

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA Nos.864 to 866/Bang/2019
(Assessment Years : 2013-14 to 2015-16)

M/s. Karnataka State Co-operative Federation Limited,
23/3, Crescent Road, Shivananda Circle,
Bangalore-560 001
PAN AAJK 0471H

....Appellant

Vs.

Assistant Commissioner of Income Tax,
Circle 1(2)(1), Bangalore.

.....Respondent.

Assessee By:	Shri S. Ramasubramanyam, C.A.
Revenue By:	Shri Sumer Singh, Addl. CIT (D.R)

Date of Hearing :	02.11.2020.
Date of Pronouncement :	03.11. 2020.

ORDER

PER SHRI CHANDRA POOJARI, A.M :

These three appeals filed by the assessee are directed against different orders of Commissioner of Income Tax (Appeals)-1, Bangalore for the Assessment Years 2013-14, 2014-15 & 2015-16. The issues in these appeals are identical and common, they are heard together and passed consolidated order for the sake of convenience.

2. The first ground in these appeals are with regard to confirming the action of the Assessing Officer by the CIT (Appeals) in treating the contribution received towards co-operative education fund as income of the assessee without considering the statutory requirement by misunderstanding the meaning of the words “objects” and “activities”.

3. The facts of the case are that the assessee is Federation for all co-operative societies formed and registered under Karnataka Co-operative Societies Act, 1959. The members of the assessee are co-operative societies in the State of Karnataka. Its main object is to impart education and training to the members, potential members, Directors and office bearers of the co-operative societies and members of general public. The Assessing Officer while completing the assessment treated the contribution received at Rs.11,39,69,052; Rs.13,25,27,459 and Rs.16,57,07,934 for the Assessment Years 2013-14, 2014-15 & 2015-16 respectively towards co-operative education fund as income of the assessee. The assessee made plea before the CIT (Appeals) that the said amount was collected from various co-operative societies towards education and training as per the requirement of provisions of Karnataka Co-operative Societies Act, 1959. The utilization of the said amount is defined in the said provisions of the Act and prior approval of Advisory Board constituted for the purpose as prescribed. The assessee does not have any right or power over the funds and it is required to spend

the amount only as provided in the statute. It has to be utilized as directed by the Advisory Board for the purpose of imparting education to the members, directors and members of co-operative societies and general public and training to the employees of the co-operative societies. The assessee shall utilize such funds for the activities of Federation for the purpose specified. It was collected by the assessee only because of its statutory requirement and therefore amount collected for co-operative education fund was not considered as income of the assessee. However, this argument of the assessee was rejected by the lower authorities. Aggrieved by the assessee, the assessee is in appeal before us.

4. The learned Authorised Representative submitted that as per the Section 57(2A) of Co-operative Societies Act, every co-operative society shall contribute 2% of the Karnataka Co-operative Societies Act specifies the manner in which the education fund should be applied by the Federation. He drew our attention to the said provisions of the Act. He also drew our attention the Rule 20 of the Karnataka Co-operative Societies Act, 1959 regarding how the education fund should be administered and how the fund should be utilized. According to the learned Authorised Representative, the assessee has no control over the fund and it has to be utilized as per the above rule and it should be only for specified purpose and as such it should be considered as it is diverted at source by over riding title. He relied on judgements of Hon'ble Supreme Court in the case of CIT Vs. Sitaldas

Tirathdas 41 ITR 367 and judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Karnataka Urban Infrastructure Development and Finance Corporation (KUIDFC) 284 ITR 582; CIT Vs. Karnataka State Agricultural Produces Processing and Export Corporation Ltd. 377 ITR 496; CIT Vs. Pandavapura Sahakara Sakkare Kharkane Ltd. 198 ITR 690. He relied on the judgement of Hon'ble Supreme Court in the case of CIT Vs. Bijli Cotton Mills (P) Ltd. 116 ITR 60. Further he submitted that it cannot be treated as income in the hands of the assessee as it is received by the as with an obligation to spend as per Section 57A of the Co-operative Societies Act. For the purpose, he relied on the decision of Hon'ble Supreme Court in the case of Emil Webber Vs. CIT 200 ITR 483 (SC).

5. On the other hand, the learned Departmental Representative submitted that the assessee Federation formed for providing education and training to the employees of the members of the co-operative societies. Therefore the contribution received from the member co-operative societies to be considered as income of the assessee as the assessee has claimed the corresponding expenditure in the 'income and expenditure' account. According to learned Departmental Representative there is no strength in the argument of the Id. AR that the amount has been received for specified purpose, it should be considered as diverted at source by over-riding title. He relied on the orders of the lower authorities.

6. We have heard both the parties and perused the material on record. The assessee is a registered co-operative society under Karnataka Societies Act, 1959 Under Section 57(2A) of Co-operative Societies Act, every co-operative society shall contribute 2% of its net profits to co-operative education fund to be administered by the assessee i.e. Karnataka State Co-operative Federation Ltd. As per Section 57A of the Karnataka Societies Act, 1959, the said amount has to be expended in such manner as may be prescribed. We reproduce the relevant provisions of Section 57(2A) and 57A of the Karnataka Societies Act, 1959 as under :

57A – Co-operative Education and Training

- 1) The co-operative education fund shall be utilised for the purpose of promotion of the co-operative movement in the State and for providing education to the members, directors and co-operators of the co-operative societies and the general public and training to the employees of the co-operative societies.
- 2) Every co-operative society shall pay its contribution to the Karnataka State Co-operative Federation within thirty days from the date of its annual general meeting
- 3) All contributions made by the co-operative societies towards co-operative education fund, grants received from the Government of India or the State Government and donations, if any, made by any person shall be credited to the co-operative education fund.
- 4) The co-operative education fund shall be maintained and administered by the Karnataka State Co-operative Federation Limited for such programmes and in such manner as may be prescribed.

5) No expenditure out of the co-operative education fund shall be incurred without the approval of an advisory board constituted for the purpose of as prescribed.

57 (2A) A Co-operative Society shall, from out of the balance of its net profits, contribute two percent to the Co-operative Education Fund to be administered by the Karnataka State Co-operative Federation Limited, Bangalore.

Provided, Urban Co-operative Banks shall contribute one per cent of its net profit to the Karnataka State Co-operative Urban Banks Federation in addition to the two per cent as prescribed in sub-section.

Provided further that out of the total contribution made by a Co-operative society to the account of the Co-operative Education Fund, every year one fourth shall be remitted to the account of the Sahakara Academy (Reg), Mysore, registered under the Karnataka Societies Registration Act, 1960 and sponsored by the State Government for the purpose of carrying out Co-operative Education, Training and Research.

At this time, it is appropriate to go through the Rule 20 of the Karnataka Co-operative Societies Rules which read as follows :

20) Co-operative Education and Training.- (1) Every cooperative society shall remit its contribution towards cooperative education fund to the account of the Karnataka State Cooperative Federation Limited, Bangalore within thirty days from the date of its annual general meeting.

(2) The cooperative education fund shall be maintained and administered by the Karnataka State Cooperative Federation Limited and shall be utilized on the advice of an advisory committee consisting of the following members, namely.-

(a) President, Chairperson of the State Cooperative Federation Chairperson

(b) Four apex societies' president/ chairpersons i.e. Karnataka State Cooperative Apex Bank Ltd., Karnataka Cooperative Milk Federation Ltd., Karnataka State Cooperative Urban Banks Federation Ltd., and Karnataka State Credit Cooperative Societies Federation Ltd., Member are the members.

(c) The Director, Regional Institute of Co-operative Management, Bangalore. Member

(d) The Registrar of Cooperative Societies or his Nominee Member

(e) The chief executive officer of the State co-operative Federation. Member Secretary (3)

The quorum for a meeting of the advisory committee shall be five. The advisory committee shall be convened at least once in three months.

(3A) No decision shall be taken by the Board of the Karnataka State Co-operative Federation Limited which contravenes the decision of the advisory committee,

(4) The Karnataka State Cooperative Federation shall maintain this fund in a separate account and all income by way of interest or otherwise accruing from the contribution towards this fund shall be credited to this fund.

(5) No expenditure out of the co-operative education fund shall be incurred without the approval of this advisory committee. The auditor of the State Co-operative Federation shall verify the utilization of the fund and certify the same.

(6) Subject to such directions as the advisory committee may give from time to time, the fund may be utilized for any of the following purposes 1. Rules 20 substituted by Notification No. CO 14 CLM 2013, dated 10-7-2013, w.e.f.10-7-2013 connected with the cooperative education, training and human resource development of the co-operative societies, namely:-

- (a) education of the members, directors including office-bearers and employees of the cooperative societies and the general public in the principles and practice of cooperation;
- (b) human resource development in the cooperative societies;
- (c) development of cooperative societies;
- (d) capacity building and business management;
- (e) professionalization;
- (f) technical up gradation;
- (g) education, training, research, man power and power and related infrastructure;
- (h) research and development;
- (i) development of the cooperative movement in general;
- (j) co-operative propaganda and publicity;
- (k) publication of the books and journals relating to the cooperative movement;
- (l) conduct of research, case studies and

(7) The State Co-operative Federation shall prepare annual budgets and formulate training and education programmes for the development of co-operatives and co-operative movement particularly in matters such as financial and business management in the co-operative societies, member education, awareness buildings on cooperative principles and values etc., according to the overall guidelines issued by the advisory committee and be responsible for implementation of the same.

(8) The State Cooperative Federation and the District Cooperative Unions shall submit returns to the Registrar once in a year showing the details of the training programmes conducted.

(9) The board of every cooperative society shall also include in its annual budget provision for expenses on member and potential member education and training of its directors and employees. It shall ensure that the members, directors and employees are well informed and trained about the theory, principles and practice of co-operation. It shall also aim at ensuring that the transparency, the levels of awareness, member participation and member control expected of any good co-operative society are reached out to the members, the directors and the employees of the co-operative society.]

6.1 As rightly pointed out by the learned Authorised Representative, the above provisions show that Federation does not have control over the funds and is required to spend the amount only as provided in the statute. S.57A mandates that the co-operative fund shall be utilized for the purpose of promotion of co-operative movement and providing education to members and others. It also requires that the amount contributed under Section 57(2A) should be credited to a fund account and the fund shall be administered as prescribed in the Rules. It also states that no expenditure can be incurred without the approval of the advisory board. Rule 20(4) states that the Federation must maintain a separate account and all income by way of interest or otherwise that accrue from the contribution towards education fund shall be credited to this fund account. This means that the Federation cannot

utilize the education fund (both the principal and interest) as if it is its own funds. It is also mandatory to spend the education fund only towards the purposes mentioned in Rule 20(6). Under Rule 20(6), the funds have to be utilized for education of members, human resource development, development of co-operative societies, activity building and business management, professionalization etc. the above provision makes it very clear that the assessee has statutory liability to utilize the education fund only for specified purpose and hence, it is diverted at source by over-riding title. Further it is clear from the following judgments of the Hon'ble Supreme Court in the case of CIT Vs. Sitaldas Tirathdas (supra) wherein it was held as under :

“ In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Whereby the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow.”

6.2 Further the jurisdictional Karnataka High Court decision in the case of CIT Vs. Karnataka Urban Infrastructure Development and Finance Corporation (KUIDFC) (supra) held that interest accrued on deposits held in the name of KUIDFC, it has to be applied only for the purpose of welfare of the Nation / State

as provided in the guidelines. It was held that such interest never reached KUIDFC as income and it was diverted at source. Therefore, the interest earned was not taxable. Further in the case of CIT Vs. Karnataka State Agricultural Produces Processing and Export Corporation Ltd. 377 ITR 496 (Kar) held that the interest earned from bank deposits made out of grants received for the Government is not income in any sense of the term. Since the Govt. of Karnataka specifically directed that the interest earned by the fixed deposit grants pending utilisation should be treated as additional grant of the scheme and not to be treated as income of the company held that such interest is not income. Since the amount received cannot be diverted for any other purpose for which it was received, it cannot be treated as income of the assessee since it was diverted at source.

6.3 Further the Hon'ble Supreme Court in the case of CIT Vs. Bijli Cotton Mills (P) Ltd. 116 ITR 60 (SC) wherein it was held that the amount collected from customers by way of Dharmada which was charged in invoice is not income as it came with an obligation to spend the money so collected for charitable purposes.

6.2 In the present case, the contribution received by the assessee from co-operative societies towards specific purpose and the assessee has not discretion to spend the amount and utilize above fund is decided by the Advisory Board consists of different persons as per the direction of the Government of Karnataka. The donations received by the assessee were for specific purpose. The donations which

are for specific purposes do not belong to the assessee. Such donation do not form its income of the assessee. This donation is for specific purposes would only mean that the assessee, as agreed to act as a trustee for this amount received from various co-operative societies and it cannot be treated as assessee's normal income. In this case, the assessee is acting as an independent trustee for that donation received from various societies as per the provisions of Section 57A r.w.s. 57(2A) of Karnataka Societies Act, 1959 and it cannot be considered for taxing the same. However, we observe that the assessee should have actually kept the said donation in separate account and any amount spent against that donation should have been debited to the separate account without bringing the same into 'income and expenditure' account. In other words, the incoming and outgoing need not be reflected in the 'income and expenditure' account of the assessee and this donation to be taken out of the 'income and expenditure' account. Similarly, the relevant expenditure spent out of the donation go out from the expenses side in the 'income and expenditure' account. The expenses expended out of this donation will be deducted from the said donation by not charging the same into Income & Expenditure Account. Therefore in the light of the above, we direct the Assessing Officer to redo the assessment accordingly. Being so, in our opinion, the said contribution is received by the assessee cannot be treated as income of the assessee. This ground of the appeal of the assessee is partly allowed.

7. The next ground in all the three appeals is with regard to denial of exemption under Section 10(23C)(iiiab) of the Act though the assessee satisfying the twin conditions i.e. existing solely for educational purposes and not for profit and substantially financed by the Government.

8. After considering the issue, we found that this issue is covered by the decision of Tribunal in assessee's own case in ITA No.1159/Bang/2011 and 381/Bang/2014 Dt.25.05.2016 for the A.Ys 2006-07 & 2005-06 respectively at paras 6 to 10 as follows :

“ 6. Having carefully examined the orders of authorities in light of the rival submissions and judgment of the Hon'ble Apex Court in the case of Visvesvaraya Technological University v. ACIT (supra), we find that for claiming exemption u/s. 10(23C)(iiiab), the assessee should be either university or educational institution existing solely for educational purpose and not for the purpose of profit and which is wholly or substantially financed by the Government. Therefore, before claiming exemption u/s. 10(23C)(iiiab), the assessee is required to establish that it is either university or educational institution existing solely for educational purpose and not for the purpose of profit and it is wholly or substantially financed by the Government. These aspects were examined by the AO in his order after recording the objects of the assessee society.

7. Undisputedly, the assessee is a State Co-operative Federation of co-operative societies and its members are District Co-operative Unions, Apex Federal Co-operative Society, Co-operative Spinning Mills, Cooperative Sugar Factories, Co-operative Societies whose area of operation s more than districts but extends upto State and Co-operative Societies registered under Multi State Co-operative Societies and whose Had Office is located in the State of Karnataka. The main objects of the assessee are to function as the accredited representative of the co-operative movement in Karnataka State with a view to further its progress and to safeguard its interest and also to impart training to the employees of Co-op. Societies, Dept. of Co-operation and Dept. of Co-op. Audit, Govt. of Karnataka. For the sake of reference, we extract the objects of the assessee society as under:-

“(i) To function as the accredited representative of the cooperative movement in Karnataka State with a view to further its progress and to safeguard its interest in such a way that the benefits of the co-operative movement shall be open to all irrespective of caste, creed and religion;

(ii) To propagate co-operative principles and practices for the purpose of ensuring their adoption by all Cooperative organizations throughout the State;

(iii) To impart training to the employees of Co-op Societies, the employees of Dept. of Co-operation and the employees of Dept. of Co-op Audit. To impart education and training to the members, the potential

members, the directors and the office-bearers of the co-operative societies and the members of the public;

(iv) To act as coordinating agency on all matters pertaining to cooperative education and function as a body of experts in matters relating to education;

(v) To serve as the exponent of co-operative opinion and function as a focusing centre of non-official opinion on various subjects affecting the movement and for representing it in proper forum and to carry on propaganda and create public opinion on such subjects;

(vi) To promote different types of cooperative activity in accordance with the plans of cooperative development and to strengthen the existing societies in the State by providing assistance and guidance technical and otherwise.

(vii) To bring about coordination among different types of cooperative organizations in the State for their mutual benefit;

(viii) To cooperate with the National Cooperative Union of India and implement to the extent possible the policies adopted by the National Cooperative Union of India and the Indian Cooperative Congress for the development of the movement;

(ix) To open libraries & reading rooms, to publish or arrange publication, purchase and sale of periodicals, books and pamphlets on literature, in general, and on cooperation, rural development and allied subjects in particular and arrange for the production of audio-visual aids including films, film-strips and documentaries etc. on co-operation and allied subjects and to maintain or cause to be maintained cooperative publicity vans;

(x) To arrange for the exhibition of articles relating to agriculture, cottage industries, village and small scale industries, minor forest produce and processing units belonging to the co-operative institutions;

(xi) To establish Co-operative Training Centres, Schools and Colleges for running prescribed courses of training and imparting instructions, holding examinations, awarding Diploma and issuing certificates;

(xii) To develop inter-co-operative relationship and help the coordinated functioning of the co-operative movement in various sectors;

(xiii) To conduct State Level / National Level Co-operative Conferences, Seminars, Meetings, Workshops, Exhibitions and competitions in Essay writing, Debates etc. among students of High Schools, Colleges and Universities;

(xiv) To acquire, purchase, own or dispose of the immovable property by way of sale, lease, exchange or otherwise for the furtherance of the objects of the Federation with approval of the general body;

(xv) To promote study and research on problems connected with rural development in general and cooperation in particular and to conduct socio-economic surveys of rural and urban areas and to take up consultancy work, valuation etc.,

(xvi) To establish printing press for printing of books, journals, periodicals and newspapers, including text books, magazines. other books and other requirements of cooperatives;

(xvii) To raise funds including corpus fund and administer the funds so raised according to these bye-laws and subsidiary rules framed by the board from time to time;

- (xviii) To advise the Government on matters relating to cooperative movement from time to time;
- (xix) To supervise and inspect the work of the Dist. Co-op Unions and represent their interest;
- (xx) To advance interest free loan and subsidy to District Coop. Unions for construction of new buildings depending upon the financial position, the budget allocation and the capacity to pay of the Federation;
- (xxi) To discharge such functions and such duties as the State Government/the Registrar or the National Co-operative Union of India might vest in the Federation;
- (xxii) To arrange study tours outside the State and outside the country, if need be, to enable the co-operators of the State to have a first hand knowledge of the co-operative development in such places;
- (xxiii) To conduct examinations for the purpose of recruitment and promotion of the employees of the co-operative societies, if required;
- (xxiv) To generally undertake all such other activities as are incidental to or conducive to the attainment of the above objectives.” “

9. Following the Tribunal order in assessee's own case for A.Ys. 2006-07 & 2005-06 (supra), we set aside the order of CIT (Appeals) on this issue and restore the order of Assessing Officer in this regard. This ground of appeal is dismissed.

10. The last ground in ITA Nos.865 & 866/Bang/2019 for the A.Ys. 2014-15 & 2015-16 is in respect of disallowing deduction claimed under Section 80P(2)(d) of the Act on interest earned from savings bank account kept with the co-operative banks on the ground of investments are made in co-operative societies.

11. The facts of the case are that the assessee received interest on savings bank account kept with the co-operative banks, the same are disallowed by the lower authorities on the reason that interest received by the assessee is eligible for deduction under Section 80P(2)(d) of the Act only when it is received from co-operative society other than interest received from savings bank account.

12. We have heard both the parties and perused the material on record. The learned Authorised Representative submitted that as per the decision of Hon'ble jurisdictional Karnataka High Court in the case of Guttigedarara Credit Co-operative Society Limited Vs. ITO 377 ITR 464 and also in the case of CIT Vs. Totagars Co-operative Sales Society Ltd. 392 ITR 74 (Kar), the interest received by the co-operative society from deposit kept with co-operative bank is entitled for deduction under Section 80P(2)(d) of the Act. The learned Authorised Representative relied on the decision of Bangalore Bench of Tribunal in the case of Menasi Seemaya Group Gramangala Seva Sanghe Niyamita Vs. DCIT in ITA Nos.609 & 610/Bang/2014. However, the D.R. is of the opinion that the interest received on savings bank account is not in accordance with above judgments. In our opinion, as per the Section 80P(2)(d) of the Act, the only condition for availing the deduction under this provision is any income by way of interest or dividend derived by the co-operative society from its investment with any other co-operative society, the whole of such income is allowable as a deduction. Therefore there is no condition for the assessee society to invest in Fixed Deposits only. As regards the co-operative bank shall be treated as co-operative society for the purpose of interest income on investment in such co-operative bank Under Section 80P(2)(d) of the Act. It was decided by the Hon'ble Supreme Court in the Totgara Co-operative Sales Society Ltd. cited supra that while interpreting the Section 80P(2)(a) of the Act, the surplus fund not immediately require for the business and

invested in short term deposit would be assessable under the head 'income from other sources' where the co-operative societies engaged in carrying in the business of banking are providing credit facilities to its members and consequently no deduction is allowable Under Section 80P(2)(a)(i) of the Act. Whereas in the case before us, the issue is whether co-operative society which is derived income on investment with the co-operative bank is entitled for deduction Under Section 80P(2)(d) of the Act. The provisions of Section 80P(2)(d) of the Act provides deduction in respect of income by way of interest or dividend on investment made with other co-operative societies. As per Section 80P(2)(d) of the Act, if the income is included in total income then the assessee society is entitled for deduction Under Section 80P(2)(d) of the Act. In other words, to avail deduction Under Section 80P(2)(d)(i) of the Act, if the assessee carries on business of the banking or providing credit facilities to its members and it must have income of interest or dividend on investment with other co-operative societies may or may not engage in banking providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under the said Section. The society having surplus funds which are invested in savings bank account and the income is included total, the assessee is entitled for deduction Under Section 80P(2)(d) of the Act. Being so, we direct the Assessing Officer to grant the deduction Under Section 80P(2)(d) of the Act. Even the deposits in S.B Account is also an investment by the assessee and the assessee has deposited

surplus funds in S.B. Account so as to meet its urgent needs and it cannot be said that the assessee is not entitled to deduction under Section 80P(2)(d) of the Act.

This ground of appeal is allowed for the A.Ys 2014-15 & 2015-16.

13. In the result, appeals of the assessee are partly allowed.

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

Sd/-

**(N.V. VASUDEVAN)
VICE PRESIDENT**

Sd/-

**(CHANDRA POOJARI)
ACCOUNTANT MEMBER**

Dated: 3.11.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore