

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 133/Asr/2023
Assessment Year: 2018-19

M/s Bains Cooperative
Thrift and Credit Society,
Mahilpur, Distt. Hoshiarpur
[PAN: AADAB 8652P]
(Appellant)

Vs. Income Tax Officer,
Ward-1(1), Hoshiarpur
(Respondent)

Appellant by : Sh. Surinder Mahajan, CA

Respondent by: Sh. Anupam Kant Gart, CIT-DR

Date of Hearing: 02.08.2023

Date of Pronouncement: 08.08.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Id. Pr. Commissioner of Income Tax, Jalandhar-1 dated 29.03.2023 in respect of Assessment Year: 2018-19.

2. At the outset, the Id. counsel for the assessee has submitted that the Id. Pr. CIT has ignored the various submissions filed before him and while holding that the assessment order passed by the Assessing Officer (AO) was erroneous and prejudicial to the interest of the Revenue, following the ITAT Amritsar Bench decision dated 22.09.2021 in ITA No. 384/Asr/2018 in the assessee's own case for the assessment year 2013-14 by observing as under:

8. The Hon'ble jurisdictional bench of ITAT, Amritsar vide its order dated **22.09.2021 in ITA No. 384/ASR/2018** in the case of assessee itself (A.Y. 2013-14) has remanded the **matter back to the file** of Ld.CIT(A) for denova passing of the appellate order with specific directions. **The relevant portion of** the order is reproduced below:-

"that the Hon'ble Supreme Court **in the subsequent decision has considered the** decision of the Hon'ble Supreme Court **in** the case of Mavilayi Service **Cooperative Bank** Ltd. &Ors v. CIT in paragraph 45 had held as under:

"45. To sum up, therefore, the ratiodecidenti 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 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 non-members, profits attributable to such loans obviously **cannot be** deducted.”

In view of the above, it was submitted that the assessee **is** entitled to **the relief claimed** in the present appeal.

3. Per contra, the Ld. DR had submitted that the decision of the Supreme Court was based on appreciation of various Act including Andhra Pradesh Act, Kerala Act and U.P. Cooperative Cane Unions Federation Ltd. and others. DR submitted that in the preset case the assessee was registered as a society under the Circle Registrar Cooperative Society, Hoshiarpur (Punjab), and it is necessary to examine rules and regulation **of** the society as well as of relevant society Act of Punjab, by the lower authorities to find **out** whether definition of Members and nominal members etc. Further assessee **was denying** doing the lending business after getting the approval from the RBI, this fact **was also** required to be verified. Lastly it is necessary to find out whether the assessee **was doing** lending activities with Members and non-Members or not.

4. In rebuttal, the Ld. AR submitted that the matter may be remanded back to the CIT(A) for afresh adjudication after granting opportunity of being heard to the appellant assessee.

5. We have heard the rival submissions and perused the material available on record. Admittedly, the foundation facts are required to be ascertained by the lower authorities like definition of members, nominal members and non-members, whether the assessee was earning interest from banking activities for the members only or for non members and whether the assessee was having the approval from Reserve Bank of India for doing banking activities.

6. Under the circumstances, we remand the matter back **to** the file of Pr. CIT for de novo adjudication of the matter of invoking section 263 of the Act with the following directions:

a. That the Pr. CIT shall examine, the veracity of the facts in the light of the Judgement delivered by the Hon'ble Supreme Court more in the matter of Mavilayi Service Cooperative Bank Ltd. vs. CIT 197 DTR 0361.

b. While deciding the issue on the basis of the above said **judgment, the Pr. CIT** shall examine the rules of assessee-society as well as the Act **under which the society** was formed.

- c. For the purpose of ascertaining the scope of the activities of the **assessee**, the Pr. CIT shall examine whether its activities were restricted to members or **non members** or both.
- d. Whether the assessee was having any license for carrying **out the banking** activities for the members and non members.
- e. Based on the above said factual findings the Pr. CIT shall decide **the matter after** granting adequate opportunity of hearing to the assessee, **and** passed a reasoned and speaking order.
- f. Needless to say the assessee shall have liberty **to file any other document which it** deem necessary for due disposal of the matter and may rely **upon any of the Judgement** referred before us.
7. In view of the peculiar circumstances of the case, it is considered deem fit to restore the matter back to the file of the PCIT to adjudicate the matter regarding holding the assessment order passed by the Assessing Officer (AO) as erroneous and prejudicial to the interest of the Revenue, after granting opportunity of being heard to the appellant assessee in the light of the subsequent decisions of Coordinate Bench in the Assessee's own case where the judgement of Hon'ble Apex (Supra) have been considered on the issue whether interest income is to be charged to Tax as income from other sources in the context of the assessee, and availability of deduction u/s.80P(2)(d) on such amount thereof. Accordingly, the matter is restored to the PCIT.

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

Order pronounced in the open court on 08.08.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order