

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH : PANAJI
(THROUGH VIRTUAL HEARING)
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA.No.180/PAN./2019
Assessment year 2015-2016

Jamkhandi Co-operative Credit Society Limited, Opp. Post Office, Main Road, Jamkhadi. C/o. Shri S. Parthasarathi, Advocate, 3/1, Pranava Complex, 5 th Cross, Malleswaram, Bengaluru. PIN – 560 003 PAN AAAAJ3399J State of Karnataka.	vs.,	The Income Tax Officer, Ward -2, Bagalkot.
(Appellant)		(Respondent)

For Assessee :	Smt. Pratibha R. Advocate
For Revenue :	Shri N. Shrikanth

Date of Hearing :	12.07.2023
Date of Pronouncement :	18.07.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for the assessment year 2015-2016, arise against the CIT(A), Belgaum's order ITA.No.CIT(A)/BGM/10165/2018-19 dated 08.03.2019, involving proceedings u/sec.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal :

1. *“The learned CIT(A) erred in upholding the order of the Assessing Officer without considering the submissions made by the appellant.*
2. *The learned CIT(A) erred in not considering the submissions made by the appellant and went ahead to make a disallowance u/s.80P(2)(a)(i) without appreciating the fact that the Hon’ble Supreme Court decision in the case of Citizen Co-op Society is not squarely applicable to the appellant’s case. [Rs.13,25,273/-].*
3. *The learned CIT(A) ought to have appreciated the fact that the appellant society has not violated any provisions u/s.80P(2)(a)(i) of the Act and the same are enforced in the by-laws of the society.*
4. *The learned CIT(A) erred in confirming the order of the AO by not considering the fact nor the judgment held that the interest earned by credit co-operative societies on deposits with banks is an income attributable to business and hence eligible for claim of deduction.*

5. *The learned CIT(A) erred in confirming the additions, made u/s.68 of the Act without considering the facts submitted by the appellant. [Rs.60,00,000/-]*
 6. *The learned CIT(A) ought to have accepted the explanation given by the appellant regarding cash deposits made in BDCC Bank and as such should have refrained from confirming the additions made u/s.68 of the Act.*
 7. *The learned CIT(A) erred in not appreciating the fact the cash deposits made were genuine and that the appellant was not given adequate opportunity to prove the source of such deposits and therefore should not have confirmed the additions made by the AO.*
 8. *Without prejudice, the disallowances/ additions are excessive, arbitrary and unreasonable and liable to be deleted in full.*
 9. *For these and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed.”*
3. We next note that the CIT(A)'s detailed discussion has upheld the Assessing Officer's action both disallowing sec.80P deduction claim of Rs.13,25,273/- as well as making

sec.68 addition of unexplained cash credits of Rs.60 lakhs as under :

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5. The facts of the case, submissions made by the appellant, grounds of appeal, the assessment order, remand report and various decisions of ITAT and High Court, Supreme Court are carefully analyzed.

6. Claim of deduction under section 80P(2)(a)(i) of Rs. 13,25,273: The Assessing Officer passed an elaborate assessment order dt:31.10.2017 giving a finding that the appellant society has provided credit facilities to three categories of members viz. i) Regular member ii) Associate members and iii) Nominal members. In the instant case, it was noticed by the AO during assessment proceedings, that the assessee society was earning income not only from the members but majority of the income from the nominal/ Associate members. Hence, A.O had disallowed the deduction of Rs.13,25,273/- claimed u/s.80P(2)(a)(i).

6.1 Karnataka Co Operative Society Act identifies members as per the clause 18 which is as under:

Nominal or Associate members: Notwithstanding anything contained in section 16, a co-operative society may admit,

- a) Any individual as a nominal or associate member:
- b) any banking company as a nominal member:
- c) Any firm, company, co operative society or any body or corporation constituted by or under any law for the time being in force, as a nominal or associate members.



- A nominal member shall not be entitled to any share in any form what so ever in the assets or profits of the society and a nominal member who is an individual shall not also be entitled to become an office bearer of the society.
- An associate member may hold shares but shall not be entitled to become an office bearer of the society.

6.2 From the Bye laws of the society, it is noticed that the assessee society also recognizes members as General members, Associate members and nominal members. In this case, it is seen that the society is accepting deposits and also lending loans to nominal/associate members.

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6.3 From the order of the AO it is noticed that the appellant caters to two categories of members i.e. Regular and Nominal members, the details of which are as under:

	No. of members	Percentage
Regular members	2569	83.06%
Nominal/Associate members	524	16.94%
Total	3093	100%

6.4 As provided under the Karnataka Co-operative Society Act, the number of associate/nominal members under clause (a) in any Co-operative Society shall not exceed fifteen percent (15%) of the total membership of the society. From the above chart it is seen that in respect of admitting members, the assessee society has admitted excess nominal/associate members which is more than 15% of the total members when compared to regular members which is in violation of Karnataka Co-operative Society Act, 1959.

6.5 In view of the violation of the Karnataka Co-operative Society Act, the society is not eligible for deduction u/s 80P and as such ratio of the decision of Hon'ble Supreme Court decision, in the case of **Citizen Co-op Society Ltd, Hyderabad v. ACIT, C-9(1), Hyderabad in Civil Appeal No.10245 of 2017 dated 8.08.2017** is applicable to the facts of the assessee society.

6.6 As viewed from the above observations/findings of the Hon'ble Supreme Court, in the assessee's case also, mutuality principles have been failed as substantial business is being carried out with the general public or nominal members. Even regular members are less than 85%. In view of the above and taking into account the byelaws and the nature of business carried out by the assessee, the society is **not eligible** for deduction u/s 80P of the Income tax Act, 1961. As such the disallowance made by the AO under section 80P(2)(a)(i) of Rs. 13,25,273 is in accordance with law.

7. Addition under section 68 of the I.T.Act of Rs.60,00,000: The assessee society has maintained its current account with BDCC bank, Jamkhandi. The AO



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during assessment proceedings noticed that the assessee had received Rs. 60 lakhs in cash from 9 account holders as under :

S.NO.	Name of the depositor	Dt.of deposit	Amount
1.	Sh.R.D.Jadhav	31.03.2015	Rs.10,00,000
2.	Sh.K.R.More	31.03.2015	Rs.10,00,000
3.	Sh.G.M.More	31.03.2015	Rs.10,00,000
4.	Sh.G.G.Gadivaddar	31.03.2015	Rs.5,00,000
5.	Sh.A.A.Shinde	31.03.2015	Rs.5,00,000
6.	Sh.V.G.Pukale	31.03.2015	Rs.5,00,000
7.	Sh.L.B.Saptasagar	31.03.2015	Rs.5,00,000
8.	Sh.N.R.More	31.03.2015	Rs.5,00,000
9.	Sh.M.G.Pendare	31.03.2015	Rs.5,00,000
	Total		Rs.60,00,000

The above deposits totaling to Rs.60,00,000 were in turn deposited with BDCC Bank by the assessee. When confronted by the AO, Sh.Tinmaker, the CEO and Sh.Vinay G.Pukale, the Cashier of the assessee society present during assessment proceedings, denied that the deposits belonged to the above account holders but was deposited by the erstwhile Manager who had expired. Since the assessee society was unable to prove with any identity, Credit worthiness and genuineness of the depositors for depositing the above cash in a single day, the AO treated it as unexplained cash credits under section 68 of Income-tax Act, 1961 and brought it to



Under Income Tax Act, any unexplained cash credit to a taxpayers' account can be held as income to the taxpayer and taxable under Section 68 of Income Tax Act. If any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

7.2 Even during the appellate proceedings, the assessee has failed to furnish any evidence in respect of the account holders who had alleged to have deposited Rs.60 lakhs in cash in a single day i.e. 31.03.2015. The assessee on 26.12.2018 submitted copies of agricultural land holdings of the alleged deposit holders. But did not substantiate on the issue of either their credit worthiness and genuineness of transactions.

7.3 As the assessee failed to prove both i.e. creditworthiness and genuineness of the transactions in substantiating the source of Rs. 60 lakhs deposited in its bank account which was claimed to be receipts from account holders, I **confirm** the addition made by the AO under section 68 of the Act.

8. As a result, the appellant's appeal is **dismissed**.

4. We find no merit in the Revenue's vehement contentions supporting the learned lower authorities action on both these grounds. This is for the precise reason that so far as the first and foremost issue of the impugned sec.80P deduction disallowance being disallowed on account of the fact that the assessee is also having nominal members, hon'ble apex court's landmark decision in Mavilayi Service Co-operative Bank Ltd., vs. CIT [2021] 431 ITR 1 (SC) elaborately guides us in holding that the same could hardly form a reason to deny the relief in issue to an eligible assessee only for the reason of distinction in categories of memberships having voting rights and others.

5. Coming to the latter issue of sec.68 addition of unexplained cash credits, we note that it is not the assessee but it's customers/depositors (supra) who had credited the same, involving varying sums in their respective accounts. This clinching fact has nowhere been denied either in the course of assessment or in the CIT(A)'s order. Learned lower authorities nowhere doubt the veracity of the concerned

account holders. We thus see no justification in the learned lower authorities adding all these deposits made in customers' accounts as allowable to be taxed in assessee's hands. The same is directed to be deleted.

6. Delay of 05 days in filing the instant appeal before the tribunal is condoned. Hon'ble apex court's landmark decision Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) has settled the law long back that all such technical aspects must make way for the cause of substantial justice. We, therefore, condone the impugned delay.

7. No other ground or argument has been pressed before us.

8. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 18.07.2023.

Sd/-
[G.D. PADMAHSHALI]
ACCOUNTANT MEMBER
Pune, Dated 18th July, 2023

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Belagavi
4.	The Pr. CIT, Belagavi
5.	D.R. ITAT, Panaji Bench, Panaji.
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.