

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-C”, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.172/Bang/2020 : Asst.Year 2016-2017

Shri Parvati Parameshwar Pattin Sahakari Sangh Niyamit No.906, Near Jumma Masjid Kamatagi, Tal. Hungund District Bagalkot – 587 120. PAN : AAKAS5692K.	v.	The Income Tax Officer Ward 1 Bagalkot.
(Appellant)		(Respondent)

Appellant by : Sri.Ishwar S.Yanni, CA
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 21.01.2021	Date of Pronouncement : 21.01.2021
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ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 29.11.2019. The relevant assessment year is 2016-2017.

2. The solitary issue argued by the learned AR was whether the CIT(A) is justified in confirming the disallowance of claim of deduction u/s 80P(2)(a)(i) of the I.T.Act amounting to Rs.10,67,783.

3. The brief facts of the case are as follow:

The assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. For the assessment year 2016-2017, the return of income was filed on 30.03.2017 declaring `Nil' income, after claiming deduction u/s 80P(2)(a)(i) of the I.T.Act amounting to Rs.10,67,783. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The assessment was passed u/s 143(3) of

the I.T.Act vide order dated 23.10.2018. The Assessing Officer denied the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act for the reason that assessee was providing credit facilities to Non-members, namely, associate / nominal members. The A.O. relied on the judgment of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd. v. ACIT reported in 397 ITR 1 (SC) for denying the claim of deduction u/s 80P(2) of the I.T.Act.

4. Aggrieved by the order of the Assessing Officer in denying the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act, assessee preferred an appeal to the first appellate authority. The CIT(A) held that since nominal and associate members of assessee is more than 15% of the total membership, there has been a violation of provisions of Karnataka Co-operative Societies Act, 1959, and hence, the A.O. has correctly denied the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee submitted that the assessee has been accepting deposits and providing loans only to nominal / associate members, who are not outsiders but are members of the assessee-society. Therefore, it was contended that the Assessing Officer and CIT(A) was not justified in denying the claim of deduction u/s 80P(2) of the I.T.Act. The learned AR also relied on the recent judgment of the Hon'ble Apex Court in the case of The Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT [Civil Appeal Nos.7343-7350 of 2009 – judgment dated 12th January, 2021].

6. The learned Standing Counsel for the Department submitted that the issue in question is covered against the assessee by the orders of the Bangalore Benches of the Tribunal in the case of M/s.Athmashakthi Multipurpose Co-operative Society Ltd. v. ITO [ITA Nos.1220 & 1221/Bang/2019 – order dated 18.10.2019] and in the case of M/s.Vikasha Vividhodesha Sahakara Sangha Niyamitha v. ITO [ITA No.1424/Bang/2019 – order dated 08.11.2019].

7. I have heard rival submissions and perused the material on record. In the instant case, admittedly, assessee has been accepting deposits and given loans primarily to associate / nominal members. Section 18 of the Karnataka Co-operative Societies Act, 1959, defines nominal or associate members as under:-

“Nominal or Associate members : Not with standing anything contained in section 16, a co-operative society may admit,

- (a) Any individual as a nominal or associate member;*
- (b) Any banking company as a nominal member;*
- (c) Any firm, company, co operative society or any body or corporation constituted by or under any law for the time being in force, as a nominal or associate member.*
 - A nominal member shall not be entitled to any share in any form whatsoever in the assets or profits of the society and a nominal member who is an individual shall not also be entitled to become an office bearer of the society.*
 - An associate member may hold shares but shall not be entitled to become an office bearer of the society.”*

7.1 Section 18 of the Karnataka Co-operative Societies Act, 1959 was amended whereby the following proviso was inserted with effect from 01.06.2014:-

- *“Provided that the number of associate and nominal members under clause (a) in any Co-operative Society shall not exceed fifteen percent of the total membership of the society. However, in case of Co-operative societies already having more than 15% of their total membership as associate & nominal members, the excess associate & nominal members shall be either made as member, if eligible under the section 16 or shall be removed from the associate & nominal membership within six months from the date of commencement of the Karnataka Co-operative Societies (Amendment) Act, 2014.”*

7.2 As per the above amendment with effect from 01.06.2014, the Co-operative Societies registered under the Karnataka Co-operative Societies Act, 1959 is allowed to do have nominal / associate members up to 15% for its total membership. In the instant case, the assessee-society is accepting deposits and also providing credit facilities to nominal / associate members far exceeding 15% of its total business. The A.O. has come to a categorical finding that regular members is less than 15%, whereas, non-members, i.e., nominal / associate members are exceeding 87% of the total members. This categorical finding of the A.O. has not been dispelled by the assessee before the Tribunal. Therefore, there is a clear violation of provisions dealing with non-members as per Karnataka Co-operative Societies Act, 1959. Therefore, the ratio of the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society (supra) is clearly applicable to the facts of the instant

case. The Hon'ble Apex Court in the case of The Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT (supra) had clearly stated that when assessee is accepting deposits and providing credit facilities to non-members, the respective State Co-operative Societies Act will have application. As mentioned earlier, the Karnataka Co-operative Societies Act, 1959 prohibits non-members, i.e., nominal / associate members in excess of 15% of the total membership. Therefore, the judgment of the Hon'ble Apex Court relied on by the learned AR is against the assessee.

7.3 An identical issue was also considered by the Bangalore Bench of the Tribunal in the case of M/s.Vikasha Vividhoddsha Sahakara Sangha Niyamitha v. ITO [ITA No.1424/Bang/2019 – order dated 08.11.2019]. The relevant finding of the Tribunal reads as follow:-

“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.”

7.4 In the light of the aforesaid order of the Tribunal and the judicial pronouncements, cited supra, I hold that the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act has been correctly

denied in the facts and circumstances of this case. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 21st day of January, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 21st January, 2021.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore