impugned co-operative bank in order to maintain the statutory reserve as directed under the Karnataka Co-operative Societies Act. Furthermore, we also note that the assessee did not submit the details of quantum of amount necessary to be deposited to comply with the Karnataka Cooperative Society Act. In the identical facts and circumstances the coordinate bench of this tribunal in case of

**Kalika Parameswari Co-operative Society Ltd vs. ITO** reported in 159 taxmann.com 1466 has set aside the issue to the file of the AO to compute the amount necessary to be deposited. The relevant finding of the Tribunal reads as under:

*10. As per the directions of Registrar of Karnataka Co-operative Societies which is placed at pages 52-53 of the Paper Book filed by the assessee, we find that all primary co-operative societies are to be mandatorily made to invest 25% of total deposits as liquid fund (SLR) and 3% of the total deposits as cash reserve (CRR) with the concerned Central District Co-operative Banks to run credit facilities by a primary agricultural credit co-operative society in the State of Karnataka. The CBDT Circular No.18/2015 dated 02.11.2015 has clarified that interest income from SLR/non-SLR investment by banking company and a cooperative society shall be chargeable under the head "profit and gains of business or profession". On identical factual situation, we find the Bangalore bench of the Tribunal in the case of M/s. Kachur Credit Co-operative Society Ltd., v. ITO in ITA No. 478/Bang/2023 (order dated 26.09.2023), by following earlier orders of the Tribunal, had held as follows:*

*"8. I have heard the rival submissions and perused the material on record. The solitary issue for adjudication is whether a sum of Rs.5,07,822/- can be allowed as a deduction under sections 80P(2)(a)(i) of the Act. Admittedly, the amount of Rs.5,07,822/- has been received by the assessee from South Canara District Central Co-operative Bank Ltd. It is the claim of the assessee that the amounts are invested in compliance with the relevant Acts and Rules. On identical facts, the Bangalore Bench of the Tribunal in the case of Bharat Co-operative Credit Society v. ITO (supra) by following the Co-ordinate Bench's order in the case of Vasavamba Co-operative Society Ltd. v. PCIT in ITA No. 453/Bang/2020 (order dated 13.08.2021) had stated that if the investments made with the Central Co-operative Bank is out of compulsions under Karnataka State Co-operative Societies Act, 1959 and Rules, the income received from such investments would be entitled to the benefit of deduction under section 80P(2)(a)(i) of the Act. The relevant finding of the Tribunal in the case of Bharat Co-operative Credit Society v. ITO (supra) reads as follows:*

*"7.1 In the instant case, it was contended that majority of the interest income is earned out of investments made with Cooperative Banks and is in compliance with the requirement under the Karnataka Co-operative Societies Act and Rules. If the amounts are invested in compliance with the Karnataka Co-operative Societies Act, necessarily, the same is to be assessed as income from business, which entails the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act. Insofar as deduction u/s 80P(2)(d) of the I.T. Act is concerned, we make it clear that interest income received out of investments with cooperative societies is to be allowed as deduction."*

*9. In view of the above order of the Tribunal, I restore the issue to the files of the AO to examine whether interest income received amounting to*

*Rs.5,07,822/- from South Canara District Central Co-operative Bank Ltd., is out of compulsions and in compliance with the Karnataka State Cooperative Societies Act, 1959 and the relevant Rules. If it is so, the same interest income is to be assessed as income from business which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act. With the aforesaid observation, I restore the matter to the AO. It is ordered accordingly."*

**11.** *In light of the above orders of the Tribunal, we direct the AO to examine whether the interest income received on investment with Central Co-operative Bank is out of compulsions under the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. If it is so, the same may be considered as 'business income' and entitled to deduction under section 80P(2)(a)(i) of the Act. In other words, if assessee society does not comply with the relevant provisions of the Act, and the Rules of Karnataka Co-operative Societies Act, 1959, it cannot carry on its cooperative activities, namely carry on the business of banking or providing credit facilities to its members. Therefore, if the investments are out of compulsion under the Act and relevant Rules, necessarily it is part of assessee's business activity entailing the benefit of section 80P(2)(a)(i) of the Act. It is ordered accordingly.*

14.5 Therefore, in view of the above detailed discussion and judicial pronouncements, we in the interest of justice and fair play, are inclined to set aside the issue to the file of the AO for fresh adjudication in the light of above stated discussion and as per the provisions of law. Hence, the ground of appeal raised by the assessee is hereby allowed for statistical purposes.

15. In the result, the appeal of the assessee is hereby partly allowed for statistical purposes.

Order pronounced in court on 29<sup>th</sup> day of November, 2024

Sd/-

**(KESHAV DUBEY)**

Judicial Member

Bangalore

Dated, 29<sup>th</sup> November, 2024

/ vms /

Sd/-

**(WASEEM AHMED)**

Accountant Member

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