

THE INCOME TAX APPELLATE TRIBUNAL
“F” Bench, Mumbai
Shri M. Balaganesh (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 2021/Mum/2021 (A.Y. 2017-18)

Janseva Cooperative Credit Society Limited 7/25, 2 nd Floor, Grants Building, 17 Arthur Bunder Road, Colaba Mumbai-400 005. PAN : AAAAJ7811P (Appellant)	Vs.	ITO, Ward 17(2)(1) Room No. 123B 1 st Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Tanzil Padvekar
Department by	Shri S.N. Kabra
Date of Hearing	30.05.2022
Date of Pronouncement	30.05.2022

ORDER

Per M.Balaganesh (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A)(National Faceless Appeal Centre) vide order dated 1.9.2021 for assessment year 2017-18.

2. The only issue to be decided in this appeal is as to whether learned CIT(A) was justified in confirming denial of deduction under section 80P(2)(a)(i) of the Income Tax Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. Both the parties mutually agreed that this issue was subject matter of adjudication by this Tribunal in assessee's own case in ITA No. 2020/Mum/2021 for A.Y. 2015-16 dated 12.5.2022. For the sake of convenience, the relevant portion of the order is reproduced hereunder :-

“2. The assessee is a cooperative credit society and it filed its return of income claiming deduction under section 80P of the I.T. Act. The Assessing

Officer noticed that the assessee is having two categories of membership, viz., “Ordinary members” and “Nominal/associate members”. The Assessing Officer, relying on the decision rendered by Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd., took the view that the assessee will not be entitled for deduction under section 80P of the Act in view of its dealing with nominal/associate members. Accordingly he rejected the claim for deduction under section 80P of the Act.

3. Learned CIT(A) also confirmed the same.

4. We have heard the parties and perused the record. The issue relating to eligibility of assessee for deduction under section 80P of the Act, when it has admitted/dealt with nominal/associate members has since been settled by Hon'ble Supreme Court in the case of Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors. (Civil Appeal Nos. 7343-7350 of 2019 dated 12.1.2021). The relevant portion of decision rendered by Hon'ble Supreme Court in the above cited case are extracted below:-

“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 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.

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 sub-section (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 non-members is not illegal, unlike the facts in *Citizen Cooperative Society Ltd.* (supra).

5. The Hon’ble Supreme Court has clarified that the meaning of the term “members” used in sec. 80(P)(2)(a)(i) of the Act should be understood as per the definition of the said term in the respective co-operative Act. Since the AO has not examined the concerned Co-operative Act to ascertain the meaning of the term “members”, we are of the view that the impugned issue requires fresh examination at the end of the Assessing Officer in accordance with the decision rendered by Hon’ble Supreme Court in the above case.

6. Accordingly, we set aside the order passed by learned CIT(A) and restore the issue relating to deduction under section 80P of the Act to the file of the Assessing Officer.

7. *In the result, appeal filed by the assessee is treated as allowed for statistical purposes.”*
4. Respectfully following the aforesaid order, we set aside the order passed by learned CIT(A) and restore the issue relating to deduction under section 80P of the I.T. Act to the file of the learned Assessing Officer.
5. In the result, appeal of the assessee is allowed for statistical purposes.
Order pronounced in the open court on 30.05.2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated : 30/05/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS