

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH: AMRITSAR
BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

I.T.A No. 384/ASR/2018
(ASSESSMENT YEAR: 2013-14)

M/s The Bains Cooperative Thrift & Credit Society Ltd., V.P.O. Mahilpur, Hoshiarpur (PB). [PAN:AAATT7569H] (Assessee)	Vs.	Asstt. Commissioner of Income Tax, Hoshiarpur Circle, Hoshiarpur (Revenue)
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Assessee by	Sh. Surinder Mahajan C.A.
Revenue by	Sh. S. M. Surendranath D.R.

Date of Hearing	21.09.2021
Date of Pronouncement	22.09.2021

ORDER

Per Laliet Kumar, JM:

The present appeal filed by the assessee feeling aggrieved by the order of Ld. CIT(A)-1, Jalandhar dated 27.03.2018 for A.Y. 2013-14.

2. The assessee has raised the following grounds of appeal:

- “1. That order passed by Learned Commissioner of Income Tax (Appeals)-I, Jalandhar [‘CIT(A)’] is against law and facts of the case.*
- 2. That on the facts & circumstances of the case, learned CIT(A) has grossly erred in law in confirming disallowance of Rs. 55,90,793/- being deduction claimed u/s 80P of the Act. Disallowance confirmed is bad in law and is illegal.*

3. *That on the facts and circumstances of the case, learned CIT(A) has grossly erred in confirming the action of assessing officer holding that assessee is carrying on banking business and is a cooperative bank not entitled to deduction u/s 80P(2)(a)(2) of the Act.*
4. *That on the facts and circumstances of the case, learned CIT(A) while confirming the disallowance of deduction claimed u/s 80P of the Act has relied upon judgment of Honourable Supreme Court in the case of “The Citizens Cooperative Society Ltd. vs ACIT, Hyderabad Civil Appeal No. 10245 of 2017. Judgment of Hon’ble Supreme Court is not applicable to the facts of the assessee since judgment of Hon’ble Supreme Court is in respect of multistate cooperative credit societies whereas assessee is a small cooperative society having geographical area of three villages only.*
5. *That on the facts and circumstances of the case, learned CIT(A) has grossly erred in concluding that assessee has indulged in business with nominal members and non members without any approval of Registrar of Societies and principles of mutuality are missing in the case. Conclusions drawn by CIT(A) are illegal and bad in law.*
6. *That learned CIT(A) has dismissed the appeal of the assessee by holding that the assessee society deal with general public. The society jurisdiction is restricted to three villages only namely Dolron, Haveli and Mahilpur of Distt. Hoshiarpur. The society does not deal with the public at all.*
7. *That order passed by learned CIT(A) is opposed to judgment of Hon’ble Karnataka High Court in the case of **SHRI BASAWESHWAR COOPERATIVE CREDIT SOCIETY (ITA NO. 100092 OF 2014)** wherein it has been held that the decision of Reserve Bank of India to the effect that whether cooperative society is a bank or not shall be final.*
8. *That on the facts and circumstances of the case, learned CIT(A) has grossly erred in holding that assessee is carrying on banking business and is a cooperative bank though neither in the past assessment years nor in the future assessment years in assessment orders passed u/s 143(3) of the Act, cooperative society has been treated as cooperative bank. Order passed by CIT(A) is opposed to the principles of consistency.*
9. *That on the facts & circumstances of the case, Learned Commissioner of Income Tax (Appeals) has grossly erred in confirming addition of Rs. 389677/- being addition made by learned assessing officer u/s 40(a)(ia) of the Act.*

10. *That on the facts & circumstances of the case, Learned Commissioner of Income Tax (Appeals) has grossly erred in confirming addition of Rs.11251/- being deduction claimed for taxes paid to local authorities.*
11. *That the Appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off.”*

3. At the outset, the Ld. AR submitted that the findings recorded by the Ld. CIT(A) as well as the Assessing Officer were premised on the decision of Hon’ble Supreme Court in the matter of ‘The Citizens Cooperative Society Ltd. in ITA 10245 of 2017. It was submitted that the Hon’ble Supreme Court in the subsequent decision has considered the decision of the Hon’ble Supreme Court in the case of Mavilayi Service Cooperative Bank Ltd. & Ors v. CIT in paragraph 45 had held as under:

“45. To sum up, therefore, the ratiodecidenti 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 co-operative 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 assesseees 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 non-members, profits attributable to such loans obviously cannot be deducted.”

In view of the above, it was submitted that the assessee is entitled to the relief claimed in the present appeal.

4. Per contra, the Ld. DR had submitted that the decision of the Supreme Court was based on appreciation of various Act including Andhra Pradesh Act, Kerala Act and U.P. Cooperative Cane Unions Federation Ltd. and others. DR submitted that in the present case the assessee was registered as a society under the Circle Registrar Cooperative Society, Hoshiarpur(Punjab), and it is necessary to examine rules and regulation of the society as well as of relevant society Act of Punjab , by the lower authorities to find out whether definition of Members and nominal members etc . Further assessee was denying doing the lending business after taking the approval from the RBI, this fact was also required to be verified . lastly it is necessary to find out whether the assessee was doing lending activities with Members and non Members or not .

4.1 In rebuttal the Ld. AR had submitted that the matter may be remanded back for examining above facts as mentioned by DR .

5. We have heard the rival submissions and perused the material available on record. As the foundation facts are required to be ascertained by the lower authorities like definition of members, nominal members and non members , whether the assessee was carrying on banking activities for the members only or for non members and whether the assessee was having the approval from Reserve Bank of India for doing banking activities.

6. In the light of, we remand back appeal to the file of Ld. CIT(A) for de novo passing of the appellate order with the following directions

- a. That the Ld. CIT(A) shall decide the appeal on the basis of the findings recorded by the Hon'ble Supreme Court more particularly in paragraph 45 in 197 DTR 0361 in the matter of Mavilayi Service Cooperative Bank Ltd. v. CIT.
- b. While deciding the issue on the basis of the above said judgment, the Ld. CIT(A) shall examine the rules of assessee-society as well as the Act under which the society was formed.
- c. For the purpose of ascertaining the scope of the activities of the assessee, the CIT(A) shall examine whether its activities were restricted to members or non members or both
- d. Whether the assessee was having any license for carrying out the banking activities for the members and non members.
- e. Based on the above said factual findings the CIT(A) shall decide the matter after finding opportunity of hearing to the assessee as well as to the Assessing Officer and passed a reasoned and speaking order.
- f. Needless to say the assessee had liberty to file any other document which it deem necessary for due disposal of the appeal and may rely upon any of the Judgement referred before us. Needless to say in case the assessee files any

document, the CIT(A) shall call for remand report and/or grant hearing to the Assessing Officer also.

7. In the light of above, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22/09/2021.

**Sd/-
(DR. M.L. MEENA)
ACCOUNTANT MEMBER**

**Sd/-
(LALIET KUMAR)
JUDICIALMEMBER**

Dated 22/09/2021

GP/Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

True Copy
By Order