

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'A' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 2260/Bang/2024
Assessment Year : 2017-18

M/s. Primary Agricultural Credit Co- operative Society Ltd., Hunisehally, Sira Taluk, Tumkur Dist., Karnataka – 572 139. PAN: AAAAP3462E	Vs.	The Income Tax Officer, Ward – 2, Tumkur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Prakash S Hegde, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Dept.

Date of Hearing	:	26-12-2024
Date of Pronouncement	:	28-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 30/09/2024 in respect of the A.Y. 2017-18 and raised the following grounds:

“The Grounds mentioned hereinafter are without prejudice to one another.

1. That the learned Joint Commissioner of Income Tax (Appeals) NCIT(A)1 erred on facts and circumstances of the case and in law so far as his order is prejudicial to the interest of the Appellant.

2. That the learned JCIT(A) erred on facts and in the circumstances of the case and in law by upholding the view of the learned Assessing Officer ('AO') who had held that the interest earned by the Appellant by providing credit facilities to its members which is in the nature of Business Income is not eligible for deduction under section 80P(2)(a)(i) of the Income Tax Act ('the Act') since the Appellant had Nominal and Associate Members.

3. That the learned JCIT(A) erred on facts and in the circumstances of the case and in law by upholding the view of the learned AO who had held that the interest income earned by the Appellant on deposits with co-operative banks is not eligible for deduction under sections 80P(2)(a)(i)/80P(2)(d) of the Act.

4. That the learned JCIT(A) erred on facts and in circumstances of the case and in law by upholding the view of the learned AO that a part of the interest received by the Appellant from Co-operative banks from deposit of the amount of Reserve Fund which is required to be statutorily maintained (in accordance with Section 57 and 58 of the Karnataka Co-operative Societies' Act, 1959 read with Rule 23 of the Karnataka Co-operative Societies' Rules, 1960) as not eligible for deduction even under section 80P(2)(a)(i) of the Act.

5. That the learned JCIT(A) erred on facts and in circumstances of the case and in law by upholding the view of the learned AO that the Appellant is not eligible for the mandatory deduction under section 80P(2)(c) of the Act.

6. Without prejudice to the above, the learned JCIT(A) has erred on facts and in the circumstances of the case and in law by not even granting expenses incurred for earning interest income, viz. cost of funds, other expenses, etc. under section 57 of the Act.

7. That the learned JCIT(A) has erred in confirming the levy of interest under sections 234B of the Act, though the same should not have been levied in the present situation.

That the Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above, or produce further documents before or at the time of the hearing of this appeal.”

2. The brief facts of the case are that the assessee is a primary agricultural credit co-operative society and filed its Nil return of income. The return was selected for scrutiny and the AO verified the claim of deduction made u/s. 80P of the Act. The AO had denied the deduction claimed u/s. 80P(2)(a)(i) and 80P(2)(d) for the reason that the assessee is having nominal and associate members and therefore there is no mutuality. The AO also disallowed the deduction u/s. 80P(2)(d) of the Act for the reason that the interest income was received from banks. As against the said order, the assessee filed an appeal before the Ld.CIT(A) which was not accepted by the Ld.CIT(A) since the assessee is dealing with the non-members i.e. associate / nominal members. Insofar as the deduction u/s. 80P(2)(d) of the Act, the Ld.CIT(A) also relied on the judgment of Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd and dismissed the grounds. As against the said order, the assessee is in appeal before this Tribunal.

3. At the time of hearing, the Ld.AR submitted a paper book and also enclosing the orders of the Tribunal, judgment of Hon'ble Supreme Court and judgment of the Hon'ble Gujarat High Court in support of his argument. The ld AR further submitted that the provisions of the Karnataka Co-operative Societies Act would not differentiate between nominal and ordinary members and therefore the presence of nominal members would not be a reason for denying the deduction claimed u/s. 80P(2)(a)(i) of the Act. The Ld.AR further submitted that the assessee had statutorily deposited a part of the reserve fund and therefore the interest earned is eligible for deduction u/s. 80P(2)(a)(i) of the Act. The ld AR also submitted that the interest income earned from the deposits made with banks are attributable to the business activity of the assessee and therefore entitled for deduction u/s 80P of the Act. The Ld.AR also submitted that the assessee is entitled for

mandatory deduction u/s. 80P(2)(c) of the Act and also raised an alternative plea that in the event of not accepting the above said arguments, necessary expenses incurred for earning the interest income i.e. cost of funds, other expenses, etc. u/s. 57 ought to be granted.

4. The Ld.DR relied on the order of the AO and submitted that the same is in accordance with the Hon'ble Supreme Court judgment and prayed to dismiss the appeal.

5. We have heard the arguments of both sides and perused the materials available on record.

6. Insofar as the denial of deduction based on the availability of nominal members, we are in agreement with the argument advanced by the Ld.AR since the said issue was already settled in favour of the assessee by the Hon'ble Supreme Court in its judgment in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT reported in 431 ITR 1. Therefore the assessee is entitled for deduction u/s. 80P(2)(a)(i) of the Act on the interest income received from its members including from the nominal members since they are also members of the society as contemplated under the Karnataka Co-operative Societies Act. Even the byelaws of the society also accepted the said nominal members as members and therefore we are setting aside the order denying the deduction made by the AO which was confirmed by the Ld.CIT(A). We have also gone through the order of the Coordinate Bench of this Tribunal in case of Kavradi Co-operative Agricultural Bank vs. ITO in ITA No. 93/Bang/2024 dated 10/06/2024 wherein the Coordinate Bench had relied on the Hon'ble Supreme Court judgment cited (supra) to allow the claim made by the assessee.

7. Insofar as the claim made u/s. 80P(2)(d) of the Act is concerned, it is the case of the assessee that the interest income is attributable to the profits and gains of the business and therefore the interest income derived from the deposits made with the banks are entitled for deduction. The Hon'ble

Supreme Court in its judgment reported in 113 ITR 84 in the case of Cambay Electrical Supply Industrial Co. Ltd. vs. CIT had considered the term 'attributable' and held as follows:

“As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business" of the specific industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from" been used, it could have with some force been contented that a balance charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General, it has used the expression "derived from", as for instance, in Section 80J. In our view, since the expression of wider import, namely "attributable to" has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity”

8. In view of the principles laid down by the Hon'ble Supreme Court, if the income is attributable to the profits and gains of business, then the assessee is entitled for deduction u/s. 80P(2)(d) of the Act.

9. Further the Hon'ble Jurisdictional High Court in its judgment reported in (2019) 307 CTR 770 in the case of Lalitamba Pattina Souharda Sahakari Niyamita vs. ITO also gave a finding that the test to be applied, whether the interest income earned is attributable to the profits and gains of business, the authorities should examine the issue in detail and thereafter if they found that the income is attributable to the business, then naturally they are entitled for deduction u/s. 80P(2)(d) of the Act. The interest income received from the deposit of surplus funds in the various banks could not be simply denied for the reason that the interest income was not earned from

the co-operative societies. Further, we have also perused the judgment of the Hon'ble Gujarat High Court in case of PCIT Vs. Ashwinkumar Arban Co-Operative Society Ltd. reported in [2024] 168 taxmann.com 314 (Gujarat) in which the Hon'ble Gujarat High Court had held that the interest earned by the assessee from the co-operative bank was eligible for deduction u/s. 80P(2)(d) of the Act. We find that the above judgment of the Hon'ble Gujarat High Court is also in favour of the assessee which was relied on by the Ld.AR.

10. Insofar as the deduction claimed u/s. 80P(2)(c) of the Act is concerned, we are not agreeing with the view of the assessee since they will not fall under the said sub-clause (c) but they will come under sub-clause (a) and therefore the said benefit could not be available to the assessee as stated in 80P(2)(c) of the Act. Hence the ground no. 5 is dismissed.

11. We have considered the facts and circumstances of the present case and we are of the opinion that if the assessee is able to demonstrate that the interest income earned from the deposits made with the banks are attributable to the business of the assessee, then the assessee is entitled for deduction. In order to ascertain the facts, we are remitting this issue to the file of the AO and to decide the same in accordance with the principles laid down by the Hon'ble Jurisdictional High Court cited (supra) and pass appropriate orders in accordance with law after hearing the assessee.

12. We also direct the AO to consider the plea raised in Gr 4, whether the assessee had made deposits in the Banks pursuant to any statutory compulsion and if so, grant the necessary deduction u/s 80P(2)(a)(i) of the Act.

13. In view of the above order passed by us we are not adjudicating Ground Nos.6&7.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 28th January, 2025.

Sd/-
(PRASHANT MAHARISHI)
Vice - President

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 28th January, 2025.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore