IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.540/Bang/2022
Assessment Year: 2017-18

Kundapura Souharda Credit Co-op. Ltd. 1st Floor, Venkatramana Arcade Kundapura Taluk Udupi District 576 201 **PAN NO : AACAK0178L**	**Vs.**	ITO Ward-2 Udupi District
		RESPONDENT

SP No.34/Bang/2022
(Arising out of ITA No.540/Bang/2022)
Assessment Year: 2017-18

Kundapura Souharda Credit Co-op. Ltd. 1st Floor, Venkatramana Arcade Kundapura Taluk Udupi District 576 201 **PAN NO : AACAK0178L**	**Vs.**	ITO Ward-2 Udupi District
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Mahesh R. Uppin, A.R.
Respondent by	:	Shri Venudhar Godesi, D.R.

Date of Hearing	:	20.07.2022
Date of Pronouncement	:	20.07.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order of CIT(A), NFAC, Delhi dated 30.3.2022. The assessee has raised following grounds of appeal:-

1. In the facts and circumstances of the case, whether the below authorities were justified in holding that Interest on Investments derived by the appellant is chargeable under Sec. 56 of the Act and not under Sec. 28 of the Act ;

*0. Whether the appellate authority was within his powers in directing the Respondent to include Interest receipts on accrual basis and allow interest payments claimed by the **appellant as expenditure on** accrual basis even when the provisions of Karnataka Souharda Sahakari Act, 1997 mandates accounting of interest payable on deposits on accrual basis **and** charging off to profits while it requires interest received on actual realisation basis ;*

*3. The **C.I.T.** (A) erred in holding that the decisions relied upon by the appellant, viz: TCA No. 882/2018 — The Commissioner of Income Tax vs. Ammapet Primary Agricultural Co-operative Bank Ltd. (Madras High Court) and ITA- 707/Bang/2019 (A. Y. 2016-17) dated 26.08.2019 Kodavoor Vyavasaya Seva Sahakari Sangha Ltd. & Ors. vs. The Income Tax Officer, Ward-2, Udupi (ITAT, Bengaluru) — were of no assistance in deciding the condition of 'principle of mutuality' instead, the decision relied upon by the Id. A.O. rendered by ITAT, Bengaluru in ITA: 1220 & 1221/Bang/2019 in Atmashakthi Multipurpose Co-operative Society Ltd. Mangalore holds the ground ;*

4. Whether both the below authorities were correct in holding that the disallowance of various Provisions of Rs. 4,10,993/- made in the audited Profit & Loss A/c of the appellant were not opposed to Sec. 40A(7) and Sec. 43(2) of the Act and further even if, said provisions are disallowed, whether or not the resultant increase in business profits will qualify for deduction u/s. 80P of the Act and will have Nil tax effect ; and

5. The appellate authority failed in considering that the appellant being a credit cooperative, its entire profits and gains of business is chargeable u/s. 28 of the Act and eligible for deduction

u/s. 80P(2)(a)(i) of the Act as per the judgement of Hon'ble Apex Court dated 12-01-2021 in — The Mavilayi Service Co-op. Bank Ltd. & Ors. vs. C.I.T. Calicut & anr. vis-à-vis the judgment in The Citizen Co-operative Society Ltd. Hyderabad.

6. The appellant craves leave to add, to amend, modify and / or to alter any of the foregoing grounds and also urge such other grounds at the time of hearing.

2. Facts of the case are that the assessee is a primary co-operative registered under the provisions of Karnataka Souharda Sahakari Act, 1997. The assessee is engaged in the business of providing credit facilities to its members. The Assessee is doing its business well within the frame work of law exclusively with its members in accordance with its Bye-laws duly approved by the Registrar of Co-operatives. The assessee is not doing any business with non-members. The Assessee had filed its Return of income declaring its GTI at Rs. 26,22,805/- and claiming full deduction of Rs. 26,22,805/- u/s 80 P of the Act and declaring Total income as Rs. NIL. In the assessment proceedings, the assessee was held to be an entity other than a co-operative institution and that since it was also transacting with nominal members, the mutuality concept was missing and as such it was not eligible for deduction u/s. 80P of the Act. Further, though it was submitted during the assessment proceedings that the assessee had claimed deduction in respect of its interest earned on investments with Co-op. Banks/Nationalized Banks u/s 80P (2) (d) of the Act in its ITR due to oversight which instead, it ought to have included it in its Business income for claiming benefit u/s 80P (2) (a) (i) of the Act, the A.O. did not consider the said sub-section, instead the A.O. held that the interest income was chargeable u/s . 56 of the Act. The learned A.O. further disallowed the Interest payable on deposits amounting to Rs. 58,09,411/- made in the Profit and/and /loss A/c on the ground that the assessee was following Hybrid system. of accounting which was not acceptable. Similarly, the provisions for

Employee Gratuity Fund of Rs. 2,23,674/-, Leave Encashment Rs. 1, 36,729/- and Bad debt provision of Rs. 50,590/- totaling Rs. 4,10,993/- also came to be added back to the profits as unascertained liabilities and hence not allowable. Thus, the Gross Total Income of the assessee was determined at Rs. 88,43,209/- from which no deduction was allowed under Chapter VI A of the Act. Thus, the total income of Rs. 88,43,209/- was brought under tax levying tax plus interest of Rs. 37 12,046/- as per the Order of the A.O. dated 05.12.2019 and accordingly a Demand Notice of even date was raised for the said tax amount.

3. Now the first issue before us is with regard to granting of deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the Income-tax Act,1961 ['the Act' for short]. The assessee has claimed deduction u/s 80P(2)(i) of the Act at Rs.7,05,931/- and at Rs.19,16,497/- u/s 80P(2)(d) of the Act in the computation of income filed before the authorities. The assessee has shown entire interest income under other sources. The Ld. A.R. submitted that assessee wrongly claiming interest income under head of income “income from other sources” instead of under head “income from business”. It was submitted that assessee has earned interest income on investment with Co-operative Banks/National Banks on which assessee is entitled for deduction u/s 80P(2)(a)(i) of the Act. However, it was claimed wrongly as deduction u/s 80P(2)(d) of the Act. The lower authorities disallowed the claim of assessee on the reason that income assessed under the head “income from other sources” u/s 56 of the Act. In our opinion, now the issue is squarely covered by the decision of Hon’ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (414 ITR 67) (SC), wherein held as follows:-

"After hearing both the parties we are of the view that the Supreme Court has reversed the decision of special Bench of Kerala High Court in the case of Mavilayi Service Co-operative Bank Ltd., Vs. CIT 414 ITR 67 wherein it was held as follows:

"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 cooperative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a license 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 assessees 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 nonmembers, 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-1 (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 1TA No.3331/Bang/2018 "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 subsection (2) and recovery thereof shall be in the manner as may be specified by the Registrar."

> *ITA No.3331/Bang/2018 Thus, the giving of loans by a primary agricultural credit society to nonmembers is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra).*
>
> *48. Resultantly, the impugned Full Bench judgment is set aside. The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment."*

5.1n view of the above, we are inclined to remit this issue to the tile of AO to examine the deduction under section 80P(2)(a)(i) of the Act in the light of the decision of the Hon'ble Supreme Court."

4. In view of this, we are of the opinion that issue relating to the deduction u/s 80P(2)((a)(i)/80P(2)(d) of the Act requires fresh examination at the end of AO. Accordingly, we set aside the order passed by the lower authorities to the file of AO to decide it afresh in the light of above judgement of Hon'ble Supreme Court cited (supra).

5. Next ground in this appeal is with regard to the disallowance of various provisions made in audited profit & loss account of the assessee by invoking the provisions of sections 40A(7) & 43(2) of the Act. The assessee has raised this issue for the first time before us. Since this ground is not emanated from the order of Ld. CIT(A), we remit this issue to the file of AO to consider the same afresh after giving an opportunity of hearing to the assessee.

6. Further, the assessee has raised one more ground without prejudice to the above ground that even if the provisions were disallowed, same to be considered as a business income of the assessee and deduction u/s 80P of the Act is to be granted. In our opinion, if the provisions were disallowed by invoking the provisions of section 40A(7) or 43(2) of the Act, the resultant income should be considered as business income and the appropriate deduction to be granted to the assessee in view of the judgement of Hon'ble Supreme Court in the case of Gem Plus Jewellery (330 ITR 175), wherein it was held as under:-

> *"(iv) That it was an admitted position that the assessee had deposited both the employer's and the employees' contribution towards provident fund and ESIC, though beyond the due date including the grace period. The Assessing Officer added these payments to the total income of the assessee. The disallowance which was effected by the Assessing Officer had not been challenged by the assessee. The plain consequence of the disallowance and the add back that had been made by the Assessing Officer was an increase in the business profits of the assessee. The contention of the Revenue that in computing the deduction under section 10A the addition made on account of the disallowance of the provident fund/ESIC payments ought to be ignored could not be accepted. No statutory provision to that effect having been made, the plain consequence of the disallowance made by the Assessing Officer must follow. The Tribunal was justified in directing the Assessing Officer to grant the exemption under section 10A of the Act on the assessed income, which was enhanced due to disallowance of the employer's as well as employees' contribution towards PF/ESIC."*

7. In view of the above judgement of the Hon'ble Bombay High Court, we also remit this issue to the file of AO for fresh consideration.

8. The assessee has also filed Stay petition before us and the same is dismissed as infructuous in view of our findings in above assessee's appeal.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes and the stay petition filed by the assessee is dismissed as infructuous.

Order pronounced in the open court on 20th Jul, 2022

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 20th Jul, 2022.
VG/SPS

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