

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
“SMC”**

ITA No.133/Bang/2020
Assessment Year: 2011-12

M/s. Srinagara Credit Cooperative Society Limited No.897, 1 st Floor, 12 th Main Road 4 th Cross, Hanumanth Nagar Bengaluru 560 019. PAN NO : AAAAS9196A	Vs.	ITO Ward-5(2)(5) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of Hearing	:	20.04.2021
Date of Pronouncement	:	21.04.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 29.11.2019 passed by Ld. CIT(A)-5, Bengaluru and it relates to the assessment year 2011-12. The grounds of appeal and the additional grounds of appeal urged by the assessee give rise to the following issues:

- a) Validity of re-opening of assessment u/s 148 of the Income-tax Act,1961 [‘the Act’ for short].
- b) Denial of exemption u/s 80P(2)(d) of the Act in respect of interest income earned from Co-operative banks.

- c) Denial of deduction u/s 80P of the Act in respect of commission income earned on sale of e-stamps.

2. I heard the parties and perused the record. The facts relating to the case are stated in brief. The assessee originally filed its return of income declaring nil total income after claiming deduction u/s 80P of the Act. In assessment year 2013-14 & 2014-15, the A.O. rejected the claim for deduction u/s 80P of the Act. Consequently, the A.O re-opened the assessment of year under consideration by issuing notice u/s 148 of the Act. In the reopened assessment, the A.O. rejected the claim for deduction u/s 80P of the Act by holding that the assessee is dealing with Nominal members and hence, fails in the Principle of mutuality. In support of this proposition, the AO placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (250 Taxman 78). Accordingly, the AO held that the assessee is not eligible for deduction u/s 80P of the Act. The assessee had also earned commission income on sale of e-stamps and the A.O. held that the same is not eligible for deduction u/s 80P of the Act. The assessee had also earned interest income of Rs.27.75 lakhs from deposits kept with various co-operative banks. The main contention of the assessee is that the interest income is eligible for deduction u/s 80P(2)(a)(i) of the Act. In the alternative, the assessee claimed that the same is deductible u/s 80P(2)(d) of the Act. The A.O. rejected the alternative claim also by following decision rendered by Hon'ble Karnataka High Court in the case of Principal CIT Vs. Totgars Co-operative Sales Society (2017) 83 Taxmann.com 140. Accordingly, the A.O. brought to tax the entire income of the assessee.

3. In the appellate proceedings, the Ld. CIT(A) noticed that the assessee has not transacted its business with nominal members

and accordingly, held that the facts of the present case is distinguishable from the facts prevailing in the case of Citizen Co-operative Society Ltd. (supra). Accordingly, the Ld. CIT(A) held that the assessee is eligible for deduction u/s 80P(2)(a)(i) of the Act in respect of its business income. However, he confirmed the disallowance u/s 80P(2)(d) of the Act in respect of interest income and also rejection of deduction u/s 80P(2)(c) in respect of commission income earned on sale of e-stamps. Aggrieved, the assessee has filed this appeal before the Tribunal.

4. Before the Tribunal, the assessee has raised a legal issue challenging the validity of re-opening of assessment besides contesting the disallowance of deduction u/s 80P(2)(c) and 80P(2)(d) of the Act.

5. I first take up the issues urged on merits. With regard to claim for deduction u/s 80P(2)(d) of the Act, the Ld. A.R. submitted that the Hon'ble Karnataka High Court has passed an order in the case of Totgars Co-operative Sales Society Ltd. (58 Taxmann.com 35), consequent to the setting aside of the issue relating to deduction u/s 80P(2)(d) of the Act to its file by Hon'ble Supreme Court. The Hon'ble Karnataka High Court has held in the case reported in 58 taxmann.com 35 that the assessee is eligible for deduction of proportionate cost, administrative and other expenses against the interest income. The Ld. A.R. submitted that the above said decision of Hon'ble High Court of Karnataka has been followed by the Bengaluru Bench of Tribunal in the case of Karkala Co-op. S. Bank Ltd. Vs. ITO (ITA No.1288 & 1289/Bang/2019 dated 18.2.2021). Accordingly, he prayed that similar direction may be given in this case also. With regard to commission earned on sale of e-stamps, the Ld A.R submitted that the assessee is eligible for deduction u/s 80P(2)(c) of the Act.

6. The Ld D.R admitted that the decision rendered by the Hon'ble Karnataka High Court in the case of Totgars Co-operative Sales Society Ltd. (58 Taxmann.com 35) may be applied in the instant case. With regard to the deduction claimed u/s 80P(2)(c) in respect of Commission income, the Ld D.R fairly agreed that the assessee is eligible for the said deduction in respect of commission income.

7. I heard the parties and perused the record. In the case of Karkala Co-op. S. Bank Ltd. Vs. ITO (supra), 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 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".

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".

8. The next issue relates to the deduction claim u/s 80P(2)(c) of the Act in respect of commission income earned on sale of e-

stamps. I notice that the tax authorities have rejected the claim only on the ground that the Commission income has been earned mainly from outsiders and not mainly from members. However, a perusal of provisions of sec.80P(2)(c) would show that there is no such restriction prescribed in it. Section 80P(2)(c) prescribes deduction in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b). It further states that the deduction u/s 80P(2)(c) is allowable to so much of its Profits and gains attributable to such activities as does not exceed the amount prescribed. Thus the quantum of deduction is the amount of “profits and gains **attributable to the activities**” subject to the maximum amount prescribed therein. Hence, I am of the view that the assessee would be eligible for deduction u/s 80P(2)(c) of the Act in respect of commission income on sale of e-stamps, since it is not one of the activities mentioned in clause (a) or (b). However, I notice that it is necessary to first determine the profits and gains attributable to the “activities of earning commission income on sale of e-stamps” and then compute deduction u/s 80P(2)(c) subject to the limits prescribed in the said provision. Accordingly, this issue requires fresh examination at the end of AO. Accordingly, I set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO for examining it afresh in the light of discussions made supra.

9. Since I have decided the issues contested on merits in favour of the assessee, the legal issue urged by the assessee would become academic. Hence I decline to adjudicate the same and leave the same open.

10. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on 21st Apr, 2021

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

Bangalore,
Dated 21st Apr, 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.