

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1449/Bang/2019
Assessment Year : 2016-17

The Puttur Primary Co-op Agriculture and Rural Development Bank Ltd. 01, Puttur PCARD Bank Ltd. Santhekatte Puttur Dakshina Kannada 574 201 PAN NO : AAALT0387M	Vs.	ITO Ward-1 Puttur
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal, A.R.
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	20.04.2021
Date of Pronouncement	:	14.06.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order dated 27.03.2019 passed by Ld CIT(A), Mangaluru and it relates to the assessment year 2016-17. The grounds urged by the assessee give rise to the following two issues:-

- (a) Rejection of deduction claimed u/s 80P(2)(a)(i) of the Income-tax Act, 1961 [‘the Act’ for short].
- (b) Rejection of deduction u/s 80P(2)(d) of the Act in respect of interest income earned on fixed deposits.

2. The Ld A.R submitted that the assessee is a co-operative society engaged in the business of accepting deposits from and lending loans to its members. The assessee filed its return of income claiming deduction u/s 80P of the Act. The AO rejected the claim on the reasoning that the assessee has dealt with nominal/associate members who do not have right to vote and to participate in the surplus, thus failing in mutuality principles. The assessee had earned interest income/dividend income of Rs.38,62,790/- from deposits/investment kept with M/s South Canara District Co-operative Bank/Bharath Co-op Bank Ltd etc. The AO held that the assessee is not eligible to claim deduction u/s 80P(2)(d) of the Act in respect of above said income. In this regard, the AO placed his reliance on the decision rendered by Hon'ble Karnataka High Court in the case of PCIT vs. Totgars Co-operative Sale Society Ltd (395 ITR 611)(Kar).

3. The Ld A.R submitted that the appeal filed by the assessee before Ld CIT(A) challenging the additions made by the AO was dismissed. Hence the assessee has filed this appeal before the Tribunal. The Ld A.R submitted that both the above said issues are covered by the decision rendered by the co-ordinate bench in the case of Karkala Co-op S. Bank Ltd (ITA Nos.1288 & 1289/Bang/2019 relating to Assessment Year: 2015-16 & 2016-17 – order dated 18-02-2021. She submitted that the co-ordinate bench has restored the first issue to the file of AO with the direction to apply the decision rendered by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs.CIT (2021) 123 taxmann.com 161 (SC). With regard to the second issue, the co-ordinate bench has directed the AO to follow the decision rendered by the jurisdictional Hon'ble Karnataka High Court in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO (2015) 58 taxmann.com 35 (Karn). Accordingly, the Ld A.R submitted

that the decision rendered by the co-ordinate bench may kindly be followed in this case also in respect of both the issues.

4. We heard Ld D.R and perused the record. The first issue relates to the claim of deduction u/s 80P(2)(a)(i) of the Act. We notice that an identical issue has been considered by the co-ordinate bench in the case of Karkala Co-op S Bank Ltd (supra), wherein an identical issue has been restored to the file of AO for examining it afresh. For the sake of convenience, we extract below the relevant observations made by the co-ordinate bench:-

“4. The Ld. A.R. submitted that the law on deduction of 80P(2)(a)(i) of the Act available to credit co-operative societies has since been settled by Hon’ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs.CIT (2021) 123 taxmann.com 161 (SC). He submitted that the Hon’ble Supreme Court has held that the expression “Members” is not defined in the Income-tax Act. Hence, it is necessary to construe the expression “Members” in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. The Ld. A.R. submitted that the Hon’ble Supreme Court has considered the decision rendered by it in the case of Citizen Co-operative Society Ltd. (supra) and observed that the ratio decidendi of Citizen Co-operative Society Ltd. must be given effect to. Accordingly, he submitted that the assessee should be allowed deduction u/s 80P(2)(a)(i) of the Act.

5. The Ld. D.R., on the contrary, submitted that the issue of deduction needs to be examined afresh in the light of decision rendered by Hon’ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. (supra). Accordingly, he submitted that this issue may be restored to the file of the A.O.

6. We heard the parties on this issue and perused the record. We find merit in the submission made by Ld. D.R. Since the Hon’ble Supreme Court has settled many issues in the decision rendered by it in the case of Mavilayi Service Co-operative Bank Ltd. (supra) and since the facts prevailing in the instant case needs to be examined afresh in the light of the principles enunciated by Hon’ble Supreme Court in the above said case, we are of the view that the issue of deduction u/s 80P(2)(a)(i) of the Act requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in both the years under consideration and restore them to the file of the A.O. in both the years for examining it afresh as discussed above.”

5. Since the facts are identical, following the decision rendered by the co-ordinate bench, we restore this issue to the file of the AO with similar directions.

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 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".

7. In the instant case, the assessee has earned both interest income and dividend income. In view of the decision rendered by the jurisdictional Hon'ble High Court of Karnataka, the assessee is entitled for deduction of proportionate cost, administrative and other expenses. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with similar directions.

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

Order pronounced in the open court on 14th June, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

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

Bangalore,
Dated 14th June, 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.