

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

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

ITA Nos.129 to 132/Bang/2024
Assessment Years :2017-18, 2018-19, 2020-21

M/s. The BBR&RDCC Bank Employees Co-op Society Ltd., No.6, V Mai Road, Chamrajpet, Bangalore - 560 018. PAN :AAAAB 1346 D	Vs.	ITO, Ward - 5(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Gireesha, CA
Revenue by	:	Shri. Subramanian S, JCIT(DR)(ITAT), Bangalore.

Date of hearing	:	24.04.2025
Date of Pronouncement	:	08.05.2025

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

ITA Nos.129, 131 and 132 are related to quantum proceeding for denying deduction under sections 80P(2)(a)(i) and 80P(2)(d) of the Act. for the AY 2017-18,2018-19, 2020-2021 and the ITA No.130 of the Act is against the penalty Order passed under section 270A of the Act for the Assessment Year 2017-18. All these appeals are filed separately against separate Orders passed by the learned CIT(A). In quantum proceedings, in all three years, assessee has challenged the deduction under sections 80P(2)(a)(i) and 80P(2)(d) of the Act for not allowing deduction by authorities below and in penalty appeal under section 270A of the Act, the assessee has challenged Order of the learned CIT(A) for confirming the penalty Order passed by the AO for misreporting or under

reporting of income. Since, the issue in all the quantum proceedings are similar and therefore were heard together and we are passing a common Order for all the three years. For the sake of convenience and brevity, first we are taking ITA No.129/Bang/2025 and the decision taken in ITA No.129/Bang/2025 shall apply mutatis mutandis for appeals in all other quantum proceedings.

2. Briefly stated, the facts of the case are that the assessee BBR&RDCC Bank Employees' Co-operative Society Ltd., filed its return of income electronically on 21.10.2017 declaring total income of Rs.Nil, after claiming deduction of Rs.19,70,818/- under section 80P(2)(a)(i) of the Act. The case was selected for scrutiny and Assessment Order was passed on 29.03.2024 disallowing the entire deduction claimed under section 80P of the Act under section 143(3)r.w.s. 254 of the Act the interest received of Rs.18,07,490/-. This is second round of proceeding before us. In the first round of proceeding in ITA No.17/Bang/2023 vide Order dated 06.02.2023, the Co-ordinate Bench held as under:

“7. The Tribunal in the case of M/s. Krishnarajapet Taluk Agri Pro Coop Marketing Society Ltd., (supra) held that the ratio laid down by the Hon’ble Karnataka High Court in the case of Totalgars Cooperative Sales Society in 395 ITR 611 (Karn) is that in the light of the principles enunciated by the Supreme Court in Totgars Co-operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a cooperative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act. The Assessee would therefore be not entitled to deduction u/s.80P(2)(a)(i) or Sec.80P(2)(d) of the Act on the interest income in question.

8. On the question of deduction of expenses earned in earning interest income, in the very same decision cited by the learned DR, the tribunal held as follows:

“16. Another aspect with regard to the deduction u/s.80P(2)(d) of the Act, is with regard to what is the quantum of interest income that should be brought to tax by the AO, in case the deduction is denied to the assessee u/s.80P(2)(d) of the Act. On this aspect, the Hon’ble ITAT, Bengaluru Bench in the case of Puttur Primary Co-operative Agriculture and Rural Development Bank Ltd., Vs. ITO in ITA No.1449/Bang/2019, order dated 14.06.2021 for Assessment Year 2016-17, the tribunal held that the assessee should be allowed expenses and the entire gross interest cannot be taxed. The following were the relevant observations of the Tribunal:

“6. The next issue relates to the deduction claimed by the assessee u/s 80P(2)(d) of the Act in respect of interest income. Identical issue has been considered by the co-ordinate bench in the case of Karkala Co-op S Bank Ltd (supra). For the sake of convenience, we extract below the relevant observations made by the co-ordinate bench:-

"7. The next common issue relates to rejection of deduction claimed u/s 80P(2)(d) of the Act in respect of interest income earned from fixed deposits kept with bank. We noticed earlier that the A.O. has observed in Assessment Year 2015-16 that the interest income received by the assessee from deposits kept with banks is not eligible for deduction u/s 80P(2)(c) & 80P(2)(d) of the Act since the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act. In AY 2016-17, the AO assessed the interest income received on bank deposits under the head "Income from other sources" and denied deduction claimed u/s 80P(2)(d) of the Act. The Ld CIT(A) confirmed the action of the AO on this issue.

8. The Ld. A.R. submitted that the assessee is entitled to claim deduction allowable u/s 57 of the Act in respect of cost of funds and proportionate administrative and other expenses. In support of this submission, the Ld. A.R. placed reliance on the decision rendered by Hon'ble High Court of Karnataka in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO (2015) 58 taxmann.com 35 (Karn). The Ld. A.R. submitted that the assessee in the above said case had put forth identical claim before Hon'ble Supreme Court in the case reported as Totgars Co-operative Sale Society Ltd. Vs.

ITO (2010) 188 taxmann.com 282 and the Hon'ble Supreme Court, vide 14 of its order, had restored the question raised by the assessee to the file of Hon'ble High Court of Karnataka. Consequent thereto, the Hon'ble High Court of Karnataka has passed the order in the case reported in 58 taxmann.com 35 and held that the Tribunal was not right in coming to the conclusion that the interest earned by the appellant is an income from other sources without allowing deduction in respect of proportionate cost, administrative expenses incurred in respect of such deposits. Accordingly, the Ld. A.R. prayed that the A.O. may be directed to allow deduction of proportionate cost, administrative and other expenses, if the A.O. proposes to assess the interest income earned from bank deposits as income under the head "other sources".

9. We heard Ld. D.R. on this issue. We find merit in the prayer of the assessee, since it is supported by the decision rendered by Hon'ble High Court of Karnataka in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO (2015) 58 taxmann.com 35 (Karn). Accordingly, we direct the A.O. to allow deduction of proportionate cost, administrative and other expenses, if the A.O. proposes to assess the interest income earned from bank deposits as income under the head "other sources".

9. The conclusion on the grounds of appeal raised by the assessee on the basis of the aforesaid decision would be that the assessee would not be entitled to deduction under section 80P(2)(d) of the Act in respect of interest received from another Co-operative Bank. The assessee would also not be entitled to deduction under section 80P(2)(a)(i) of the Act. In so far as deduction under section 57 of the Act is concerned, in terms of paragraph 16 of the Tribunal's order referred to above, the assessee will be entitled to deduction on account of expenses. The issue with regard to deduction u/s.57 of the Act is accordingly restored to the file of the AO to decide the same afresh in accordance with law after affording the assessee opportunity of being heard and in the light of the decisions referred to above."

3. In pursuance of the above Order, it is noticed that AO passed Order on 29.03.2024 and assessed the income at Rs.18,07,490/-u/s 143(3) r.w.s. 254

4. Aggrieved from the above Order, assessee filed appeal before the learned CIT(A). The learned CIT(A) observed that the AO was directed to allow deduction as per provision of section 57 of the Act from interest income received on investments made during the year. During the course of remand proceedings, assessee failed to substantiate evidence for incurring any expenditure towards earning of such interest income. Accordingly, the cost of funds towards earning of income was not allowed to the assessee. The AO has observed as under:

- i. The AO clearly mentioned that appellant failed to furnish documentary evidence and deposits collected from members with FDs made in the bank during the year. Since Section 57(iii) of the Act specifically states that only expenditure incurred for earning of income is allowed which is incumbent on appellant to furnish details like extent of funds used for making FDs during the year.
- ii. Evidence for source of funds that is surplus funds or funds collected from members.
- iii. Evidence linking funds from members and FDs
- iv. Rate of interest paid to members.
- v. Details of actual interest paid to members on funds for making FDs during the year, etc.

5. It was noticed that none of the above requirements were furnished by the assessee before the AO during the year except giving a general statement that funds received from members are utilized for making FDs and appellant could not furnish any other details. In the remand proceedings, the learned CIT(A) also noted that the assessee has no quantum interest expenditure attributable to funds used for making FDs appellant with surplus funds are not used for making FD is true. The assessee filed only profit and loss account and balance sheet that Tribunal had directed to allow expenditure towards earning of income but it was the duty of the assessee to file documentary evidence towards incurring of

expenditure for earning interest income but assessee has failed. Accordingly, learned CIT(A) dismissed the appeal of the assessee.

6. Aggrieved from the above Order, assessee filed appeal before the Tribunal and assessee has raised a fresh ground which are not emanating from the direction given by the Co-ordinate Bench in ITA No.17/Bang/2023 (supra). However, the assessee has furnished statement of interest paid from April 2016 to March 2017 the details as on 31.03.2017 which is placed at page No.157 and copy of bank statements. The assessee has also furnished two Paper Books containing page Nos.1 to 48 and 1 to 65 which are placed on record. The learned Counsel submitted that the assessee is eligible for deduction under section 80P(2)(a)(i) of the Act on interest received from Co-operative Bank which are Co-operative Societies. Assessee is registered under Karnataka Co-operative Societies Act, 1959. It is in the business of accepting deposits and providing credit facilities to the members, investing funds in banks are integral part of its business, the Bye Laws Chapter 3, objectives of the appellant society includes investing of funds which are not required for use immediately are invested in co-operative banks as per section 58 of the Karnataka Co-operative Societies Act, 1959. He further submitted that there is an obligation upon the appellant society to invest its funds with the Co-operative Banks and the interest income earned on deposit with Co-operative Bank and it is eligible for deduction under section 80P(2)(a)(i) of the Act. Alternatively he submitted that if deduction u/s 80P(2)(a)(i) is not allowed then the assessee is eligible for deduction u/s 80P(2)(d) of the act. on such interest received from co-operative banks. All co-operative banks are at the first instance it is registered under the kKarnataka Co-operative Society Act as a Co-operative Society. He also referred to section 57 of the Karnataka Co-operative Societies Act, 1959. He also relied on the following judgments:

- *The rifle Factory Co-Operative Society Ltd V/s Assistant Commissioner of Income Tax, Held in ITAT SMC Bench, Kolkata, ITA N 41/KOL/ 2023.*

- *Lankapalli PACS Ltd V/s ITO, held in Honorable ITAT Vishakapatnam SMC Bench, ITA 364/2024.*
- *Ismaila Urban Credit C-Op Society Ltd Vs ITO, held in Honourable ITAT Nagpur Bench ITA 122/2023.*

7. The learned Counsel further submitted that the assessee is eligible for cost incurred to earn the interest income as per section 57 of the I.T. Act. During the impugned Assessment Year, the appellant society has obtained loan from BDCC Bank on the FDs. In other words, loan on deposits (lien on deposits), the interest paid on the loan is Rs.31,87,834/-. The loan interest paid on loan deposits should be allowed as cost. The assessee society has earned interest income from its deposits with the following co-operative societies banks :

I. BDC Cooperative Bank Limited (Reserve Fund) of	Rs.20,50,000/-
II. BDC Cooperative Bank Limited (Fixed Deposit) of	Rs.1,30,00,000/-
III. BDC Cooperative Bank Limited (Reserve Fund) of	Rs.50,50,000/-
Total Investments	Rs.2,01,00,000/-

8. He further submitted that the source of fund is interest bearing deposit received from members. The interest is paid to the members approx.. 8% p.a. and the total interest paid to the members on the deposits is Rs.16,.08,000/-. In addition to the above, the assessee has incurred administrative cost which are also part of the cost of funds towards earning of the interest income.

9. He further submitted that the Co-operative Bank is a Co-operative Society Bank because the definition as per Section 2(19) of the Act would make it clear that Co-operative Society means a Co-operative Society registered under the Karnataka Societies Act, 1912. Thus, the Co-operative Society as defined under the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other business or a Co-operative Bank. Hence,

Co-operative Bank would fall within the purview of Co-operative Society. Hence, the interest earned on deposits made in Co-operative Bank is eligible for deduction under section 80P(2)(d) of the Act. He relied on the following 2 judgments and requested that further chance may be given to the assessee to represent its case.

- Thorapadi Urban Co-op Credit Society Limited V/s ITO
- Virupachipuram Urban Co-op Credit Society Limited V/s ITO

10. On the other hand, learned DR opposed to granting of any opportunity to the assessee and drew our attention to the direction of the Co-ordinate Bench of the Tribunal noted supra in which it has been clearly mentioned that the deduction under sections 80P(2)(a)(i) and 80P(2)(d) of the Act is not to be allowed to the assessee and eligible for cost of funds. During the remand proceedings the assessee could not comply the direction given by the Hon'ble Bench. The assessee cannot go beyond the direction given by the Hon'ble Co-ordinate Bench. Since the earlier decision of the Co-ordinate Bench has not been challenged by the assessee before the jurisdictional Hon'ble High Court, therefore, the decision given in the first round is final and during the course of proceeding under section 143(3) r.w.s. 254 of the Act, assessee was unable to provide details as observed by the learned CIT(A). In the proceeding before the Hon'ble Bench in the second round of proceedings, assessee has not given any details of the cost incurred towards earning of interest income with documentary evidence. Section 57(iii) of the Act reads as under:

“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.”

11. He further submitted that however, both the authorities below had given chance to the assessee to comply with the direction of the Hon'ble Bench but

assessee failed to do so. During the course of hearing, judgments relied on by the assessee will not support the case of the assessee. Since the AO has passed Order to comply with the direction of the Hon'ble Bench.

12. Considering the rival submissions, we noted that this is second round of proceeding before us. In the first round of proceedings in ITA No.17/Bang/2023, the Co-ordinate Bench had observed (as noted supra). Accordingly, the AO provided opportunities to the assessee but assessee failed to produce evidence as observed by the learned CIT(A) for substantiating its case with documentary evidence. However, before us, the learned Counsel raised issue that assessee is eligible for deduction under sections 80P(2)(a)(i) and 80P(2)(d) of the Act. We cannot go beyond the direction given earlier by the Co-ordinate Bench (noted supra) in which it has been clearly held that assessee is not eligible for deduction deduction under sections 80P(2)(a)(i) and 80P(2)(d) of the Act and assessee is only eligible for cost of funds as per section 57(iii) of the Act.

13. Assessee has not produced any evidence regarding challenging the Order passed by the Co-ordinate Bench before the jurisdictional Hon'ble High Court. Therefore, considering the totality of facts and circumstances of the case, we are again giving chance to the assessee to comply with the direction given by the Co-ordinate Bench in para No.9. Accordingly, assessee is directed to produce necessary documentary evidence towards incurring of expenses for earning interest income and AO is directed to give reasonable opportunity of being heard to the assessee and decide the issue as per law. Since, the issue involved in which it has been decided that the assessee is not eligible deduction under sections 80P(2)(a)(i) and 80P(2)(d) of the Act on such interest income received and this issue has not been challenged by the assessee before the Hon'ble jurisdictional High Court. It means, i.e., the earlier Order of the Co-ordinate Bench noted supra attains the finality. Therefore, for the subsequent Assessment Years in assessee's own case, we cannot go beyond the view taken by the Co-ordinate Bench to

maintain the principle of consistency. Accordingly, we hold that the assessee is not eligible for deduction under sections 80P(2)(a)(i) and 80P(2)(d) of the Act in ITA No.129, 131,132/Bang/2025 for the Assessment Years 2017-18, 2018-19 and 2020-21 respectively and the ratio of decision laid down in ITA No.17/Bang/2023 for the Assessment Year 2018-19 shall apply mutatis mutandis in other two appeals. However, the Co-ordinate Bench has directed to allow expenditures (cost of funds) for earning interest income as per section 57(iii) of the Act. Accordingly, we are directing the AO to give reasonable opportunity of being heard to the assessee for substantiating cost of funds with relevant documentary evidences for Assessment Years 2017-18, 2018-19 and 2020-21 and decide the issue as per law, and assessee is directed to produce necessary documents and not seek unnecessary adjournments to facilitate early disposal of the case.

14. The ITA No.130/Bang/2025 is a penalty proceeding under section 270A of the Act for the Assessment Year 2017-18. Since we have remitted the issue to the file of AO in quantum proceedings, since the penalty proceeding has consequential effect of the quantum proceedings, therefore, this issue is also remitted back to the AO for deciding the issue as per law, after giving reasonable opportunity of being heard to the assessee.

15. In the result, all the four appeals are allowed for statistical purposes.

Pronounced in the court on the date mentioned on the caption page.

Sd/-

(KESHAV DUBEY)
Judicial Member

Bangalore,
Dated : 08.05.2025.
/NS/*

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT4.CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.