

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

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.2941/Bang/2018
Assessment Year : 2015-16

M/s. Shri Prabhulingeshwar Urban Co-operative Credit Society Ltd., K. M. Manani Building, Bazar Road, Saundatti, Dist. Belagavi – 591 126. <b>PAN: AAGAS 1027 G</b>	Vs.	The Income Tax Officer, Ward – 1(5), Belagavi.
APPELLANT		RESPONDENT

Appellant by	:	Shri. S. Ramasubramanian, CA
Respondent by	:	Shri. D. Kiran, JCIT

Date of hearing	:	01.01.2019
Date of Pronouncement	:	17.01.2019

**ORDER**

*Per Jason P Boaz, Accountant Member*

This appeal by the assessee is directed against the order of CIT(A), Belgaum dated 18.09.2018, for Assessment Year 2015-16.

2. Briefly stated, the facts of the case are as under:

2.1 The assessee, a Co-operative Society registered under the Karnataka State Co-operative Societies Act, 1959, filed its return of income for

Assessment Year 2015-16 on 27.09.2015 declaring NIL income, after claiming deduction of Rs.11,37,984/- u/s 80P(2)(a)(i) of the Income Tax Act, 1961 (in short 'the Act'). The case was taken up for scrutiny and the assessment completed u/s 143(3) of the Act vide order dated 16.11.2017 wherein the assessee's income was determined at Rs.11,37,984/-; on the ground that since the assessee is dealing with nominal and associate members, therefore it is not eligible for deduction u/s 80P(2)(a)(i) of the Act. In coming to this view, the Assessing Officer (AO) followed the decision of the Hon'ble Apex Court in the case of Citizens Co-operative Society Ltd., (397 ITR 1)(SC).

2.2 Aggrieved, the assessee preferred an appeal before the CIT(A), Belgaum; who dismissed the appeal vide order dated 18.09.2018. In this order, the learned CIT(A) further held that since the nominal members of the society exceed 15% of the regular members, it is a violation of Karnataka State Co-operative Societies Act, 1959 and confirmed the AO's disallowance of the assessee's claim for deduction u/s 80P(2)(a)(i) of the Act.

3. Aggrieved by the order of CIT(A), Belgaum dated 18.09.2018 for Assessment Year 2015-16, the assessee has preferred this appeal before the Tribunal, wherein it has raised the following grounds:

- 1. That the order of the learned Commissioner of Income tax in so far it is prejudicial to interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.*

2. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the disallowance of Rs. 11,37,984/- u/s. 80P(2)(a)(i) on the ground that the nominal members of the appellant exceeds 15% of the Regular members therefore, it is violation of provisions of Karnataka Co-operative Societies Act, 1959.*
3. *That the finding of the learned Commissioner of Income Tax (Appeals) that the appellant has violated the provisions of Karnataka Co-operative Societies Act, 1959 is perverse and contrary to the materials available on record.*
4. *Without prejudice to the above grounds that the learned Commissioner of Income Tax (Appeals) erred in law and on facts in denying the deduction u/s. 80P of the Act even though the appellant has not violated provisions of section 80P of the Act.*
5. *Without prejudice to the above grounds, that the learned Commissioner of Income Tax (Appeals) ought to have allowed the deduction u/s. 80P(2)(a)(i) on proportionate basis to the extent of income from Regular Members.*

4.1 The learned AR of the assessee was heard in support of the grounds raised. The learned AR submitted that the AO disallowed the assessee's claim for deduction u/s 80P(2)(a)(i) of the Act as he was of the view that the decision of Hon'ble Apex Court in the case of Citizens Co-operative Society Ltd., (397 ITR 1) was squarely applicable to the facts of the case on hand. According to the learned AR, even though before the CIT(A) it was contended that the decision of the Hon'ble Apex Court is distinguishable since Karnataka Co-operative Societies Act, 1959 permits a Co-operative society to admit nominal members, the CIT(A) did not deal with this contention, but rather went on to hold that the total number of nominal members and associate members cannot exceed 15% of total members.

4.1.2 As per the information on record, the details of regular members, nominal members, etc., furnished by the assessee are as under:

<b>Particulars</b>	<b>No. of Members</b>
Regular Members	774
Nominal Members	309
<b>Total</b>	<b>1083</b>
15% of Regular Members	116

The CIT(A) held that since the nominal / associate members numbering 309 was in excess of 15% of the regular members, section 18 of the Karnataka Co-operative Societies Act, 1959 is violated.

4.1.3 The learned AR submitted that section 18 of the Karnataka Co-operative Societies Act, 1959 was amended in 2014 to insert a proviso; the effect of which is that the associate members shall cease to be associate members and become regular members but does not affect nominal members. The aforesaid proviso inserted in section 18 in 2014 was substituted by Act No. 19 of 2016 to provide that on or after the Karnataka Co-operative Societies (Amendment) Act, 2014, the number of associate members under clause (a) in any Co-operative Society except employees of Co-operative Society shall not exceed 15% of the total regular membership. It is contended by the learned AR that the aforesaid amendments made in 2014 and 2016 (supra) do not have any impact on section 80P of the Act and therefore the deduction claimed by the assessee u/s 80P(2)(a)(i) of the Act is allowable.

4.2 Per contra, the learned DR for Revenue supported the orders of the authorities below.

4.3.1 I have heard the rival contentions and perused and carefully considered the material on record. It is seen that the CIT(A) has not dealt with the assessee's contention raised before him that the decision of the Hon'ble Apex Court in Citizen Co-operative Society Ltd., (supra) is distinguishable as the Karnataka Co-operative Societies Act, 1959 permits a Co-operative Society to admit nominal members and the assessee's claims that the amendments of 2014 and 2016 to the Karnataka Co-operative Societies Act, 1959 refers only to associate members and therefore would not negatively affect the allowability of the assessee's claim for deduction u/s 80P(a)(i) of the Act. In these circumstances, as narrated above, I find that the authorities below have not examined or considered whether the amendments to section 18 of the Karnataka Co-operative Societies Act, 1959 impacts the claim of deduction u/s 80P of the Act. I, therefore, deem it appropriate to set aside the orders of the authorities below and remand the matter of allowability of the assessee's claim for deduction u/s 80P of the Act to the file of the AO for denovo examination and consideration and adjudication as per law in the light of the above observations. Needless to add the assessee shall be afforded reasonable opportunity of being heard and to file details and submissions required, which shall be considered by the AO, before deciding these issues. The AO is accordingly directed.

5. In view of the above, I refrain from commenting or considering the grounds raised by the assessee on merits of its claim for deduction u/s 80P of the Act.

6. In the result, the assessee's appeal for Assessment Year 2015-16 is treated as allowed for statistical purposes.

Pronounced in the open court on 17.01.2019.

Sd/-  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.  
Dated: 17.01.2019.  
/NS/

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.