

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

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA No.903/Bang/2023
Assessment Year : 2017-18

M/s. Bantwal Public Employees Consumers Co-operative Society, Kaikamba, Jodumarga, Bantwala – 574 219, Dakshina Kannada. PAN : AABAB 0979 P	Vs.	ITO, Ward – 2(3), Mangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sriram V. Roa, CA
Revenue by	:	Shri. Ganesh R Ghale, Standing Counsel for Revenue.

Date of hearing	:	18.12.2023
Date of Pronouncement	:	18.12.2023

ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 20.09.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. The grounds raised read as follows:

1. *That the learned Commissioner of Income Tax (Appeals) [CIT(A)] has erred on facts and in circumstances of the case and in law so far as his order passed under section 250 of the Income Tax Act, 1961 ('the Act') which is prejudicial to the interest of the Appellant.*
2. *That the learned CIT(A) has erred on facts and in circumstances of the case and in law by confirming the Assessment order passed by the learned Assessing Officer who has held that the interest received by the*

Appellant from Cooperative Banks is not eligible for deduction u/s 80P(2)(d) of the Act.

3. *That the learned CIT(A) has erred on facts and in circumstances of the case and in law by considering that the interest received by the Appellant from Co operative Banks is not eligible for deduction even u/s 80P(2)(a)(i) of the Act.*
4. *That the learned CIT(A) has erred on facts and in circumstances of the case and in law by confirming the disallowance of deduction u/s 80P(2)(d) of the Act on the interest income earned from other co operative banks, as the definition cooperative society includes co operative banks as well.*
5. *The Learned CIT (A) has erred on facts and in circumstances of the case and in law by disregarding the comprehensive submission made by the Appellant during the course of appellate proceedings by highlighting the various judicial decisions rendered in favour of the assessee.*
6. *The appellant hereby crave to add, amend, modify, alter or delete any part or portion of these grounds of appeal at any stage during the hearing proceedings and any such addition, amendment, modification, alteration or deletion, if made, shall be deemed to be the part of these grounds of appeal.*

3. Brief facts of the case are as follows:

Assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. It is engaged in the business of taking deposits and providing credit facilities to its members. Assessee has also earned rental income. For the Assessment Year 2017-18, return of income was filed on 29.10.2017 declaring income of Rs.19,750/- after claiming deduction under section 80P of the Act, amounting to Rs.25,54,125/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 10.08.2018. During the course of assessment proceedings, assessee was directed to explain the claim of

deduction under section 80P of the Act. Assessee, vide its letter dated 11.12.2019, had explained that it is entitled to deduction under section 80P of the Act. However, the explanation of the assessee was rejected and assessment was completed under section 143(3) of the Act vide order dated 27.12.2019. In the said assessment order, the AO denied the claim of deduction under section 80P of the Act. The AO held that assessee has not complied with the principle of mutuality and relied on the judgment of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd., reported in (2017) 397 ITR 1. Further the AO held that the total amount claimed as deduction under section 80P of the Act is in respect of interest earned on deposit with Co-operative Banks and in view of the judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totagars Co-operative Sale Society Ltd., reported in 395 ITR 611 (Karnataka), the assessee is not entitled to claim of deduction under sections 80P(2)(a)(i) or 80P(2)(d) of the Act.

4. Aggrieved by the Assessment Order, assessee filed appeal before the First Appellate Authority (FAA). The CIT(A) partly allowed the appeal of the assessee. The CIT(A) held that assessee is entitled to deduction under section 80P(2)(a)(i) of the Act. The CIT(A) held that the associate / nominal members of the assessee as per the provisions of the Karnataka State Co-operative Societies Act and the relevant Rules, is "member" who is entitled to voting rights and therefore there is no violation of principle of mutuality. In this context, the learned CIT(A) relied on the judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, reported in 431 ITR 1. As regards the interest received on investments with co-operative banks, the CIT(A) confirmed the view taken by the AO. The CIT(A) followed the order of the Bangalore Bench of the Tribunal in the case of Vasavamba Co-operative Society Ltd., Vs. PCIT in ITA No.453/Bang/2020 (order dated 13.08.2021), which in turn had followed the

judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totagars Co-operative Sale Society Ltd., (supra).

5. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book comprising of 242 pages enclosing there in the case laws relied on, the submissions made, brief facts of the case, etc. The learned AR reiterated the submission made before the AO and the CIT(A).

6. Learned standing counsel supported the orders of the CIT(A).

7. I have heard the rival submissions and perused the material on record. The solitary issue that is raised is whether CIT(A) is justified in confirming the disallowance of claim of deduction under section 80P(2)(d) of the Act with respect to interest earned out of investments with co-operative banks. The Hon'ble jurisdictional High Court in the case of PCIT Vs. Totagars Co-operative Sale Society Ltd., (supra) had categorically held that interest income earned out of the surplus fund is to be taxed under the head "income from other sources" and is not entitled to deduction under section 80P(2)(a)(i) of the Act. Further, the Hon'ble jurisdictional High Court held that interest income received from co-operative banks cannot be equated with interest received from co-operative society and therefore is not entitled to deduction under section 80P(2)(d) of the Act. The CIT(A) had relied on the order of the Bangalore Bench of the Tribunal in the case of Vasavamba Co-operative Society Ltd., Vs. PCIT (supra). The Bangalore Bench of the Tribunal considered the judicial pronouncements on the subject and had followed the judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totagars Co-operative Sale Society Ltd., reported in 395 ITR 611 (Karnataka). Since the relevant finding of the Bangalore Bench of the Tribunal

has been reproduced in the impugned order of the CIT(A), the same is not reiterated here. Therefore, in the light of the judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totagars Co-operative Sale Society Ltd., (supra), I hold that assessee is not entitled to deduction under sections 80P(2)(a)(i) or 80P(2)(d) of the Act with regard to the interest income that is received from the scheduled banks / co-operative banks. It is ordered accordingly.

8. In the result, appeal filed by the assessee is dismissed.

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

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 18.12.2023.

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.