

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

Before Shri George George K, Judicial Member

ITA No.186/Bang/2021 : Asst.Year 2017-2018

M/s.Nanjangud Taluk Teachers Co-operative Society Limited Mahadeshwara Layout 71, Hullahalli Road Nanjangud – 571 301. PAN : AACAN1884C.	v.	The Income Tax Officer Ward 2(3) Mysore.
(Appellant)		(Respondent)

Appellant by : Sri.Ravishankar, Advocate
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 17.09.2021	Date of Pronouncement : 20.09.2021
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ORDER

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 11.03.2021. The relevant assessment year is 2017-2018.

2. The solitary issue that was argued was whether the CIT(A) was justified in confirming the disallowance of claim of deduction u/s 80P of the I.T.Act.

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

The assessee is a co-operative society. For the assessment year 2017-2018, the assessee filed return of income on 28.09.2017 declaring income of Rs.54,600 after claiming exemption u/s 80P of the I.T.Act amounting to Rs.23,58,506. The assessment was taken up for limited

scrutiny. During the course of assessment proceedings, the A.O. noticed that the assessee was having income both from members and non-members. Since the assessee was having income from non-members amounting to Rs.4,31,119, the Assessing Officer held that the assessee has violated the principle of mutuality. The A.O. by placing reliance on the judgment of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT reported in 397 ITR 1 (SC)*, denied the benefit of deduction u/s 80P of the I.T.Act.

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

“Now, before me at the appellate stage, written submission has been made that the judgment of Hon'ble Supreme Court is not applicable here. The assessee has also stated that the erroneous treatment has been given to interest received from as associate members as interest received from non members. I have gone through the entire written submission and find no force in the arguments. The judgment of Hon'ble Supreme Court in the case of citizen Co-operative Society Ltd. is clearly applicable to the fact of this case. The assessee has not been able to contradict the argument of the A.O. and to challenge the asking given as income from non-members. The assessee has also failed to challenge the order of the A.O., where it is mentioned that principle of mutuality is missing.”

5. Aggrieved, the assessee has preferred this appeal to the Tribunal. The learned AR has filed a paper book comprising of 81 pages enclosing therein the return of income and copy of the financials for the relevant assessment year, copy of the registration certificate, relevant clauses of bye-laws, notices issued u/s 143(2), 142, show cause notice issued by the A.O.,

reply and written submissions made by the assessee before the A.O. and the CIT(A) and judicial pronouncements relied on. The learned AR submitted that the recent judgment of the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. Reported in (2021) 431 ITR 1 (SC)* has decided the issue in favour of the assessee. It was further submitted that even assuming that the assessee had dealings with non-members (in this case only a miniscule portion of the total income is arrived on account of business with non-members), the assessee is entitled to proportionate deduction u/s 80P of the I.T.Act.

6. The learned Departmental Representative supported the orders of the Income Tax Authorities.

7. I have heard rival submissions and perused the material on record. The Hon'ble Apex court in the case of *Mavilayi Service co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra)* had held that expression "members" is not defined under the Income-tax Act. Therefore, it was held by the Hon'ble Apex Court that necessarily the expression "members" in section 80P of the I.T.Act has to be construed in the light of the expression as contained in the respective State Co-operative Societies Act. The Hon'ble Apex Court held that if associate / nominal members are treated as members under the State Co-operative Societies Act, there is no violation of the provisions under the State Co-operative Societies Act, and therefore, the assessee would be entitled to the benefit of deduction u/s 80P of the I.T.Act. In the light of the principles

laid down by the Hon'ble Apex Court in the case of *Mavilayi Service co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra)*, I am of the view that the issue of deduction u/s 80P of the I.T.Act needs to be reconsidered afresh by the A.O. Accordingly, the issues raised in this appeal are restored to the files of the A.O. The A.O. is directed to afford a reasonable opportunity of hearing to the assessee and take a decision in accordance with law. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 20th day of September, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), NFAC, Delhi
4. The CIT concerned.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	17.09.2021		Sr.PS
2.	Draft placed before author	17.09.2021		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	Date of uploading the order on website			
8.	If not uploaded, furnish the reason			
8.	File sent to the Bench Clerk			Sr.PS
9.	Date on which file goes to the AR			
10.	Date on which file goes to the Head Clerk.			
11.	Date of dispatch of Order.			
12.	Draft dictation sheets are attached			Sr.PS