

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1567/Bang/2018
Assessment year : 2014 – 15

M/s. The Mysore District Co-operative Milk Producers Society Union Ltd., T. Narasipura Road, Siddartha Nagar, Mysore. PAN : AAAA 2764 P	Vs.	The Assistant Commissioner of Income-tax, Circle 2(1), Mysuru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Prathibha, Advocate
Revenue by	:	Shri. Manjeet Singh, Addl. CIT DR
Date of hearing	:	06.08.2020
Date of Pronouncement	:	21 .08.2020

ORDER

PER ARUN KUMAR GARODIA, A. M.:

This appeal is filed by the assessee and the same is directed against the order of CIT(A), Bengaluru, dated 30.11.2017, for Assessment Year 2014-15.

The assessee has raised various grounds but the only issue in dispute is regarding rejection of assessee’s claim for deduction under section 80p(2)(d) of the Income Tax Act, 1961(hereinafter called ‘the Act’) in respect of bonus received by the assessee from M/s. Karnataka Co-operative Milk Producers’ Federation (KMF) of Rs.22,67,980/-.

2. In the course of hearing, learned AR of the assessee submitted that the terms used in section 80p(2)(d) of the Act are interest or dividend derived by the Co-operative Society from its investments with any other Co-operative Society. Regarding this aspect that the investments of the assessee society is KMF, she submitted that the balance sheet of the assessee society is available on page 40 of the Paper Book as per which there is investment of Rs.7,70,53,491/- and the details of these investments are available on page 55 of the Paper Book and she pointed out that this includes an amount of Rs.95.65 lakh in investment in shares of KMF. Regarding the receipt of income from KMF on account of this investment, it can be seen that on page 37 of the Paper Book that the assessee has received an amount of Rs.22,67,980/- as bonus from KMF and Rs.20,93,520/- as dividend from KMF. It was submitted by her that there is no dispute about the amount received as dividend but as per the AO and CIT(A), the amount of bonus received from KMF cannot be considered as dividend or interest provided in section 80p(2)(d) of the Act. She also submitted that copy of Bye Laws of KMF is available on pages 65 to 96 of the Paper Book and in particular our attention was drawn to para 32 of the Bye Laws which is regarding distribution of profits and thereafter it was pointed out that in para 33 of the Bye Laws, it is described that 25% of the net profit is to be transferred to reserve fund and out of the remaining profit, bonus should be given to the members not exceeding 25% and dividend to be given to the members not exceeding 25% of the share investments. She submitted that both i.e., bonus and dividend is given by KMF to its members as distribution of net profit, only the basis of distribution of the amount is different and therefore the nature of bonus should be accepted as dividend only and deduction should be allowed under section 80p(2)(d) of the Act. As against this, learned DR of the Revenue supported the order of CIT(A).

3. We have considered the rival submissions. First of all, we reproduce the provisions of section 80p(2)(d) of the Act which are as under:

“.....

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;”

4. Now we reproduce the relevant paras of Bye Law of KMF which is at paras 32 and 33 on pages 92 and 93 of the Paper Book.

“32.0 Distribution of Profits:

To distribute net profit, the following procedure shall be adopted All interest accrued due, but not actually realised shall be deducted from the gross profits for the year, before the net profits are arrived at. So much of the accrued interest that has been so deducted from the profits of the year, as are actually recovered during the subsequent year, may be added to the profits of the subsequent year. The-Registrar may, in special cases and after due enquiry, permit a society to treat interest accrued due for a period not exceeding one year profits; but, if the amount so permitted to be treated profits is not actually recovered during the subsequent years, it shall be deducted from the profits of such subsequent year before the net profits of the year are arrived at;

- a) All interest paid and due for the year shall be charged off to profit*
- b) All management expenses paid and due for shall be charged off to profit;*
- c) All rents, rates, taxes, subscriptions and insurance charges paid and due for the year shall be charged off to profit;*
- d) Audit fee due for the year in accordance with the scale fixed by Government shall be charged off to profit.*
- e) Adequate provision for depreciation on furniture, stock buildings, land and other property owned by the Society shall be made in accordance with the provisions of the bye-laws and charged off to profit;*
- f) Contribution towards Trade fluctuation fund 1-3% of turnover.*

g) Any other items notified by the Registrar

33.0 Distribution of net profit:

Not less than 25% to be transferred to Reserve Fund.”

5. From the provisions of section 80p(2)(d) of the Act reproduced above, it comes out that the dividend and interest received by a society from its investment in any other society is eligible for deduction under section 80p(2)(d) of the Act and this is the stand of the AO and the CIT(A) that out of the dividend received by the assessee from KMF is eligible for deduction under section 80p(2)(d) of the Act but the amount of bonus received by the assessee from KMF is not eligible for deduction under section 80p(2)(d) of the Act. Hence, we have to decide this aspect as to whether the nature of bonus income received by the assessee from KMF can be considered as dividend received from KMF or not. In this regard, we find that Rules 33 and 34 of the Bye Law of the KMF as reproduced above are relevant in this regard. We find that as per these Rules, 25% of the profit is to be transferred to reserve fund and 25% to be transferred to Co-operative Education Fund which is payable to Karnataka State Co-operative Society Federation and out of the remaining profit, bonus is payable to the members not exceeding 25% of their business transaction with federation and from other payment to be made to Nandini Dairy Farmers Welfare Trust towards development of affiliated milk union, Co-operative propaganda fund and out of the remaining profit dividend is to be given to the members not exceeding 25% of the share investments. In view of these Bye Laws of KMF, it is seen that every member is entitled to receive some amount as bonus and some amount as dividend as distribution of net profit by KMF on the basis of computing the allowable to be paid by the KMF is different. Bonus is payable for the members with the transaction with KMF and this is the restriction that it should not exceed 25% of the

remaining profit after transfer to reserve fund and contribution to Co-operative Education Fund. The dividend is payable as percentage of investment of members out of remaining profit after deducting all other payments to be made such as transfer to reserve fund, contribution to Co-operative Education Fund, Bonus to Members, contribution towards infrastructure fund, contribution towards Nandini Dairy Farmers welfare trust, contribution towards development of affiliated milk union, contribution towards the co-operative propaganda fund, contribution towards Bad Debt Fund and contribution towards charitable fund and dividend is payable only if there is remaining profit after these transfers as noted above and such dividend should not exceed 25% of share investment. Hence, it is seen that the computation mechanism for payment of bonus and dividend are different but both are towards distribution of net profit of KMF. This is also accepted legal position that dividend is only distribution of net profits. Under these facts, we find force in the argument of learned AR of the assessee that the nature of bonus received by the assessee from KMF is nothing but dividend only although the mechanism of its computation is different because both bonus and dividend are paid to the assessee as distribution of net profit only. We, therefore, direct the AO to consider the amount of bonus received by the assessee from KMF as dividend received from KMF and allow deduction under section 80p(2)(d) of the Act in respect of receipt of bonus also. Accordingly, this issue is decided in favour of the assessee.

6. In the result, assessee's appeal is allowed.

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

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: 21st August, 2020.

/NS/*

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

By order

Assistant Registrar,
ITAT, Bangalore.