

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

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

ITA No.3331/Bang/2018
Assessment Year : 2016-17

M/s. Gayatri Pattin Sahakari Sangh Niayamit, Main Road, Post: Sulebhavi, Tq: Hungund, Dist: Bagalkot. PAN : AALAS 5670 A	Vs.	Income-tax Officer, Ward-1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ishwar S. Yanni, CA
Revenue by	:	Shri. Priyadarshi Mishra, Addl. CIT

Date of hearing	:	15.04.2021
Date of Pronouncement	:	15.04.2021

ORDER

Per Shri. Chandra Poojari, AM:

This appeal by the assessee directed against the order of CIT(A) for the Assessment Year 2016-17. The assessee has raised the following grounds:

1. *The Ld. Commissioner of Income Tax (Appeals) erred in law as well as on facts in rejecting the genuine claim of the appellant in respect of deduction u/s 80P(2)(a)(i) to the extent of Rs.61,09,525.00 as claimed by the appellant. The appellant prays for grant of the deduction as claimed.*

2. *The Ld. Commissioner of Income Tax (Appeals) erred in law as well as on facts in applying the Judgment of Hon. Supreme Court of India in the case of Citizen Co —Operative Society, Hyderabad. As the facts of Citizen society & the assessee society is totally different. Difference in facts of the case are as under :*

- i. *Citizen Society is basically registered under Andhra Pradesh Mutually Aided Co — Operative Societies Act, 1995 & subsequently registered under Multi State Co — Operative Societies Act, 2002. But the provisions of APMACS Act is applied, while passing an order. Where as our society is registered under Karnataka Co — Operative Societies act, 1959. Therefore this judgment is not applicable to our society case.*
- ii. *Sec 2(f) of the KCS Act, 1959, 'member' means a person joining in the application for the registration of a co — operative society and a person admitted to membership after such registration in accordance with this Act, the rules and the bye laws and includes a nominal and an associate member. Where as Sec 2(p) of APMACS Act, 1995 'member means a member of a co —operative society. This Act does not say member includes a nominal and associate member. Therefore any member other than regular member is a non member. But here in KCS Act, it includes nominal and associate members.*
- iii. *Para 15(iii) & (iv) of Supreme Court judgment, second category of persons is neither members nor nominal/associate members. That means deposits are accepted from non — members. Where as in our case deposits are accepted from members of the society. Therefore this case is not applicable.*
- iv. *Para 15 (v) & (vi) of Supreme Court judgment, the assessee accepts deposits mostly from the second category these deposits are mostly kept in FDs. Investment with banks to earn maximum returns, a portion of these deposits are utilized to advance gold loans etc. to members of the first category. It means majority of the deposits accepted from non members and invested in other banks with an intention to earn the interest income. A portion of deposits which are accepted from non members are used to advance the gold loan to members. Where as our society has accepted the deposits from members and used to advance the loans to members and portion of deposit is kept in banks & societies.*

- v. *Para 15 (ix) of Supreme Court judgment, the assessee society is engaged in the activity of granting loans to general public. Where as in our society, we have sanctioned the loans to members only. As per the KCS Act, to obtain the loan, a person shall be a member of the society. Therefore our society has complied the KCS Act. This judgment is not applicable as loans are not sanctioned to other than members.*
- vi. *Para 15(xi) of the judgment, the society both in form and substance, the activity is in violation of the Co operative Societies Act and co operative society rules. Where as our society has complied both the KCS Act & Rules.*
- vii. *Para 16 of the judgment, that provisions of Section 80P(2)(a)(i) were grossly violated as the appellant society was found not dealing with its members only but also with general public as well. On that basis, further submission of AR of Dept. was that the principle of mutuality was missing in this case. Where as in our case the Principle of Mutuality is very much exist. Therefore this case is not applicable.*
- viii. *Para 18 of the judgment, that Section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co — operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (Bajaj Tempo Limited, Bombay Vs. CIT, Bombay City —III, Bombay) Supreme Court judgment. It is also treat that such a provision has to be construed as to effectuate the object of the Legislature and not to defeat it (CIT, Bombay & Ors Vs Mahindra and Mahindra Limited & Ors) Supreme Court judgment. Therefore the same may be applied in our case by considering the main objects & substance of the activities done by the society.*
- ix. *Para 27 of the judgment, the appellant cannot be treated as a co — operative society meant only for its members and providing credit facilities to its members. Where as our society has accepted the deposits from members & loans given to members only. Therefore in totality this judgment of Hon.*

Supreme Court of India is not applicable to our society as the facts & objectives of the society are completely different. On plain reading of the Citizen society judgment, the society is running to earn the profit & not to pay the income tax by taking the shelter under the Income Tax Act through Section 80P(2)(a)(i). Where as our society's main objective is to promote the savings among the members & uplift the financial condition of members by granting the loans on their need basis.

3. *The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts in not following the Hon'ble High Court of Karnataka, Dharwad Bench in the case of Tumkur Merchants Souharda Credit Co — Operative Ltd V/s ITO and Guttugedarara Credit Co — Operative Society Ltd., Vs. ITO. The High Court of Karnataka is the jurisdictional high court to the Ld. CIT (Appeal). The Assessee society has made deposits with BDCC Bank & others as a short term deposit. These deposits are made up out of idle funds which are required for lending purpose. As & when the society requires money, it withdraws the deposit. Therefore investment is attributable to the main activity of the assessee society.*

4. *Each of the above grounds is without prejudice to one another and the appellant :raves leave to add, delete, amend or otherwise modify or withdraw one or more of the above grounds either before or at the time of hearing of this appeal.*

2. Learned AR of the assessee submitted that assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. The main object of the Society was to accept deposits from members and to provide credit facilities to its shareholder / members. Therefore, it was claimed that the Society is entitled to deduction under section 80P(2)(a)(i) of the Act as it is Co-operative Society, carrying on the business of banking or providing credit facilities to its members.

3. The Ld. DR AO contended that as per the details furnished by the bye laws, it is observed that the assessee is dealing with non members termed as

associate members termed as associate members and claimed to have admitted as per the provisions of the Karnataka Co-operative Societies Act, 1959.

4. After hearing both the parties we are of the view that the Supreme Court has reversed the decision of special Bench of Kerala High Court in the case of Mavilayi Service Co-operative Bank Ltd., Vs. CIT 414 ITR 67 wherein it was held as follows:

*"45. To sum up, therefore, the ratio decidendi of **Citizen Cooperative Society Ltd.** (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes cooperative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of **Citizen Cooperative Society Ltd.** (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to nonmembers, profits attributable to such loans obviously cannot be deducted. 46. It must also be mentioned here that unlike the Andhra Act that **Citizen Cooperative Society Ltd.** (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in **U.P. Cooperative Cane Unions' Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I** (1997) 11 SCC 287 referred to section 80P of the IT Act and then held:*

"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression

"members" in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i). 47. Further, unlike the facts in **Citizen Cooperative Society Ltd.** (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:

"59. Restrictions on loans.- (1) A society shall not make a loan to any person or a society other than a member:

Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

(3) Granting of loans to members or to non-members under subsection (2) and recovery thereof shall be in the manner as may be specified by the Registrar."

*Thus, the giving of loans by a primary agricultural credit society to nonmembers is not illegal, unlike the facts in **Citizen Cooperative Society Ltd.** (supra).*

48. Resultantly, the impugned Full Bench judgment is set aside. The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment."

5. In view of the above, we are inclined to remit this issue to the file of AO to examine the deduction under section 80P(2)(a)(i) of the Act in the light of the decision of the Hon'ble Supreme Court.

6. In the result, appeal of the assessee is allowed for statistical purposes.

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

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated: 15.04.2021.
/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.