

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri George George K, JM and Shri B.R.Baskaran, AM**

ITA No.371/Bang/2020 : Asst.Year 2016-2017

M/s.Kokkada Primary Agricultural Credit Co-operative Society Ltd. 2-26-2 Kokkada Primary Agri Cr Co-op Society, Kokkada Post and Village, Belthangady Taluk D.K. 574198 <b>PAN : AACAK5603Q.</b>	v.	The Income Tax Officer Puttur.
(Appellant)		(Respondent)

Appellant by : Sri. Srikrishna, CA  
Respondent by : Sri.Sankar Ganesh K, JCIT-DR

<b>Date of Hearing : 28.10.2021</b>	<b>Date of Pronouncement : 29.10.2021</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 09.01.2020. The relevant assessment year is 2016-2017.

2. The grounds raised read as follows:-

*"1. Your appellant is a primary agricultural credit co-operative society engaged mainly in the business of providing credit facilities to its member-agriculturists and distribution of ration articles, distribution of fertilizer's, provider of crop insurance facility, link between government and farmers in case of agricultural related subsidy loan schemes in rural village areas, where till now there is no banking facility is reached.*

*2. Your appellant submits that being a Primary Agricultural Credit Co-operative Society, they are eligible for deduction u/s 80P of the Income Tax Act in respect of interest and dividend earned from their investment with the South Canara District Co-operative Bank Ltd.*

3. Your appellant submits that the decision of the honorable Supreme Court in the case of Citizens co-op. Society is not applicable to their case and provide the following comparative analysis:

<i>Case of Citizen Co-operative Society Limited</i>	<i>Position of our Society</i>
<i>Citizen Co-operative Society is governed under the Andhra Pradesh Mutually aided Co-op Societies Act, 1995 (APMACSA). Whereas there is separate Andhra Pradesh Co-op. Societies Act, 1964 governing primary agricultural credit Co-op Societies.</i>	<i>Ours is a Primary Agricultural Credit Co-operative Society governed by the Karnataka Co-operative Societies Act, 1959, which is akin to Andhra Pradesh Co-op. Societies Act, 1964.</i>
<i>No statutory provision regarding having nominal members, but the societies can have nominal members only as per the provisions of their respective by-laws.</i>	<i>Societies are statutorily allowed to have nominal members as per the provisions of section 2(f) and section 18 of the Karnataka Co-operative Societies Act, 1959.</i>
<i>Most of the business of the society was with the 'nominal members'.</i>	<i>Most of the business of the society is with regular members. Only a very small percentage of business is with nominal members.</i>
<i>There is no Government control or participation in societies registered under the APMACSA</i>	<i>There is major Government control over the activities of our society. Being a primary agricultural credit society, major portion of loans are given to the farmers as per the rules framed by the Government. These loans are supervised by the district central co-operative bank. Further the elections to the office bearers are conducted under the supervision of the State Government.</i>

Considering the question of 'mutuality', we once again insist that the major portion of transactions are with the regular members and only a very small portion of transactions are with the nominal members.

Further there are no co-op. societies in the State of Karnataka which do not have nominal members. Hence applying the decision of the honorable Supreme Court in this manner will result in disallowance of section 80P deduction for all the co-op. societies and will render the section infructuous.

4. The learned AO erred in applying the decision in the case of the The Tatagars Co-op. Sale Society in ITA No.100066 of 2016, where the respondent society was a

*'Marketing Co-op. Society', whereas your appellant is a 'primary agricultural credit co-operative society'. Hence there no analogy between the two.*

5. *Your appellant submits that the provisions of section 80P(4) restrict the applicability of section 80P to 'Co-operative Bank', only to the extent of claiming deduction under this section i.e. a Co-operative Bank is barred from claiming deduction u/s 80P in respect of its income.*

*However it does not stretch to the extent of restricting deduction u/s 80P(2)(d) to other co-operative societies in respect of their investment in a co-operative Bank.*

*If the high court decision referred above is applied as it is, only 'primary agricultural credit co-operative societies' can claim deduction u/s 80P and no other co-operative societies are eligible for deduction u/s 80P.*

*Even in that case, since the appellant is a 'primary agricultural credit co-operative society, it is eligible for the said deduction.*

6. *In view of the above facts, and on such other grounds that may be urged at the time of hearing of the appeal, the appellant prays to allow the appeal and impart justice."*

2. The brief facts of the case are as follows:

The assessee is a primary agricultural credit society registered under the Karnataka Co-operative Societies Act, 1959. It is engaged in providing credit facilities to its members. For the assessment year 2016-2017, the return of income was filed declaring total income of Rs.8,435 after claiming deduction u/s 80P of the I.T.Act amounting to Rs.60,71,501. The return of income was selected for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The assessment u/s 143(3) was completed vide order dated 10.12.2019 wherein the claim of deduction u/s 80P of the I.T.Act was denied by the Assessing Officer. The Assessing

Officer held that the assessee has violated the principles of mutuality by placing reliance on the judgment of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT reported in 397 ITR 1 (SC)*. The Assessing Officer also denied the claim of deduction u/s 80P(2)(d) of the I.T.Act since interest / dividend income was earned out of investments with co-operative banks. For denying the claim of deduction u/s 80P(2)(d) of the I.T.Act, the Assessing Officer relied on the judgment of the Hon'ble Karnataka High Court in the case of *Totagars Co-operative Sales Society reported in 395 ITR 611 (Kar.)*.

3. Aggrieved by the disallowance of deduction u/s 80P of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The CIT(A) held that the assessee was having substantial dealings with non-members (nominal members), therefore, in view of the judgment of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT (supra)*, the assessee is not entitled to any deduction u/s 80P of the I.T.Act. It was further held by the CIT(A) that since the assessee has violated the principles of mutuality, deduction u/s 80P(2)(d) of the I.T.Act is also not to be allowed.

4. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR relied on the latest judgment of the Hon'ble Apex Court in the case of *M/s.Mavilayi Service Co-operative Bank Ltd. v. CIT reported*

in 431 ITR 1 (SC). It is further submitted by the learned AR that if the interest income is assessed as income from other sources, necessarily, the cost incurred for earning such interest income should be allowed as deduction u/s 57 of the I.T.Act. In this context, the learned AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Totagars Co-operative Sales Society* reported in (2015) 58 taxmann.com 35 (Kar.).

5. We have heard rival submissions and perused the material on record. The Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra)* had held that the co-operative societies providing credit facilities to its members is entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act. The Hon'ble Apex Court after considering the judicial pronouncements on the subject, had stated the term "member" has not been defined under the Income-tax Act. It was, therefore, stated by the Hon'ble Apex Court that the term "member" in the respective State Co-operative Societies Acts under which the societies are registered have to be taken into consideration. The Hon'ble Apex Court held that if nominal / associate member is not prohibited under the said Act, for being taken as a member, the income earned on account of providing credit facilities to such member also qualify for deduction u/s 80P(2)(a)(i) of the I.T.Act. It was further held by the Hon'ble Apex Court that section 80P(4) of the I.T.Act is to be read as a proviso. It was stated by the Hon'ble Apex Court that section 80P(4) of the I.T.Act now specifically excludes only co-operative banks which are co-operative societies

engaged in the business of banking i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. The Hon'ble Apex Court had enunciated various principles in regard to deduction u/s 80P of the I.T.Act. On identical factual situation, the Bangalore Bench of the Tribunal in the case of M/s.Ravindra Multipurpose Co-operative Society Ltd. v. ITO in ITA No.1262/Bang/2019 (order dated 31.08.2021) had remanded the issue to the files of the A.O. for *de novo* consideration. The Tribunal directed the A.O. to follow the dictum laid down by the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra)*. The relevant finding of the Co-ordinate Bench of the Tribunal in the case of M/s.Ravindra Multipurpose Co-operative Society Ltd. v. ITO (*supra*), reads as follows:-

*“6. Grounds 2-4 & additional Ground No.1:  
In respect of associate / nominal members, Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC) 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. In view of this, the facts are to be examined in the light of principles laid down by the Hon'ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. (surpa). Accordingly, we remit this issue of deduction u/s 80P(2)(a)(i) of the Act to the files of Ld.AO to examine the same de novo in the light of the above judgment. Needless to say that proper opportunity of being heard is to be granted to assess in accordance with law.”*

5.1 In view of the order of the ITAT, which is identical to the facts of the case, we restore the issue of claim of deduction u/s 80P of the I.T.Act to the files of the A.O. for *de novo* consideration.

5.2 As regards the claim of deduction u/s 80P(2)(d) of the I.T.Act, the CIT(A) has not adjudicated the same for the reason that the assessee has violated the principle of mutuality. If the assessee receives / earns interest / dividend income out of investments with co-operative society, the same is entitled to deduction u/s 80P(2)(d) of the I.T.Act. With these observations, we direct the A.O. to examine the claim of deduction u/s 80P(2)(d) of the I.T.Act, afresh.

5.3 Insofar as assessee's claim that if interest income is to be assessed income from other sources, necessarily, the cost incurred for earning such interest income should be allowed as deduction u/s 57 of the I.T.Act, we find an identical issue was considered by the Hon'ble jurisdictional High Court in the case of Totgars Co-operative Sales Society Ltd. v. ITO reported in [2015] 58 Taxmann.com 35 (Karnataka) (judgment dated 25.03.2015). The relevant findings of the Hon'ble High Court, read as follows:-

*“11. Having heard the learned counsel for the parties and perusing the records and in the light of the finding recorded by the Hon'ble Supreme Court that the interest income earned by the appellant falls within the category of “other income” what falls for consideration is to answer the question as to whether the Tribunal was right in law in holding that the income by way of interest was chargeable to tax under Section 56 of the Income Tax Act without allowing deduction in respect of proportionate costs incurred as permissible under Section 57.*

*12. It is no doubt true that the appellant did initially claim deduction under Section 80P(2). Upon the pronouncement of the order by the Apex Court, in these appeals referred to supra, the income earned on the interest is declared as “other income” falling under Section 56 of the Income Tax Act. Then the next immediate question that follows is as to whether the entire fund i.e., in deposit with the Bank is taxable or the proportionate expenditure incurred by the appellant requires*

*deduction. It is logical that when the Revenue is permitted to assess and recover taxes from assessee under Section 56 by treating the income earned by interest as income from "other sources", the appellant shall be entitled for proportionate expenditure cost incurred in mobilizing the deposit placed in the Bank/s. What can be taxed is only the net income which the appellant earns after deducting cost and expenditure incurred and administrative expenses incurred by the assessee.*

*13. Accordingly, we answer the question of law and hold 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 the proportionate costs, administrative expenses incurred in respect of such deposits."*

5.4 The assessee has not raised the plea before the Income Tax Authorities that it has to be given deduction u/s 57 of the I.T.Act, in respect of expenditure for earning the interest income. However, inspite of such plea not being raised before the lower authorities, we are of the view that since the fundamental principle under Income-tax Act being that only net income has to be taxed and not the gross income, this plea of the assessee has to be necessarily entertained, especially in the light of the judgment of the Hon'ble jurisdictional High Court in the case of Totgars Sales Co-operative Society Limited v. ITO [2015] 58 taxmann.com 35 (Karnataka). Accordingly, the issue of deduction u/s 57 of the I.T.Act is restored to the files of the A.O. The A.O. is directed to examine whether assessee has incurred any expenditure for earning interest income, which is assessed under the head 'income from other sources'. If so, the same shall be allowed as deduction u/s 57 of the I.T.Act. The assessee is directed to co-operate with the department and furnish the necessary

evidence for expeditious disposal of the matter. It is ordered accordingly.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 29<sup>th</sup> day of October, 2021.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 29<sup>th</sup> October, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mangaluru.
4. The Pr.CIT, Mangaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore