

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**  
**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**  
**ITA No. 174/Mum/2023**  
**(A.Y. 2016-17)**

Janseva Co-operative Credit Society Ltd. 7/25, 2 <sup>nd</sup> Floor, Grants Building, 17 Arthur Bunder Road, Colaba, Mumbai – 400 003	Vs.	Income Tax Officer, Ward 17(2)(1) R. No. 123B, 1 <sup>st</sup> Floor, Aaykar Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAJ7811P		
Appellant	..	Respondent

Appellant by :	Shri Tanzil R. Padvekar
Respondent by :	Shri C.T. Mathews

Date of Hearing	20.03.2023
Date of Pronouncement	30.03.2023

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi dated 26.04.2022 for A.Y. 2016-17. The assessee has raised the following grounds before us:

- “1. On the facts and in law, the Ld. CIT(A) has erred in confirming the disallowance made by the Respondent Assessing Officer under Section 80P of the Act
2. On the facts and in law, the Ld. CIT(A) has erred confirming the disallowance made by the Respondent Assessing Officer by placing reliance on the decision of Citizen Co-operative Society and Totgar Co-operative Credit Society. when the issue relating to eligibility of deduction under Section 80P has been settled by the Hon'ble Supreme Court in a very recent decision of Mavilayi Service Co-operative Bank Ltd & Ors. Vis. CIT Calicut & Ors, which is now a good law
3. On the facts and in law, the Ld. CIT(A) has erred in passing impugned Order under Section 250 of the Act In grave violation of principles of

*natural justice, without allowing opportunity to the Appellant Society to present its case*

4. *On the facts and in law. the Appellant Credit Society is eligible for deduction under Section 80P of the Act. Hence, this Hon'ble Tribunal may be pleased to allow deduction to the Appellant Society.*
5. *The appellant craves leave to amend to add, to modify or delete any of the grounds in the interest of justice."*

2. The assessee has filed application for condonation of delay in filing this appeal by 269 days. The assessee submitted that order of the Id. CIT(A) passed u/s 250 of the Act on 26.04.2022 was not reflected in its normal mail box. Subsequently, it was noticed that the impugned order was lying in spam email folder till September 2022. Thereafter, the order of the Id. CIT(A) was revived to the mail box which resulted delay in filing the appeal.

3. The assessee explained that it was not aware about the order passed u/s 250 of the Act on 26.04.2022. Looking to the facts reported it appear that there is a reasonable cause for delay in filing the instant appeal. We have also considered the judgement of Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Kattiji & Others – Civil Appeal No. 460 of 1987 dated 19.02.1987 wherein it was held "sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to the approach which scuttles a decision on merit." I am of the considered opinion that there is a bonafide reason for not filing the appeal in time, therefore, I condone the delay to decide the issue on merit.

4. Fact in brief is that return of income declaring total income of Rs. Nil was filed on 07.12.2016. The case was subject to scrutiny assessment and notice u/s 143(2) was issued on 21.07.2017. During the course of assessment proceedings the AO noticed that assessee has claimed the entire profit of Rs.39,05,333/- as exempt u/s 80P of the

Act. The A.O issued show cause notice to the assessee as to why the deduction u/s 80P should not be disallowed in the light of the decision of Hon'ble Supreme Court in the case of Citizen Cooperative Credit Society. The assessee has not offered any explanation. Further the A.O observed that assessee was having two categories of members i.e nominal members and associate members, the nominal members do not have voting power and they cannot be called a member of the cooperative society. Since the assessee was making transaction with nominal members, therefore, it cannot be said that the cooperative society was rendering services to members only, therefore, the A.O has disallowed the claim of deduction u/s 80P of the Act.

5. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

6. During the course of appellate proceedings before us the ld. Counsel contended that the ld. CIT(A) has incorrectly at para 6.4 of his order stated that assessee has not challenged the finding of the A.O for relying on the decision of Hon'ble Supreme Court in the case of Citizen's Co-operative Society and Totgar's Co-operative Sale Society Ltd. The ld. Counsel further submitted that assessee has never accepted the ex-parte order passed by the A.O u/s 144 of the Act. The ld. Counsel further submitted that issue in the case of the assessee relating to deduction u/s 80P has been settled by the Hon'ble Supreme Court as per the decision in the case of Mavilayi Services Cooperative Banks Ltd. & Others Vs. CIT, Calicut & Others (Civil Appeal No. 7343 – 7350 of 2019 dated 12.01.2021). The ld. Counsel further submitted that on similar issue and identical facts after following the aforesaid decision of the Hon'ble Supreme Court, the coordinate bench of ITAT, Mumbai in the case of the assessee itself for assessment year 2015-16 and 2017-18 have adjudicated the identical issue in favour of the assessee vide ITA No.

2020/Mum/2021 dated 12.05.2022 and vide ITA No.2021/Mum/2021 dated 20.05.2022.

On the other hand, ld. D.R supported the order of lower authorities.

7. Heard both the sides and perused the material on record. The assessee is a cooperative society and it filed its return of income after claiming deduction u/s 80P of the Act. The A.O has disallowed the claim of deduction stating that assessee was having two categories of members viz. ordinary members and nominal/associate members. He stated that since the assessee was making transaction with nominal members, therefore, it cannot be said that assessee rendering the services to members only.

With the assistance of the ld. Representative, I have perused the decision of coordinate bench of ITAT, Mumbai in the case of the assessee and the relevant operating part of the decision of the ITAT vide ITA No. 2020/Mum/2021 dated 12.05.2022 is reproduced as under:

*“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 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 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 subsection (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.”*

Respectfully following the aforesaid order I set aside order passed by the ld. CIT(A) and restore this issue relevant to deduction u/s 80P of the Act to the file of the AO for deciding as per the direction given in the order of the ITAT.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.03.2023

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 30.03.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**