

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.91/PAN/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Vardhaman Urban Credit Souharda Sahakari Niyamit, Post- Kudchi, Tal- Raibag, Dist.- Belgaum, Karnataka- 591005. PAN : AAAAS5599R	Vs.	ITO, Ward-1, Belgaum.
Appellant		Respondent

S.A. No.07/PAN/2023
(Arising out of ITA No.91/PAN/2023)
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Vardhaman Urban Credit Souharda Sahakari Niyamit, Post- Kudchi, Tal- Raibag, Dist.- Belgaum, Karnataka- 591005. PAN : AAAAS5599R	Vs.	ITO, Ward-1, Belgaum.
Appellant		Respondent

Assessee by : Shri U. G. Ammangi
Revenue by : Shri Ashwini D. Hosmani

Date of hearing : 04.09.2023
Date of pronouncement : 08.09.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated

27.02.2023 for the assessment years 2017-18. The assessee also filed a Stay Petition bearing S.A. No.07/PAN/2023.

ITA No.91/PAN/2023 :

2. The appellant raised the following grounds of appeal :-

- “1. Assessee is a co-operative credit society registered under Karnataka Souharda Sahakari Act, 1992 having both Regular & Associate Members. As per Section 21 B of Karnataka Souharda Sahakari Act, 1997 permits “Associate Member”. Hence eligible for deduction U/s 80P(2)(a)(i). Apex Court decision in case of The Citizen Co-operative Society Ltd is not applicable. Hence Appeal is to be allowed.
2. Interest Income earned from Co-op Bank is eligible for deduction U/s 80P(2)(d). Co-op Bank is Co-op Society. Hence Appeal is to be allowed.”

3. Briefly, the facts of the case are that the appellant is a Co-operative Credit Society engaged in the business of accepting the deposits from its members and lending money to its members. The Return of Income for the assessment year 2017-18 was filed on 02.02.2018 declaring Rs.Nil income after claiming deduction u/s 80P of the Income Tax Act, 1961 (‘the Act’) of Rs.13,89,475/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-4, Belgaum (‘the Assessing Officer’) vide order dated 09.12.2019 passed u/s 143(3) of the Act at a total income of Rs.3,79,183/-. While doing so, the Assessing Officer brought to tax the interest income of Rs.2,96,729/- earned from the

associate/nominal members by holding that the principle of mutuality had no application in respect of associate/nominal member placing reliance on the decision of the Hon'ble Supreme Court in the case of *The Citizen Co-operative Society Limited vs. ACIT* in Civil Appeal No.10245 of 2017 (arising out of SLP (c) No.20044 of 2015). Similarly, the Assessing Officer also made addition of Rs.1,32,454/- being interest income earned out of the surplus money invested with co-operative banks/nationalized banks by holding that such interest income does not qualify for exemption u/s 80P(2)(a)(i)/80P(2)(d) of the Act.

4. Being aggrieved by the above disallowances, an appeal was filed before the NFAC, who vide impugned order confirmed the findings of the Assessing Officer and dismissed the appeal of the assessee for non-prosecution.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. We heard the rival submissions and perused the material on record. The first ground of appeal challenges the disallowance of exemption of interest income earned from the associate/nominal members. From perusal of the assessment order, it is clear that the

Assessing Officer had denied the exemption u/s 80P(2)(a)(i) in respect of interest income earned from the associate/nominal members by holding that the principle of mutuality had no application placing reliance on the decision of the Hon'ble Supreme Court in the case of The Citizen Co-operative Society Limited (supra). Recently, the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT, 431 ITR 1 (SC), wherein, vide para 46 after making a reference to the earlier decision in the case of U.P. Co-op. Cane Union Federation Ltd. vs. CIT, 237 ITR 574 (SC) held that the term "Member" should be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption was formed. The relevant provisions of the State Legislature were not placed before us, therefore, we remit the matter back to the file of the Assessing Officer with a direction to verify the relevant provisions of the State Legislature under which the cooperative society was formed and thereby as to whether the "member" includes a "nominal member", if so, to allow the exemption even in respect of income earned from the nominal members in the light of the law laid down by the Hon'ble Supreme

Court in the case of Mavilayi Service Co-operative Bank Ltd. (supra). Thus, this ground of appeal stands partly allowed for statistical purposes.

7. As regards to the interest income earned out of the surplus money invested with the co-operative bank, we find that Pune Benches of the ITAT had been taking a consistent view that the interest income earned by the co-operative society on the investments made with the schedule banks/co-operative banks/nationalized banks made out of the surplus money also qualifies for exemption u/s 80P(2)(a)(i) of the Act. There is a cleavage of judicial opinion among several High Courts on the issue of eligibility of this kind of income for exemption u/s 80P(2)(a)(i) of the Act. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Cooperative Federation of Housing Building Societies Ltd. 11 taxmann.com 448, the Hon'ble Gujarat High Court in the case of State Bank of India vs. CIT 389 ITR 578 (Guj.), the Hon'ble Delhi High Court in the case of Mantola Co-operative Thrift & Credit Society Ltd. vs. CIT 50 taxmann.com 278, the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Cooperative Agricultural Development Bank Ltd. 389

ITR 68 and the Hon'ble Kolkata High Court in the case of CIT vs. Southern Eastern Employees Cooperative Credit Society Ltd. 390 ITR 524 took a view that the income arising on the surplus money invested in short term deposits and securities cannot be attributed to the activities of the society and, therefore, not eligible for exemption u/s.80P(2)(a)(i) of the Act. However, the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO (2015) 230 taxmann.com 309 (Kar.) and the Hon'ble Telangana and Hon'ble Andhra Pradesh High Court in the case of Vaveru Co-operative Rural Bank Ltd. vs. CIT (2017) 396 ITR 371 took a view that such interest income is attributable to the activities of the society and, therefore, eligible for exemption u/s 80P(2)(a)(i) of the Act. Similar view has been taken by the Hon'ble Calcutta High Court in the case of PCIT vs. Gunja Samabay Krishi Unnayan Samity Ltd., 147 taxmann.com 518 (Calcutta) and the Hon'ble Madras High Court in the case of Chennai Central Co-operative Bank Ltd. vs. ITO, 148 taxmann.com 17 (Madras). The Pune Bench of the Tribunal in the case of M/s. Ratnatray Gramin Bigar Sheti Sah. Pat Sanstha Maryadit vs. ITO (ITA Nos.559/560/PUN/2018, dated 11-12-2018) taken a view in favour

of the assessee following the judgment of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra). Respectfully following the decision of the Coordinate Bench of this Tribunal (Pune), we are of the considered opinion that the interest income earned on fixed deposits with cooperative bank/schedule bank partakes character of the business income, which is eligible for deduction u/s 80P(2)(a)(i) of the Act. In the light of the above settled position of law, we direct the Assessing Officer to allow the exemption in respect of interest income earned from schedule banks/co-operative banks/nationalized banks u/s 80P(2)(a)(i) of the Act. Accordingly, this ground of appeal filed by the assessee stand allowed.

8. In the result, the appeal filed by the assessee in ITA No.91/PAN/2023 for A.Y. 2017-18 stands partly allowed for statistical purposes.

S.A No.07/PAN/2023, A.Y. 2017-18 :

9. Since the appeal of the assessee is decided as partly allowed for statistical purposes, the Stay Application filed by the assessee becomes infructuous. Thus, the Stay Application in S.A. No.07/PAN/2023 filed by the assessee stands dismissed.

10. To sum up, the appeal filed by the assessee stands partly allowed for statistical purposes and the Stay Application filed by the assessee stands dismissed, as indicated above.

Order pronounced on this 08th day of September, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 08th September, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. DR, ITAT, Panaji.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलिय अधिकरण, पुणे / ITAT, Pune.