

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

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

ITA No.738/Bang/2021

Assessment year : 2016-17

M/s Bhavana Co-operative Credit Society Niyamita, #38, Market Road, Sirsi-581 401. PAN – AACAB 5033 D	Vs.	The Income-tax Officer, Ward-1, Sirsi.
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Smt. Priyadarshini Basaganni, Addl. CIT

Date of hearing	:	02.06.2022
Date of Pronouncement	:	29.06.2022

ORDER

Per Beena Pillai, Judicial Member

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 22.11.2021 for the asst. year 2016-17 on the following grounds of appeal:-

- 1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned Commissioner of Income tax [Appeals] of the National Faceless Appeal Center (CIT[A] for short) is not justified in upholding the denial of deduction u/s.80P[2][a][i] of the Act to the extent of Rs.20,26,903/- that has been computed by the Assessing Officer as the profits earned by the appellant from the business of providing credit facilities to*

nominal and associate members under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] erred in holding that the aforesaid profits computed in respect of the business of providing credit facilities to the nominal and associate members, who could neither vote nor were entitled to a share in the profits as per the bye-laws of the appellant cannot be allowed as deduction u/s. 80P[2][a][i] of the Act having regard to the rationale behind the judgment of the Hon'ble Supreme Court in the case of Citizen Co-Operative Society reported in 397 ITR 1 and the later judgement of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. reported in [2021] 123 Taxmann.co 161[SC] under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] ought to have appreciated that the appellant co- V operative society had no doubt admitted nominal and associate members, which was permissible under the Karnataka Co-operatives Societies Act, 1959 but, there was no violation of any of the provisions of the Karnataka Co-operative Societies Act under which the appellant was constituted and therefore, the same cannot be considered as business carried on with non-members in order to disentitle the appellant to deduction in light of the ratio of the judgement of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. reported in [2021] 123 Taxmann.co 161[SC].

5. The learned CIT[A] ought to have appreciated that the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. reported in [2021] 123 Taxmann.co 161[SC] has held that Paragraphs 24 to 26 of the judgement in the case of Citizen Co-Operative Society reported in 397 ITR 1, being the judgment based on the combined effect of the statements of the principle of law applicable to the material facts of the case cannot be described as the ratio decidendi of the said judgment and therefore, the view expressed by the learned CIT[A] that even in view of the judgement rendered by the Hon'ble Apex Court in Mavilayi Service Co-operative Bank Ltd. [supra], the test of mutuality has to be complied with as held in the earlier judgement of the Hon'ble Apex Court in the case of Citizen Co- Operative Society [supra] is erroneous and therefore, the disallowance sustained on this basis requires to be vacated.

6. The learned CIT[A] ought not to have upheld the disallowance of deduction u/s. 80P[2][d] to the extent of Rs. 245,549/- being portion of the interest income earned from deposits made in Co-operative Banks, which was also claimed by the appellant u/s. 80P[2][a][i] of the Act having regard to the judgment of the Hon'ble Karnataka High Court in the case of TUMKUR MERCHANTS SOUHARDA CREDIT CO-OPERATIVE LTD reported in [2015] 230 Taxman 309[Kar]purportedly in light of the later judgement of the Hon'ble jurisdictional High Court in the case of Pr.CIT, Hubballi v. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 [Karnataka], which was totally ~~ inapplicable to the case of the appellant.

7. The learned CIT[A] ought to have appreciated that the appellant had earned the interest income from investments statutorily required to be maintained under the Karnataka Co-operative Societies Act from out of the profits besides 25% of the total deposits as SLR with co-operative banks and 3% of the total deposits towards CRR and thus, the income earned therefrom ought to have been assessed as part of the business of the providing credit facilities to its members and therefore, entitled to deduction u/s. 80P[2][a][i] of the Act, under the facts and in the circumstances of the appellant's case.

8. Without prejudice to the above, the learned CIT[A] ought to have appreciated that the Assessing Officer had computed the aforesaid sum of Rs. 2,45,649/- by ascertaining the extent of the alleged statutory allowable interest earned on investments made without appreciating that the entire investment was made in co-operative banks and therefore, the entire interest was allowable in terms of section 80P[2][d] of the Act without any reference to the statutory deposits made under the Karnataka Co-operative Society Act, which contention of the appellant was only relevant for the plea that the interest income was liable for assessment under the head "Business" and therefore, the disallowance sustained u/s. 80P[2][d] of the Act, deserves to be deleted.

9. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. Brief facts of the case are that the assessee is a cooperative credit society engaged in providing credit facilities to its members, filed its return of income for the assessment year under consideration on 20.09.2016 declaring Nil income after claiming Chapter VIA deduction u/s 80P(2)(a)(i) of the Act of Rs.32,56,379/-. It was noticed that the assessee has been collecting membership fees accepting deposits and providing credit facilities to the members. Accordingly, the AO asked the assessee to show cause as to why the disallowance claimed u/s 80P should not be disallowed under the provisions of section 80P(4) applicable with effect from 01.04.2007. The assessee contended that the assessee being cooperative credit society is entitled for deduction u/s 80(2)(d) of the Act. However, the AO rejected the contention of the assessee and disallowed the claim u/s 80P of the Act, holding that since the assessee fulfills the condition laid down u/s 56 (c) (ccv) of part-V of the Banking Regulation Act, 1949 and being cooperative bank, not entitle for deduction u/s 80P (2)(a)(i) of the Act and also by taking support of the decision rendered by Hon'ble Supreme Court in the case of *M/s Citizens co-operative bank Vs. ACIT reported in [2017] 84 taxmann.com 114 (SC) dated 8/8/2017* held that the above said income is not allowable as deduction u/s 80P(2)(d) of the Act.

2.1 The Id.AO assessed Rs.22,72,500/- as regular income of the assessee after deducting Rs.3,25,451/- u/s 80P(2)(a)(i) and Rs.6,58,376/- u/s 80P(2)(d) from Gross total income of Rs.32,56,379/- and completed the assessment.

3. Aggrieved, the assessee challenged the assessment order before the CIT, who confirmed the order of the AO.

4. Aggrieved by the order of the CIT(A), the assessee is before us for denial of deduction u/s 80P(2)(a)(i) of the Act.
5. The Ld.AR submitted that the entire issue requires re-examination in the light of decision rendered by *Hon'ble Supreme Court* in the case of *Mavilayi Service Co-operative Bank Ltd. and others (2021)* reported in *431 ITR 1*. He submitted that the coordinate bench restored identical issue to the file of the A.O. in many cases for examining the deduction claimed u/s 80P(2)(a)(i) of the Act, in the light of decision rendered by *Hon'ble Supreme Court* in the case of *Mavilayi Service Co-operative Bank Ltd. (Supra)*.
6. The ld.DR supported the order of the lower authorities.
7. We have heard both the parties and perused the materials record. We find merit in the prayer of the assessee since the issue of deduction u/s 80P(2)(a)(i) of the Act requires fresh examination in the light of decision rendered by *Hon'ble Supreme Court* in the case of *Mavilayi Service Co-operative Bank Ltd. (supra)*, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O for examining it afresh as discussed above.
8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in court on 29th day of June, 2022

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, 29th June, 2022
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
.....
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant Registrar for
signature on the order
12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
.....