

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1256/Bang/2019
Assessment Year: 2016-17

M/s. Sri Ananthapadmanabha Credit Co-operative Society Ltd. 1, R.G. Pai Complex, Hebri Karkala 574 104 PAN NO : AACAS9906L	Vs.	ITO Ward-3 Udupi
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	01.09.2021
Date of Pronouncement	:	01.09.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 14.03.2019 passed by Ld CIT(A), Mangalore and it relates to the assessment year 2016-17. The grounds of appeal filed by the assessee reads as under:-

- 1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned CIT[A] is not justified in upholding the denial of deduction _aimed u/s.80P[2][a][i] of the Act amounting to Rs. 52,68,554/- in respect of the profits earned by the appellant*

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from the business of providing credit facilities to its members under the facts and in the circumstances of the appellant's case.

3. *The learned CIT[A] erred in holding that the business of providing credit facilities to the members carried on by the appellant cannot be regarded as a business carried on by a co-operative society complying with the principles of mutuality since the appellant had admitted nominal members, who could either vote nor were entitled to a share in the profits as per the bye-laws of the appellant and hence, the appellant was not entitled to deduction u/s. 80P[2][a][i] of the Act having regard to the rationale behind the judgement of the Hon'ble Supreme Court in the case of Citizens Co-operative Society reported in 397 ITR 1 [SC] under the facts and in the circumstances of the appellant's case.*
4. *The learned CIT[A] ought to have appreciated that the appellant cooperative society had no doubt admitted nominal members, which was permissible under the Karnataka Co-operatives Societies Act, 1959 and that **there** was no violation of any of the provisions of the Karnataka Co-operative Societies Act under which the appellant was constituted and therefore, the judgement of the Hon'ble Supreme Court relied upon in the case of Citizens Co-operative Society reported in 397 ITR 1 was distinguishable and wholly inapplicable to the facts of the appellant's case.*
5. *The learned CIT[A] ought not to have held that the income earned by the appellant from investments made in SCDCC Bank and other Nationalised Banks to the extent of Rs. 2,19,735/- was liable for assessment as income from business and not under the head "Other Sources" under the facts and in the circumstances of the appellant's case.*
6. *The learned CIT[A] ought to have appreciated that the appellant had earned the interest income of Rs. 2,19,735/- from investments statutorily required to be maintained under the Karnataka Co-operative Societies Act from out of the profits besides 25% of the total deposits as SLR with co-operative banks and 3% of the total deposits towards CRR and thus, the income earned therefrom ought to have been assessed as part of the business of the providing credit facilities to its members and not under the head 'Other Sources' under the facts and in the circumstances of the appellant's case.*

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7. *Without prejudice to the above, the learned CIT(A) ought to have appreciated that the cost of funds ought to have been allowed u/s. 57[iii] of the Act while assessing the interest income under the head "Other Sources" under the facts and in the circumstances of the appellant's case.*
 8. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*
 9. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*
2. The assessee is a co-operative credit society registered under Karnataka Co-operative Societies Act. The assessee claimed deduction u/s 80P(2)(a)(i) of the Act in respect of its entire income and accordingly filed return of income declaring NIL income. The assessing officer noticed that the assessee is having nominal/associate members and accordingly took the view that the assessee has violated the principles of mutuality. Accordingly, taking support of the decision rendered by the Hon'ble Supreme Court in the case of Citizens co-operative bank (2017)(84 taxmann.com 114), the AO held that the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act.
3. The AO also noticed that the assessee has earned interest income from deposits to the extent of Rs.5,92,555/- and it has claimed deduction u/s 80P(2)(a)(i) for this amount also. The A.O. held that the above said income is not allowable as deduction u/s 80P(2)(d) of the Act. Further, the assessee should have offered the above said interest income under the head income from other

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sources. Accordingly, taking support of the decision rendered by Hon'ble Karnataka High Court in the case of The Totagars Co-operative Society (ITA No.100066 of 2016 dated 16.6.2017). The A.O. held that he is bringing the interest income to tax u/s 56 of the Act under the head income from other sources. As stated earlier he did not allow deduction for interest income u/s 80P(2)(d) and 80P(2)(a)(i) of the Act. The Ld. CIT(A) confirmed the order passed by A.O.

4. The ground no.1 and 9 urged by the assessee are general in nature. Ground No.8 relating to charging of interest u/s 234B is consequential in nature.

5. Ground No.2 to 4 relate to deduction claimed u/s 80P(2)(a)(i) of the Act. The LD. A.R. submitted that the entire issue requires re-examination in the light of decision rendered by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. and others (2021) 431 ITR 1. He submitted that the coordinate benches in the case of Thannirupantha Primary Agricultural Credit Co-operative Society Ltd. Vs. ITO (ITA No.276 & 277/Bang/2020 dated 30.7.2021) has restored an identical issue to the file of the A.O. for examining the deduction claimed u/s 80P(2)(a)(i) of the Act in the light of decision rendered by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd.

6. We heard Ld. D.R. and perused the record. Since the issue of deduction u/s 80P(2)(a)(i) of the Act requires fresh examination in the light of decision rendered by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. (supra), we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining it afresh as discussed above.

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7. Ground No.5 & 6 relate to deduction claimed u/s 80P(2)(d) of the Act. The Ld. A.R. submitted that and identical issue was also restored to the file of A.O. in the case of Thannirupantha Primary Agricultural Credit Co-operative Society Ltd. Vs. ITO (supra) and accordingly prayed that this issue may be restored to the file of the A.O.

8. We heard Ld. D.R. and perused the record. We notice that an identical issue was restored to the file of the A.O. by the coordinate bench in the case of Thannirupantha Primary Agricultural Credit Co-operative Society Ltd. Vs. ITO (supra) with the following observations:

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 Court in the case of PCIT Vs. Totgars Cooperative 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 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

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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.”

9. Following the above said decision we restore this issue to the file of the A.O. for examining it afresh in the light of discussions made (supra).

10. Ground No.7 relates to alternative claim of the assessee that the expenses relating to interest income should be allowed u/s 57(iii) of the Act. Since we have already restored the issue of claim of deduction u/s 80P(2)(d) of the Act, we restore this alternative contention also to the file of the A.O., since the claim of the assessee gets support from the decision rendered by Hon'ble High Court of Karnataka in the case of Totgars Co-operative Sales Society Ltd. Vs. ITO (2015) 58 taxmann.com 35.

11. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 1st Sept 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 1st Sept, 2021.
VG/SPS

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.**