

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.1399/Bang/2019</b>
<b>Assessment Year : 2016-17</b>

M/s Narimogaru Primary Agricultural Credit Co- operative Society Ltd., No.1, Narimogarupost, Puttur Taluk, Puttur.	<b>Vs.</b>	The Income Tax Officer Ward-1, Puttur.
<b>PAN - AACAN 4873 F</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri Prashanth G.S, C.A
Respondent by	:	Shri Pradeep Kumar, CIT

Date of Hearing	:	01-09-2020
Date of Pronouncement	:	01-09-2020

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 30/03/2019 passed by Ld.CIT (A), Bangalore for assessment years 2015-16

**2.** At the outset Ld.AR submitted that, assessee is a co-operative society registered under Karnataka co-operative societies act 1959 and is engaged in the business of providing credit facilities to its members and distribution of ration card. Only issue alledged by assessee in present appeal is regarding denial of deduction under section 80P of the Act.

**3.** Assessee during year under consideration filed 'nil' return of income after claiming deduction of Rs.84 67,703 /- under section 80P of the Act. The return was selected for scrutiny and during assessment proceedings, Ld.AO noticed that principles of mutuality were violated by assessee. Ld.AO thus denied deduction claimed under section 80P of the Act, by following decision of *Hon'ble Supreme Court* in case of *Citizen co-operative society Ltd.*, reported in *(2017)84 taxman.com114*. Ld.AO disallowed entire deduction under section 80P by observing as under:

a) interest income earned out of investment with co-operative banks was treated as income from other sources not eligible for deduction under section 80P(2)(d) relying on *Hon'ble Karnataka High Court* decision in case of *M/sTotgar's Co-operative sale Society Ltd* dated 16/06/2017.

b) The principles of mutuality were violated relying on the decision of *Hon'ble Apex court* in case of *M/s.Citizen Co-operative society Ltd.*, Hyderabad dated 08/09/2017

**4.** Aggrieved by addition made by Ld.AO, assessee preferred appeal before Ld.CIT(A)

**5.** Ld.CIT(A) observed that, nominal members do not contribute to share capital and pays Rs.50 words admission fee which is credited to P&L account. It was also recorded by Ld.CIT(A) that assessee has 279 nominal members and their not reflected in balance sheet as members at all. Ld.CIT (A) noted that, loans have been advanced to nominal members, against which interest has been earned by assessee. He also noted that the nominal members were admitted at a very low fee of Rs. 25/-as and when required.

He thus upheld observations by Ld.AO and confirmed the addition made therein relying on decision of *Hon'ble Apex court* in case of *M/s.Citizen Co-operative society Ltd.*

**6.** Aggrieved by orders of Ld.CIT(A), assessee is in appeal before us now.

**6.1.** Ld.AR referred to a chart reproduced by Ld.CIT(A) at page 10 of his order. Ld.AR submitted that,

**6.2.** Ld.AR submitted that it has not violated any of the provisions of Karnataka co-operative societies act and that members include nominal and associate members. It has been submitted that only jewel loans are given to nominal members which is about 10% of total advances, and that, such jewel loans are only given to farmers who hold agricultural land.

**6.3.** He submitted that, ratio of *Hon'ble Supreme Court* in case of *Citizen Co-operative Society Ltd., (supra)*, will not be applicable to facts of present case. Ld.AR submitted that, assessee's facts are more similar with facts in case of *Tumkur Merchans Souharda Credit*

*Co-operative Ltd. vs. ITO*, reported in 230 *Taxman* 309. He also submitted that, there has been various decisions of this *Tribunal*, wherein identical issue has been remanded to Ld.AO for due verification of facts.

7. On the contrary, Ld.Sr.DR submitted that, issue may be remanded to Ld.AO for due verification of facts in the light of decisions of *Hon'ble jurisdictional High Court*, as well as *Hon'ble Apex Court* referred to herein.

8. We have perused submissions advanced by both sides in light of records placed before us.

8.1. Grievance of assessee is that, in its case test of mutuality is satisfied, however, Ld.CIT(A) did not spell out as to how the said test fails. We are of the view that, such grievance of assessee would be addressed by setting aside issue of deduction u/s.80P(2)(a)(i) of the Act to Ld.AO for consideration afresh, with a direction to Assessee to produce certificate from RBI, that it does not possess license from it for doing banking business, and further that, business carried on by assessee is not akin to business of a co-operative bank. Further, first part of Sec.80P(2)(a)(i) allows deduction in respect of income derived by a co-operative society from business of banking. Even claim of the assessee for deduction requires to be examined under first part of Sec.80P(2)(a)(i) of the Act. *Hon'ble Supreme Court* in case of *Citizen Co-operative Society Ltd. (supra)* has held that, it is also important to ascertain as to what is the nature of income which is claimed as

exempt, and as to how principle of mutuality is not violated in respect of such income.

**8.2.** An examination of (i) memorandum of association, articles of association, (ii) byelaws and other documents explaining rules and regulations of the society is necessary, so as to clearly understand the purpose and the nature of business done by it. An examination of different categories of members of a society and what are the conditions attached to their being admitted as members and their rights as contributors of funds to the society and participants in surplus and the byelaws of the society is necessary. Deduction u/s.80P2(a)(i) is allowed only in respect of income arising out of transactions with members. The relevant law governing co-operative Society of State providing status of different categories of members, in so far as affairs of co- operative Society are concerned, is also required to be examined. It is only income which arises from dealing with members and which is either in the nature of banking or providing credit facilities to members that would be allowed as deduction. All these aspects requires examination. Ld.AO will allow opportunity of being heard to the Assessee and filing appropriate evidence, if desired, by the Assessee to substantiate its case, before deciding the issue.

**Accordingly, grounds raised by assessee stands allowed for statistical purposes.**

**In the result appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 1<sup>st</sup> Sept, 2020.

Sd/-

Sd/-

**(CHANDRA POOJARI)**

**Accountant Member**

Bangalore,

Dated, the 1<sup>st</sup> Sept, 2020.

/Vms/

**(BEENA PILLAI)**

**Judicial Member**

**Copy to:**

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

By order

Assistant Registrar,  
Income-Tax Appellate Tribunal.  
Bangalore.

		<b>Date</b>	<b>Initial</b>	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-09-2020		Sr.PS
3.	Draft proposed & placed before the second member	-09-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-09-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-09-2020		Sr.PS/PS
6.	Kept for pronouncement on	-09-2020		Sr.PS
7.	Date of uploading the order on Website	-09-2020		Sr.PS
8.	If not uploaded, furnish the reason	-09-2020		Sr.PS
9.	File sent to the Bench Clerk	-09-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS