



॥ आयकर अपीलीय न्यायाधिकरण, पणजी न्यायपीठ, पणजी में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI  
BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

(Through Virtual Hearing)

आयकर अपील सं. / ITA No.38 to 43/PAN/2022

निर्धारण वर्ष / Assessment Year : 2012-13 to 2014-15 & 2016-17 to 2018-19

The Income Tax Officer,  
Ward-2(1), Mangaluru

..... अपीलार्थी / Appellant

बनाम / V/s

M/s S. K. Udupi District Co-operative  
Fish Marketing Federation Limited,  
22-7-1069/1, Mulihithulu, Bolara,  
Mangaluru – 575001.  
PAN: AADAT 6313 M

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : None

Revenue by : Shri N. Shrikanth

सुनवाई की तारीख / Date of conclusive Hearing : 10/07/2023

घोषणा की तारीख / Date of Pronouncement : 12/07/2023

आदेश / ORDER

**PER BENCH :**

This bunch of six appeals of the Revenue is directed against separate orders of National Faceless Appeal Centre [‘NFAC’ for short], Delhi dt. 31/03/2022, passed u/s 250 of the Income-tax Act, 1961 [‘the Act’ in short] which ascended out of respective orders of assessment passed by the Income Tax Officer, Ward-2(5), Mangalore & National Faceless Assessment Centre, Delhi [‘AO’ for short] for the different assessment years [‘AY’ for short].



2. Since identical facts and similar issue is involved in this bunch of six appeals, at the convenience and request of both the parties hereto, we have heard these matters together for a common and consolidated order taking ITA No.38/PAN/2022 as lead case. Resultantly our adjudication laid in succeeding paragraphs hereinafter shall *mutatis-mutandis* shall apply to the ITA No. 39/PAN/2022 to 43/PAN/2022.

**3. Briefly stated the facts borne out of the records are;**

3.1 The appellant assessee is a Co-operative Society registered under the provisions of Karnataka Co-operative Societies Act, 1959 and is consisting of residents of South Kanara and Udupi districts of the Karnataka. The appellant assessee filed its return of income [‘ITR’ for short] for the AY 2012-13 on 21/10/2013 declaring the total income at ₹NIL after claiming a deduction for sum of ₹2,79,89,807/- u/s 80P of chapter VI-A of the Act.

3.2 On the reasoning that the appellant society is not eligible for deduction u/s 80P of the Act, recording the reasons the case of the appellant by service of notice u/s 148 of the Act was reopened by the Ld. AO u/s 147 of the Act after prior approval Ld. PCIT dt. 30/03/2019.

3.3 After considering the submission of the appellant, the Ld. AO culminated the assessment u/s 144 r.w.s. 147 of the Act on 26/12/2019 by disallowing the entire claim for deduction of ₹2,79,89,807/- made u/s 80P of the Act by holding the appellant as association of person [‘AOP’ for short] in place of Co-operative society.



3.4 Aggrieved assessee appealed before first appellate authority, wherein the Ld. NFAC disapproved the views of Ld. AO by holding the assessee as society and granted the relief by restoring the deduction claimed u/s 80P of the Act.

3.5 Aggrieved Revenue brought these matters before the Tribunal alleging the action of Ld. NFAC as *contra-legem* on the following grounds;

***“1. The Order of the CIT(A), NFAC, Delhi is opposed to law and facts of the case.***

***2. The CIT(A) has erred in ignoring the fact that the assessee Society M/S. Sk & Udupi District Cooperative Fish Marketing Federation Limited, is engaged in fishing and allied activities and are covered under the provisions of section 80P(2)(a)(vii) of the IT Act. As per the IT Act, those societies falling under the provisions of section 80P(2)(a)(vii), should have the rules and bye laws restricting the voting rights to the individuals who contribute their labour or carry on the fishing or allied activities, the co-operative credit societies which provide financial assistance to the society, the State Government.***

***3. The CIT(A) has erred in ignoring the fact that the assessee Society's rules and Bye Laws are formulated in contradiction to the provisions laid down u/s.80P(2) of the Income Tax Act. The Bye Laws of the Society is formulated in such a way that there is differentiation with regard to the voting rights provided to the Members of the society, who are engaged in carry on the fishing or allied activities, which amounts to a clear violation of the Income Tax Act, 1961.***

***4. The CIT(A) has erred in directing the AO to allow the deduction claimed by the assessee u/s. 80P(2)(a)(vii), 80P(2)(a)(i), 80P(2) [partly allowed] & 80P(2)(e), following the decision of the Hon'ble Supreme Court in the case of M/s.Mavilayi Service Co-operative Bank Ltd when the facts of the case, M/s.Mavilayi Service Co-operative Bank Ltd who were stated to be providing credit facilities to their members to agricultural and allied purposes, is different from the assessee Society, M/s.SK & Udupi District Cooperative Fish Marketing Federation Limited. In the present case the assessee is engaged in the fishing and allied activities which has been dealt with in Section 80P(2)(a)(vii) of the Act wherein is clearly held that the individuals who contribute their labour or carry on the fishing or allied activities should not have restriction in voting rights.***

***5. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed.”***



4. When the case called out for the hearing on the schedule day, none appeared for the assessee, however an application dt. 04/07/2023 seeking adjournment found filed on 07/07/2023. Since reasons seeking adjournment found unconvincing, we rejected adjournment application and proceeded to hear the matter *ex-parte* on merits u/r 24 of Income Tax Appellate Rules, 1963 ['ITAT-Rules' for short] with the able assistance of learned departmental representative Mr N Shrikanth ['DR' for short].

5. We have heard the Ld. DR on the sole & substantive ground; and subject to the provisions of rule 18 of ITAT-Rules, perused the material placed on record, case laws relied upon by both the parties and duly considered the facts of the case in the light of settled legal position which also forewarned to respective rival parties present and noted that;

5.1 In re-assessment proceedings, the Ld. AO upon the perusal of bye-laws of the assessee has observed that, the nominal members of the assessee society are excluded from the general voting rights thus from sharing the surplus of the society. This being against the accepted principle of mutuality, the Ld. AO dismantled the status of the assessee as Society eligible for deduction u/s 80P of the Act and disallowed the claim of entire deduction holding it as AOP. In framing the aforesaid assessment, the Ld. AO placed his reliance on the decision of Hon'ble Apex Court of India in the case of '*CIT Vs Bankipur Club Ltd.*' reported in 226 ITR 97 (SC) [equivalent citation 92 taxman 278] and '*Chelmsford Club Vs CIT*' reported in 243 ITR 89 (SC) [equivalent citation 109 taxman 215]. While dislodging other claims made u/s 80P(2) of the Act,



Ld. AO reliance also placed on decision of Hon'ble Karnataka High Court in 'PCIT Vs Totagars Co-Op. Sale Society' found reported in 392 ITR 74 (Kar) [equivalent citation 78 taxmann.com 169]

5.2 Per contra, we observed that, the Ld. NFAC elaborately dilating its observation has disapproved the views of Ld. AO in the light of judicial precedents and allowed the deduction u/s 80P of the Act by holding that;

*“5.1 As per the Karnataka State Co-operative Societies Act, the definition ‘member’ includes a nominal and an associate member. The appellant society’s main activity relates to Fishing & Allied activities and is covered by Section 80P(2)(a)(vii) and the income derived from this activity is in respect of members which includes nominal and associate also. Therefore, the deduction claimed by the appellant is squarely covered by the recent decision of Hon’ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd vs. CIT Calicut, wherein it had held with regard to eligibility of deduction to the society u/s.80P as follows:*

*“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 80P(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 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. ”***

5.2 *The appellant is also providing credit facilities to its members and therefore the income from this activity is also covered by Section 80P(a)(i).*

5.3 *It is seen that the appellant earned interest income on deposits made with various nationalized banks and co-operative society/bank. The interest income earned from Co-operative Bank and Societies is assessable under the head income from other sources as the main activity of the appellant is fishing and allied. However, the appellant would still be entitled to deduction u/s.80P(2)(d) for the interest income received from Co-operative Bank/Society, since the other activity of earning interest is incidental in nature. The only income taxable is the interest received from scheduled bank. The Assessing Officer is directed to **Disallow only the interest earned from Scheduled Banks** in view of the decision of M/s. Totagar's Cooperative Sale Society 392 ITR 74 (Kar).*

5.4 *With regard to letting of godowns, the appellant submitted that the society has built some godowns for the benefit of the members. They are using to stock fish and fishing related materials namely net, rope and other material. It is seen that the godowns are used for the benefit of members and hence, income in respect of letting of godown is also covered by 80P(2)(e) of the Income Tax Act.*

5.5 *In view of the decision of the Hon'ble Supreme Court supra, the definition of 'member' under the Karnataka State Co-operative Societies Act, includes nominal and associate member and the loans given to such nominal/associate members would qualify for the purpose of deduction under section 80P(2)(a)(vii).*

5.6 *Considering the facts and circumstances of the instant case and respectfully following the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd vs. CIT Calicut, the Assessing Officer is directed to allow deduction u/s.80P(2)(a)(vii), 80P(2)(a)(i), 80P(2)(d)[partly allowed as discussed at Para 5.3] and 80P(2)(e). Hence, Ground Nos.2, 3, 3.1 to 3.11 and additional ground Nos.5, 6, 7, 8, 9 & 11 are partly allowed.*

***(Emphasis supplied)***



6. During the course hearing the Ld. DR submitted that the assessee has four classes of members, however of these classes, the Nominal members falling within class 'D' are not at par with other members, as these nominal members do neither carry any right to participate in the management and surplus, nor do carry any right to vote in general election of the respondent society. This provisions of registered bye-law preventing nominal members/fishers from exercising their voting right *de-facto* triggered the operation of *proviso* to section 80P(2)(a) of the Act and thus disentitled or disqualified the respondent from claiming any deduction u/s 80P(2)(a) of the Act. For the reasons action of Ld. NFAC holding nominal member/fishers with par as that of regular individual member (class 'C') is contrary to the provisions bye-laws and of the Act, therefore impugned order allowing deductions u/s 80P(2) merits reversal.

7. Without reproducing the text of the provision of section 80P(2)(a) in *verbum*, it shall be purpose to state that, this section entitles certain deductions to co-operative societies engaged in certain business activities such as (i) banking ii) cottage industry, (iii) marketing of agricultural produce (iv) purchase of agricultural implements, seeds, livestock etc. (v) processing of agricultural produce (vi) collective disposal of the labour and **(vii) fishing or allied activities**. However, deductions to societies whose businesses/activities are falling in class (vi) & (vii) are subjected to a solitary condition prescribed by proviso to section 80P(2)(a) of the Act, which restricts the voting right to three classes viz; (1) Individuals, (2) Co-operative societies and (3) the State Government. Thus any provision in the bye-law of the assessee granting voting



right to any other class shall disqualify its entitlement to deduction u/s 80P of the Act.

8. Undisputedly, the assessee society is engaged in the business of fishing and allied activities as envisaged by clause (vii) of 80P(2)(a) of the Act with four classes of members namely Government Member (Class 'A'), Societies Members (Class 'B'), Individual Members (Class 'C') and Nominal Member (Class 'D'). It is also an admitted fact that, in terms of registered bye-laws of the respondent society, of the above only first three classes of members i.e. A, B, & C are allowed to exercise their voting rights, and the nominal members i.e. class 'D' are expunged from exercising any such voting right. ***It is also remained an absolute fact that, the respondent assessee did neither permit voting rights to any other class/person other than A, B, & C nor the Revenue could establish on evidence otherwise.*** This *ispo-facto* in our considered view satisfies the legal sanction going by the principles of stricter interpretation laid by the Hon'ble Apex Court in '*Commission of Customs Vs M/s Dilip Kumar And Co. & Ors*' reported in 9 SCC 1 (2018).

9. We note that, for excluding the nominal member from voting rights, the Revenue pressing into service the *proviso* (supra) tried to interpret the provision liberally so has to cause violence to the plain, simple and unambiguous restriction placed by proviso to section 80P(2)(a) of the Act. This interpretation of the Revenue in our considered view however, cannot pass the test of acceptance in the light Hon'ble Supreme Court's decision laid



in 'CIT Vs NC Bhudharaja & Co' reported in 1993 AIR 2529, [equivalent citation 1994 SCC Supl. (1) 280], wherein their Hon'ble lordship have held that, if the language of a provision is clear and unambiguous, then it should be construed strictly.

10. Since the respondent assessee restricted the voting rights exclusively to permitted classes of members in terms of *proviso* to section 80P(2)(a) of the Act and in the clear absence of evidence from the Revenue of respondent's allowing or granting voting rights to any class or person other than Government, Societies and Individual Members, we do not inclined to countenance the views of Ld. AO. Therefore finding no force in the argument of Ld. DR, there remains no reason to interfere with the impugned order allowing the claim for deduction u/s 80P(2)(a)(vii) of the Act.

11. In result, all six appeals of the Revenue stands **DISMISSED**.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday 12<sup>th</sup> of July, 2023.

-S/d-

**S. S. GODARA**

**JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHALI**

**ACCOUNTANT MEMBER**

पुणे/ PUNE ; दिनांक / Dated : 12<sup>th</sup> day of July, 2023.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The CIT-(A), Belagavi

4. The Pr. CIT, Belagavi

5. DR, ITAT, Panaji Bench, Panaji

6. गार्ड फाइल / Guard File.

\*SGR

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकरअपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.