

**IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM**

आयकर अपील सं. / ITA No.27/PAN/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Havyaka Credit Souharda
Sahakari Niyamita,
Samruddhi Complex, Mastikatta,
Kumta-581343.

PAN : AABAH1683E

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-2,
Karwar.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Parameshwar Bhat
Revenue by : Shri Sourabh Nayak

सुनवाई की तारीख / Date of Hearing : 09.11.2021
घोषणा की तारीख / Date of Pronouncement : 16.11.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-10, Bengaluru ('CIT(A)' for short) dated 22.11.2017 for the assessment year 2013-14.

2. Briefly, the facts of the case are that the appellant is a cooperative society engaged in the business of accepting deposits and lending money to its members. The return of income for the assessment year 2013-14 was filed on 22.01.2014 declaring total income of Rs.Nil after claiming deduction u/s 80P of the Income Tax Act, 1961 ('the Act') of Rs.29,15,928/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-2, Karwar ('the Assessing Officer') vide order dated 21.12.2015 passed u/s 143(3) of the Act at a total income of Rs.13,09,299/- after denying the claim of

deduction by holding that the provisions of section 80P(4) of the Act was not upheld.

3. Being aggrieved by the above action of the Assessing Officer, an appeal was filed before the Id. CIT(A), who vide impugned order denied the benefit of deduction u/s 80P(2)(a)(i) of the Act on account of principle of mutuality placing reliance on the decision of the Hon'ble Supreme Court in the case of Citizen Cooperative Society Limited, Civil Appeal No.10245 of 2017 dated 08.08.2017.

4. Being aggrieved by the above decision of the Id. CIT(A), the assessee is in appeal before us in the present appeal.

5. The Id. AR for the assessee society submits that it is a purely cooperative credit society and was granted any bank licence to carry out any banking business. It is further submitted that the facts of the present case is totally different from the decision of the Hon'ble Supreme Court in the case of Citizen Cooperative Society Limited (supra). He also submitted that assessee society cannot be treated as cooperative bank.

6. On the other hand, the Id. Sr. DR submits that when the assessee cooperative society lends money to its members and charges interest, hence, income by way of interest charges is nothing but providing credit facilities akin to banking business and, therefore, the assessee society is not entitled for deduction u/s 80P(2)(i)(a) of the Act.

7. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the denying of deduction u/s 80P(2) of the Act. The Assessing Officer was of the view that the assessee society is a cooperative bank and, therefore, relying on the provisions of sub-section (4) of section 80P of the Act, denied the deduction u/s 80P of the Act. Therefore, the question which requires to be examined is whether the assessee society is cooperative bank or not?. Admittedly, the assessee society is formed for the purpose of accepting deposits from members and lending it to its members and does not have licence from Reserve Bank of India to carry out the business of cooperative bank. The Hon'ble Supreme Court in the case of *The Mavilayi Service Cooperative Bank Ltd. & ors. vs. CIT*, 431 ITR 01 (SC) held that the income-tax authorities cannot go behind the registration granted under the Cooperative Societies Registration Act. In the absence of banking licence from RBI, a cooperative society cannot be termed as cooperative bank. Applying the ratio of the decision of the Hon'ble Supreme Court in the case of *Mavilayi Service Cooperative Bank Ltd. (supra)*, we are of the considered opinion that in the facts of the present case the assessee society is only a members of cooperative society not cooperative bank and not hit by the provisions of sub-section (4) of section 80P of the Act and, therefore, the assessee society is clearly entitled for the deduction u/s 80P(2)(i)(a) of the Act. The decision of the Id. CIT(A) though cryptic has to be upheld in view of the fact that the decision of the Id. CIT(A) is in conformity with the ratio of the decision of the Hon'ble Supreme Court in the case of *Mavilayi Service Cooperative Bank Ltd. (supra)*. Having held that the assessee society is not a cooperative bank then the question of denying the claim for deduction u/s 80P(2)(i)(a) does not arise. Accordingly, the grounds of appeal filed by the assessee stand allowed.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced on this 16th day of November, 2021.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 16th November, 2021.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-10, Bengaluru.
4. The Pr. CIT, Mangaluru.
5. DR, ITAT, Panaji.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.