

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'SMC-B', BANGALORE**

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

**ITA No.1424 (Bang) 2019
(Assessment year : 2016 – 17)**

M/s. Vikasha Vividhodesha Sahakara Sangha Niyamitha, Appellant
1 – 20 – A, Guruvayunkere,
Belthangady – 574217.
PAN. AABAV0539P

Vs

The ITO, Ward – 1, Respondent
Puttur.

Assessee by : Shri Sandeep C., C. A.

Revenue by : Shri Ganesh R. Ghale, Standing Counsel

Date of hearing : 23-10-2019

Date of pronouncement : 08-11-2019

ORDER

PER A. K. GARODIA, A.M.:

This appeal is filed by the assessee and it is directed against the order of
CIT (A) – Mangaluru dated 27.03.2019 for A. Y. 2016 – 17.

2. The grounds raised by the assessee read as under:-

“1. That the order of the learned Commissioner of Income-Tax (Appeals) is bad in so far it is prejudicial to the interests of the appellant 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.32,66,896/- claimed as deduction u/s. 80P(2)(a)(i) of the Act.

3. That the learned Commissioner of Income-Tax (Appeals) denied the deduction u/s. 80P(2)(a)(i) of the Act on the only ground that the appellant deals with nominal and associate members.

4. That the learned Commissioner of Income-Tax (Appeals) ought to have appreciated that the appellant is registered as Co-operative Society under Karnataka State Co-operative Societies Act, 1959 and

the said Act allows the appellant to admit nominal and associate members.

5. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not allowing the interest income of Rs.11,48,977/- on investments as deduction u/s. 80P(2)(a)(i) of the Act.

6. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not allowing the interest income of Rs.11,48,977/- on investments as deduction u/s. 80P(2)(d) of the Act.

Each of the above grounds is without prejudice to one another, the appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify each or any of the grounds of appeal either before or at the time of hearing this appeal.”

3. Learned AR of the assessee submitted that similar issue was decided by the tribunal in the case of M/s Kodavoor Vyavasaya Seva Sahakari Sangha Niyamitha & others vs. ITO in ITA Nos. 707, 762, 765,942,1190 & 1191/Bang/2019 dated 26.08.2019. He submitted a copy of this tribunal order and pointed out that in Para 5 of this tribunal order, the tribunal considered another tribunal order rendered in the case of Trapaj Vibhageeya Khet Udyog Mal Rupantar Food Processing Sahakari Mandal Ltd. Vs. DCIT in ITA No. 1328/Ahmd/2018 and relevant portion of this tribunal is reproduced. It was also pointed out that in the same Para, the judgment of Hon'ble Madras High Court rendered in the case of PCIT vs. S – 1308 Ammapet Primary Agricultural Co-operative Bank Ltd. In Tax Case Appeal No. 891 of 2018 was also considered and relevant portion of this judgment was also reproduced and it was held that by following these judicial pronouncements, entire disputed issue is restored back to AO for fresh decision with some directions. It was submitted that in the

present case also, the order of CIT (A) should be set aside and the entire matter be restored back to AO for fresh decision with similar directions.

4. Learned DR of the revenue supported the order of CIT (A). He submitted a copy of the tribunal order rendered in the case of M/s Atmashakthi Multipurpose Co – Operative Society Ltd. Vs. ITO in ITA No. 1220 & 1221/Bang/2019 dated 18.10.2019 and placed reliance on this. He pointed out that as per Para No. 5 of this tribunal order, the tribunal noted the legal position that as per the Proviso to section 18 of the Karnataka Co Operative Societies Act, 1959 w.e.f. 06.09.2014, the number of associate members in any co operative society shall not exceed 15% of the total regular members. He pointed that in A. Y. 2016 – 17 of that case, the tribunal noted that the number of Associate Members were in excess of 15% of total regular members and in the light of this factual position, the tribunal in that case in A. Y. 2016 – 17 held that the Judgment of Hon'ble Apex Court rendered in the case of The Citizen Co Operative Society Ltd. vs. ACIT, 297 ITR 1 is applicable in which it was held that if the assessee co operative society is violating the Co Operative Society Act under which it is formed, than such a society cannot be termed as a co operative society meant only for its members and providing credit facilities to its members and then such a society cannot claim the benefit u/s 80P of I T Act. He pointed out that in A. Y. 2016 – 17 of that case, the issue was decided against the assessee by following this judgment of Hon'ble Apex Court but in A. Y. 2015 – 16 of that

case, it was noted in para 7 of this tribunal order that the no. of associate members is below 15% of total regular members and therefore, in this year, the matter was restored to CIT (A) for a fresh decision with the direction that the learned CIT (A) should pass a speaking and reasoned order as to how the Judgment of Hon'ble Apex Court rendered in the case of The Citizen Co Operative Society Ltd. vs. ACIT (Supra) is applicable by giving a categorical finding as to which provision of the Karnataka Co Operative Societies Act, 1959 has been violated by the assessee in A. Y. 2015 – 16. Learned CIT (A) was also directed that if there is violation of the Karnataka Co Operative Societies Act, 1959 than the assessee is not eligible for deduction u/s 80P but if there is no such violation than the issue regarding eligibility for deduction u/s 80P should be decided on merit as per law after providing adequate opportunity of being heard to both sides. Thereafter, he pointed out that in Para 5.17 of the impugned order of CIT (A), a categorical finding is given by CIT (A) in the present case that no. of regular members in the present case is 1738 and the present assessee can have associate members up to 261 being 15% of 1738 but the present assessee is having 384 associate members and this is the violation committed by the present assessee of Karnataka Co Operative Societies Act, 1959 and therefore, this tribunal order for A. Y. 2016 – 17 is squarely applicable in the present case and therefore, the appeal of the assessee should be dismissed.

Learned AR of the assessee could not point out any factual mistake in this categorical finding of CIT (A).

5. I have considered the rival submissions. I find that the tribunal order cited by the learned DR of the revenue is squarely applicable in the present case because learned AR of the assessee could not controvert the categorical finding of CIT (A) regarding violation of the provisions of Karnataka Co Operative Societies Act, 1959 as noted above and hence, I respectfully following the tribunal order cited by the learned DR of the revenue, I decide the issue against the assessee. Regarding the tribunal order cited by the learned AR of the assessee and another tribunal order and the judgment of Hon'ble Madras High Court followed by the tribunal in that case, I find that in those three cases, this is not a finding that the assessee society is having more than prescribed number of associate members in excess of 15% of regular members and still eligible for deduction u/s 80P of I. T. Act as in the present case and in the case cited by learned DR of the revenue and because of this vital difference in facts, these judicial pronouncements are not applicable in the present case.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Bangalore

D a t e d : 08.11.2019

/MS/

Copy to :

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

By order,

AR, ITAT, Bangalore