

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

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

ITA No.468/Bang/2020
Assessment Year:2016-17

The Primary Co-op. Agricultural & Rural Development Bank Ltd. Near KSRTC Bus Stand Sullia Karnataka  <b>PAN NO : AAALT0052B</b>	<b>Vs.</b>	ITO Ward-1 Puttur
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri A. Ravish Rao, A.R.
<b>Respondent by</b>	:	Shri Priyadarshi Mishra, D.R.

<b>Date of Hearing</b>	:	02.09.2021
<b>Date of Pronouncement</b>	:	02.09.2021

**O R D E R**

**PERB.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 06.01.2020 passed by Ld CIT(A), Mangaluru and it relates to the assessment year 2016-17. The grounds of appeal filed by the assessee reads as under:-

*1. The learned Assessing Officer has erred in disallowing the deduction claimed by the cooperative society of Rs.77,39,885/- under section 80P(2)(a)(i) and the learned First Appellate Authority has erred in confirming the orders of the assessing authority.*

*2. The learned assessing officer has erred in treating the sum of Rs.21,88,166/-being the interest received from SCDC Bank as income*

*from other sources, which the appellant had included under income from business. The assessing officer has erred in not granting the benefit of deduction u/s 80P(2)(d) for the interest received from co-operative banks*

- 3. The assessee society is registered under the Co-operative Societies Act, 1959 and complied with The Karnataka Co-operative Societies Act, 1959, the Karnataka Co-operative Societies Rules, 1960 and bye laws of the society as well. The Karnataka Co-operative Societies Act, 1959 for the year under appeal permits to do the transaction with ordinary members, associate members and nominal members. Hence all the borrowers are members (regular or associate or nominal) of the appellant society and we are conducting the business with the above category of members and not with the general public as observed by the assessing officer.*

*Section 80P(2)(a)(i) and mutuality concept are not inter related. Mutuality concept is not mandatory to claim the deduction u/s 80P(2)(a)(i).*

- 4. During the year under appeal the assessee society received interest on deposits of Z. 21,88,166/- from co operative banks and claimed deduction u/s 80P(2)(a)(i). However the assessing officer relied on the decision of Hon'ble High Court of Karnataka Dharwad Bench in the case of M/s Totagars Co-operative Sale Society.*

*However our case is not similar to the above case, and the assessee is a co-operative society hence eligible to claim deduction u/s 80P(2)(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.*

- 5. We further submit that, as per the provisions of section 80(P)(2)(a)(i), in the case of a co-operative society, the whole of the amount of profits and gains attributable to the business of providing credit facilities to its members shall be allowed as full deduction. If any activity is carried on with non members as alleged by the assessing officer and confirmed by the learned First Appellate Authority, the profit attributable to such business can only be taxed. Therefore in the case of the appellant if nominal members are not considered as members as alleged by the assessing officer, only such portion of profit attributable to the business with nominal members could be taxed.*
- 6. The appellant has been assessed as a co-operative society and such being the case all benefits available to the appellant as per the provisions of section 80P of the Income Tax Act cannot be denied without a legal*

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*provision to do so. The learned First Appellate Authority has erred in not considering this while disposing of the appeal.*

7. *The appellant craves leave to add, to amend and/or alter any of the foregoing grounds and such other grounds as may be urged at the time of hearing, the appellant prays for allowing the deduction u/s 80P(2)(i) & 80P(2)(d).*

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 and declared total income of Rs.4,06,730/-. 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 Hyderabad bench of Tribunal in the case of Citizens co-operative bank, 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.21,88,166/- and it has claimed deduction u/s 80P(2)(a)(i) for this amount also. The AO took the view that the assessee should have offered the above said interest income under the head income from other 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. The A.O. further held that the above said income is not allowable as deduction u/s 80P(2)(d) of the Act as per the above said decision and accordingly 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 nos.1, 6 and 7 urged by the assessee are general in nature.

5. Ground No.3 to 5 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 has restored an identical issue to the file of the A.O. in many cases 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.

7. Ground No.2 relate to deduction claimed u/s 80P(2)(d) of the Act. The Ld. A.R. submitted that the assessee is required to maintain deposits with banks to meet the requirement of Statutory liquidity ratio (SLR), which is 28% of total deposits. Since these deposits have been made under legal obligation, it is incidental activity of business intricately connected with the main business of providing credit to the members. He submitted that the SLR deposits stand at Rs.1,63,35,337/-. Accordingly, he submitted

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that the interest earned on deposits kept as SLR is eligible for deduction u/s 80P(2)(a)(i) of the Act.

8. The Ld A.R also submitted that the issue of deduction u/s 80P(2)(d) is being restored to the file of A.O. by the Bangalore bench of Tribunal with certain directions and accordingly prayed that this issue may be restored to the file of the A.O for examining afresh by considering all the contentions of the assessee.

9. 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 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*

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*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 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.”*

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. The Ld A.R also put up an alternative claim that the expenses incurred to earn the interest income should be allowed u/s 57(iii) of the Act, if it claim for deduction u/s 80P(2)(a)(i) or 80P(2)(d) is not allowed. 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 2<sup>nd</sup> Sept 2021

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

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

Bangalore,  
Dated 2<sup>nd</sup> 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.**