

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

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

ITA No.210/Bang/2020
Assessment year : 2016-17

M/s. Kadaba Sahakari Vyavasayika Bank Ltd., Kadaba Post, Kadaba Tq. DK – 574 221. PAN : AAAJK 0025 B	Vs.	ITO, Ward – 1, Puttur.
APPELLANT		RESPONDENT

Appellant by	:	Shri. V. Srinivasan, Advocate
Respondent by	:	Smt. R. Premi, JCIT(DR)(ITAT), Bengaluru

Date of hearing	:	22.07.2021
Date of Pronouncement	:	23.07.2021

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 06.01.2020 of CIT(A), Mangaluru, relating to Assessment Year 2016-17.

2. The assessee is a Primary Agricultural Co-operative Society duly registered under the Karnataka Co-operative Societies Act,1959 and is engaged in the business of accepting deposits from members, lending credit facilities to its members (mainly agricultural loans), distribution of food grains and other products under State Govt's Public Distribution System, sale of fertilizers / pesticides etc., to farmers.

3. The assessee filed its return of income for the Assessment Year 2016-17 on 14-10-2016 declaring a total income of Rs.64,060 after claiming deduction of Rs. 1,92,69,544 u/s 80P(2)(d) of the Act. Thereafter, the assessee's case was selected for scrutiny under CASS and notice u/s 143(2) was issued by the AO on 04-072017. During the course of the assessment proceedings, the assessee submitted a revised Statement of Income declaring a Gross Total Income of Rs 2,17,53,604 and Total Income of Rs Nil, after claiming a Deduction of Rs 2,17,53,604 under Sec 80P of the Act.

4. The assessee furnished all the details asked for by the learned assessing officer as well as made detailed submissions as to why the deduction u/s 80P should be allowed and how the facts of the following case laws are distinguishable to the facts of the assessee:

- a. M/s The Totgars' Co-operative Sale Society 08.02.2010 in Civil Appeal No. 1622 of 2010 ;
- b. M/s. Totagars' Co-operative Sale Society dt 16.06.2017 in ITA No. 100066 of 2016 ;
- c. M/s Citizen Co-operative Society, Hyderabad dt 08.08.2017 in Civil Appeal No. 10245 of 2017 .

5. The AO denied the deduction u/s 80P(2)(a)(i) amounting to Rs 1,41,26,010 [income from lending of credit facility to Members] and u/s 80P(2)(d) amounting to Rs. 51,43,534 towards interest earned on Term Deposits with SCDCC Bank / Other Co Op Societies and Dividend Income from Investment in Shares with SCDCC Bank / Other Co Op Societies.

6. Further, the AO denied the assessee's claim of expenses incurred for earning the interest income / dividend income and allowed only an ad hoc deduction of 10% of such income i.e. Rs. 4,45,205 without any basis, as expenses for earning interest income and dividend income. Thus, the AO made an addition of Rs. 40,06,845 in respect of interest income/ dividend income.

7. The AO also denied entire deduction of Section 80P to the assessee thereby making an addition of Rs. 1,92,69,544 merely because of the fact that the assessee had admitted Nominal Members. The AO ought to have appreciated the fact that the bye laws of the assessee Society and the Karnataka Co Operative Societies Act, 1959 under which the assessee is registered, permits the admission of such class of members and the assessee has not violated the law by admitting Nominal Members. Thus, the total income of the assessee was computed at Rs. 1,93,33,604 and tax thereon including interest was levied by the AO at Rs. 88,72,171/-.

8. On appeal by the assessee, the CIT(A) confirmed the order of the AO by placing reliance on the decision of the Hon'ble Supreme Court in the case of Citizens Co-operative Society Ltd. Vs. ACIT 397 ITR 1 (SC). Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal.

9. We have heard the rival submissions. On ground Nos.1 to 5, 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 Cooperative Bank Ltd. Vs.CIT (2021)

123 taxmarin.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. 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.

10. 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) for the year under consideration and restore them to the file of the A.O. for examining it afresh as discussed above.

11. As far as ground Nos.6 to 8 are concerned, we have heard the rival submissions. In the case of Karkala Co-op. S. Bank Ltd. Vs. ITO (ITA No.1288 8r, 1289/Bang/2019 dated 18.2.2021), the Bangalore bench of Tribunal has considered issue of eligibility of the assessee to claim deduction u/s 80P(2)(d) and it was held that the assessee is eligible for deduction of expenses incurred for earning the interest income. The relevant observations made by the Tribunal are extracted below:-

"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 Cooperative 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".

12. Following the above said decision. of the Tribunal, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction 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.

13. In the result, appeal by the assessee is treated as allowed for statistical purposes.

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

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 23.07.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.