

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1225/Mum/2023
(A.Y. 2018-19)**

Janseva Co-operative Credit Society Limited 408, Maker Bhavan No. 3, 21, New Marine Lines, Mumbai – 400 020	Vs.	PCIT-17 Room No. 120, 1 st Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAJ7811P		
Appellant	..	Respondent

Appellant by :	Tanzil Padvekar
Respondent by :	Ankush Kapoor

Date of Hearing	25.07.2023
Date of Pronouncement	21.08.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. PCIT-17, Mumbai, dated 30.03.2023 for A.Y. 2018-19.

The assessee has raised the following grounds before us:

- “1. On the facts and in law, the Ld. Principal Commissioner of Income Tax, Mumbai-17 erred in passing the impugned Order under Section 263 of the Act by invoking powers under Section 263 of the Act without jurisdiction. Hence, the impugned Order passed under Section 263 of the Act is bad in law and without meeting jurisdictional requirement as twin mandatory conditions are not fulfilled for invoking power under Section 263 of the Act.*
- 2. On the facts and in law, the Ld. Principal Commissioner of Income Tax, Mumbai-17 has erred in relying on the decision of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society V/s. Income Tax*

Officer, Karnataka reported in [2010] 188 Taxman 282 (SC) without appreciating that the facts in the case of the Appellant are different from that of the facts in the case of Totgars Co-operative Sale Society V/s. Income Tax Officer, Karnataka (supra) and therefore the legal principles in the said decision will not apply to the case of the Appellant.

3. *On the facts and in law, the Ld. Principal Commissioner of Income Tax, Mumbai-17 has erred by failing to appreciate that the Appellant's case was selected for limited scrutiny for examining claim of deduction under chapter VIA of the Act, and the Ld. Assessing Officer has made detailed enquiry on the specific issue of deduction claimed under Section 80P of the Act, including enquiry regarding interest income earned by the Appellant during the year under consideration. Therefore, the charge of Ld. Principal Commissioner of Income Tax, Mumbai- 17 that Ld. Assessing Officer had failed to verify interest income is misconceived and erroneous on this ground alone, proceeding initiated under Section 263 of the Act without jurisdiction and Order deserves to be quashed.*
4. *On the facts and in law, the Ld. Principal Commissioner of Income Tax, Mumbai-17 has erred in passing the impugned Order under Section 263 of the Act which is contrary to the law laid down by the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. V/s. Commissioner of Income Tax, Calicut [2021] 123 taxmann.com 161 (SC) and therefore, the impugned Order passed under Section 263 of the Act is unsustainable in law and is liable to be quashed.*
5. *That the Assessment Order passed by the Ld. Assessing Officer is in conformity with law laid down by Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. (Supra) and hence, Assessment Order is not erroneous.*
6. *On the Facts and in law, the Ld. Mavilayi Service Co-operative Bank Ltd. erred by assuming jurisdiction under Section 263 of the Act without due verification of the material available on record and the Order passed under Section 263 of the Act suffers from total non-application of mind and therefore the impugned Order is bad in law.*
7. *On the facts and in law the Ld. Mavilayi Service Co-operative Bank Ltd erred in assuming jurisdiction under Section 263 of the Act without appreciating that the Ld. Assessing Officer has adopted one of two views possible which is in conformity with the decision of the Hon'ble Apex Court in the Case of Mavilayi Service Co-operative Bank Ltd. V/s. Commissioner of Income Tax, Calicut (Supra) and therefore the Assessment Order passed by the Ld. Assessing Officer cannot be held to be erroneous and prejudicial to the interest of the Revenue.*
8. *On the facts and in law, the Ld. Principal Commissioner of Income Tax, Mumbai-17 erred in holding transactions with 'nominal members' is not eligible for deduction under Section SOP(2)(a)(i) of th Act which is contrary to the decision of the Apex Court in Mavilayi Service Co-operative Bank Ltd. V/s. Commissioner of Income Tax, Calicut (Supra) read with Maharashtra Co-operative Society Act. The Hon'ble Apex Court has held*

that loans given to such nominal members would qualify for the purpose of deduction under Section 80P(2)(a)(1).

9. *On the facts and in law, the Ld. Principal Commissioner of Income Tax, Mumbai-17 erred in holding the Assessment Order is erroneous and prejudicial to the interest of the Revenue by merely making bald allegation which are short of any merits. The Assessment Order is neither erroneous nor prejudicial to the interest of the Revenue and therefore the impugned Order passed under Section 263 of the Act is arbitrary, void, illegal and is liable to be quashed and set aside.*
10. *The appellant craves, leave to add, alter, modify, revise, add/delete ground (s) with the leave of hon'ble Bench."*

2. The fact in brief is that assessment u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act was made on 19.04.2021 by accepting the return of income nil filed by the assessee. Thereafter on examination of the assessment record, the ld. Pr.CIT noticed that assessee has claimed deduction u/s 80P(2)(a)(i) of the Act for Rs.56,92,992/- which was allowed by the assessing officer. However, the similar deduction was disallowed in the assessment order passed in the case of the assessee for assessment year 2015-16 to 2017-18. The ld. Pr.CIT also found that the ld. CIT(A) has confirmed the order of the assessing officer for the assessment year 2015-16 to 2017-18 holding that assessee was not entitled to claim deduction u/s 80P of the Act. Therefore, the ld. Pr.CIT observed that the facts in the case of the assessee was similar to the earlier years and the assessing officer had allowed the assessee's claim of deduction u/s 80P(2)(a)(i) without due verification. The ld. Pr.CIT also observed that the AO has not verified the detail of interest income earned by the assessee during the year under consideration. The ld. PCIT also referred the decision of Hon'ble Supreme Court in the case of Totagars Cooperative Sales Society Vs. Income Tax Officer Karnataka reported in (2010) 188 taxman 282 (SC) wherein held that the income in respect of which deduction is sought must constitute the operational income and not the other income was accrued to the society. Interest earned by the assessee on funds which were not required for business

purpose at the given point of time falls in the category of other income. Therefore, order passed by the assessing officer is erroneous and prejudicial to the interest of revenue since deduction was allowed to the assessee without proper application of the facts and law. In response to notice u/s 263 of the Act the assessee submitted as under:

- “i. The assessee has submitted that the case of the assessee for A.Y. 2015-16 and A.Y. 2017-18 has been set aside to the file of the AO by the Hon'ble ITAT.*
- ii. The law is well settled on the powers under Section 263 of the Act that when there are two views possible or when the issue in question is debatable and if the AO has taken one of the two views possible then such Assessment Order cannot be said to be erroneous or prejudicial or both as per Section 263.*
- iii. The assessee has relied upon various judicial pronouncements and claimed that it has rightly claimed deduction u/s 80P(2)(a)(i).”*

The Id. Pr.CIT has not accepted the submission of the assessee and observed that assessee has shown an amount of Rs.15,57,881/- as “Other Income” but did not provide the source of such income. In assessment order of previous years where deduction u/s 80P(2)(a) were disallowed, the AO has clearly mentioned that the assessee had two categories of members i.e nominal members and associate members and as the assessee had entered into transactions with nominal members it was not eligible for deduction u/s 80P(2)(a)(i) of the Act. The assessee has not substantiated how its case for the current year was different from the previous year. It is also observed that there was an element of profiteering in the activities of the assessee society thereby violating the principle of mutuality as held in the decision of Hon'ble Supreme Court in the case of CIT Vs. Kumbakonam Mutual Benefit Fund Ltd. 53 ITR 241 (SC). The Id. Pr. CIT also observed that in the case of the assessee the decision of Hon'ble Supreme Court in the case of Totagars Cooperative Sale Society Vs. ITO, Karnataka (2010) 188 taxman 282 (SC) was relevant wherein it is held that interest on deposit

was not business income but income from other sources and the society was not entitled to such deduction u/s 80P(2). Therefore, the AO was directed to frame the assessment de novo.

3. During the course of appellate proceedings before us the Id. Counsel referred the notice u/s 142(1) of the Act issued by the assessing officer during the course of assessment on 20.11.2020 wherein the assessing officer has categorically asked the assessee to prove the allowability of deduction of Rs.56,92,992/- u/s 80P along with documentary evidences. The assessing officer has asked the assessee to provide detail regarding members of the society including name, address type of membership etc. The assessing officer has also called last 3 assessment order and status of assessment from the assessee. In response vide letter dated 11.02.2021 the assessee has provided the relevant detail along with supporting evidences. The Id. Counsel has also referred the decision of ITAT Mumbai in the case of the assessee itself as placed in the paper book vide ITA No. 2021/Mum/2021 dated 30.05.2022 in the case of Janseva Cooperative Credit Society Ltd. Vs. ITO and also various other decision placed in the paper book.

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

4. Heard both the sides and perused the material on record. On verification of the assessment record the Id. Pr. CIT observed that assessing officer has allowed the deduction u/s 80P(2)(a)(i) in respect of interest on deposit without proper application of provision of Act as interest on deposit was not business income but income from other sources and the assessee society was not entitled to said deduction u/s 80P(2)(a)(i) of the Act. Therefore, in view of the fact as elaborated above in this order the Id. Pr.CIT held that assessment order passed u/s 143(3) r.w.s 143(3A) and 143(3B) of the Act by the assessing officer on

19.04.2021 is erroneous and prejudicial to the interest of revenue. On perusal of the assessment order we find that the assessing officer has mentioned in the assessment order passed u/s 143(3) of the Act on 19.04.2021 that the case of the assessee was selected for complete scrutiny assessment under e-assessment scheme 2019 including the assessment on deduction claimed under chapter VIA of the Act. Further during the course of assessment proceedings by issuing of notice u/s 142(1) of the Act the AO has asked the assessee to prove the claim of deduction of Rs.56,92,992/- made u/s 80P along with documentary evidences with detail regarding member of the society including name/address and type of membership etc. The assessee has explained the query raised by the assessee vide its submission dated 11.02.2021. Further on perusal of the submission made by the assessee we find that on identical issue and similar facts the ITAT, Mumbai vide ITA No. 2020/Mum/2021 dated 12.05.2022 for AY. 2015-16 has set aside the issue to the file of the assessing officer for fresh examination in accordance with the decision of Hon'ble Supreme Court in the case of Mavilayi Services Cooperative Bank Ltd. & Other Vs. CIT Calicut & Ors. (Civil Appeal No. 7343-7350 of 2019 dated 12.01.2021). The ld. counsel also submitted that during the year under consideration the assessee cooperative society has not entered into any transactions with non-members and all the transactions are with the members of the society only therefore, there is no violation Sec. 80P(2)(a)(i) of the Act. The ld. Counsel also referred the decision of Hon'ble High Court of Karnataka in the case of Guttigedarara Credit Cooperative Society Ltd. vs. ITO Ward-2(2) (2015) 60 taxman.com 215 (Karnataka) wherein it is held that interest income earned by assessee society by providing credit facility to its members was deposited in banks for short duration which had earned interest, said interest on deposit was attributable to business of banking of assessee and it was liable to deduction u/s 80P(2)(a)(i) of the

Act. We have also perused the decision of Hon'ble Supreme Court in the case of Mavilayi Services Cooperative Bank Ltd. Vs. CIT, Calicut (2021) 123 taxman.com 161 (SC) wherein held where once assessee primary agricultural credit society was giving loan only to its members it was entitled to benefit of deduction u/s 80P(2)(a)(i) notwithstanding that it might also be giving loan to its members which were not related to agriculture. The ld. Counsel has also referred the decision of Hon'ble High Court of Bombay in the case of Quepen Urban Cooperative Credit Society Ltd. Vs. ACIT Circle -1 Margoa (2015) 58 taxman.com 113 (Bom) wherein held that assessee society was providing credit mainly to its members and its transaction with non-members were insignificant, therefore, the assessee was entitled for deduction u/s 80P(2)(a)(i) of the Act. In the light of the above facts and finding we observe that case of the assessee in the earlier year was restored to the file of the assessing officer on the limited extent of examination in accordance with the decision of Hon'ble Supreme Court in the case of Mavilayi Services Cooperative Bank Ltd. Vs. CIT, Calicut (2021) 123 taxman.com 161 (SC). In this regard we have perused the decision of ITAT Mumbai in the case of the assessee itself for assessment year 2017-18 vide ITA No. 2021/Mum/2021 dated 30.05.2022 wherein on similar facts and issue it is held 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 cooperative 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 assesseees 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 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 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.

7. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.”

4. Respectfully following the aforesaid order, we set aside the order passed by learned CIT(A) and restore the issue relating to deduction under section 80P of the I.T. Act to the file of the learned Assessing Officer.

5. In the result, appeal of the assessee is allowed for statistical purposes.”

Following the decision of coordinate bench as supra we set aside the order to the limited extent of examination in accordance with the decision of Hon’ble Supreme Court as directed in the order of the coordinate bench of ITAT, therefore, this ground of appeal of the assessee is allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21.08.2023

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.08.2023

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.