

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.790/Bang/2023
Assessment year : 2018-19

Kanak Pattin Sahakari Sangh Niyamit, Kanaka Society Building, Behind Bus Stand, Bilagi – 587 116. PAN: AABAK 9999E	Vs.	The Income Tax Officer, Ward 1.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Sridhar, CA
Respondent by	:	Shri Subramanaian, S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11.12.2023
Date of Pronouncement	:	14.12.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1055483264(1) dated 28.8.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2018-19 on the following ground:-

“The CIT(A) failed to note that the Karnataka Cooperative Societies Act, 1959 under which the appellant is registered, defines the term member to include nominal and associate members and as such he income earned from the activity of providing of credit facilities to the members including the

associate members is deduction under section 80P of the I T Act 1961.”

2. The brief facts of the case are that the assessee is a co-operative society and has filed return of income on 29.09.2018 declaring gross total income at Rs.25,84,172 after claiming deduction under Chapter VIA u/s. 80P(2)(a)(i) amounting to Rs.25,84,172 declaring total income of NIL. The case was selected for scrutiny under CASS for the reasons (i) investments/advances/loans (ii) deduction from total income under Chapter VIA. Accordingly notice u/s. 143(2) dated 22.09.2019 and other notices were also issued to the assessee. In response, the assessee submitted reply on ITBA portal. The AO observed that assessee is a credit co-operative society registered under the Karnataka Cooperative Societies Act, 1959 and engaged in the activity of accepting deposits and providing credit facilities to its members and making investments. The assessee made investments with BDCC bank etc. and derived interest income therefrom. The AO noted that assessee is providing credit facilities to its members and accordingly entitled to deduction u/s. 80P(2)(a)(i) of the Act. However, he observed that the assessee is having regular members and associate members and rights and privileges are not similar. As on 31.03.2018 there were 3853 members, out of which 1766 (54.16%) are associate members and 2087 (45.845) are regular members. There were more nominal members than regular members and it was in violation of Karnataka Cooperative Societies Act, 1959, which prescribed that associate members cannot exceed 15% of total members. The AO noted that principle of mutuality is missing which is foundation stone

of co-op. societies in the present case and held that society dealing with nominal/associate members is not eligible for deduction u/s. 80P(2)(a)(i). The AO relied on the judgment of CIT v. Bankipur Club Ltd., 226 ITR 97 (SC) and Chelmsford Club v. CIT and 243 ITR 89 (SC). Citizen Co-op. Credit Society Ltd., Civil Appeal No.10245 of 2017 (SLP(C) No.20044 of 2015 dated 8.8.2017) [SC]. The assessee's reliance in the case of Mavilayi Service Cooperative Bank (Civil Appeal No.7343-7350 of 2019)[SC] was held to be not applicable to assessee's case on different facts, since in the present case u/s. 18 of The Karnataka Cooperative Societies Act, 1959, associate/nominal members cannot exceed 15% of total members. The AO also relied on the ITAT Bangalore Bench in the case of Atmashakthi Multipurpose Co-op. Society where it was held that if the assessee is guilty of violating the provisions of The Karnataka Cooperative Societies Act, 1959, the assessee would not be entitled for deduction u/s. 80P(2)(a)(i). Accordingly, the AO disallowed deduction u/s. 80P(2)(a)(i) of Rs.25,84,172 and added it to total income of assessee.

3. The AO further noted that the assessee has received interest income from BDCC Bank in the form of FD, shares, etc. and claimed deduction u/s. 80P(2)(a)(i)/80P(2)(d) and observed that interest income out of investments made with cooperative banks/banks is to be assessed and only interest earned from co-op. societies is eligible for deduction. The AO relied on the Hon'ble Supreme Court judgment in the case of Totagars Co-op. Sale Society in ITA No.100066/2016 dated 16.06.2017. However, no separate disallowance was made since the

interest income was considered in disallowance deduction u/s. 80P(2)(a)(i).

4. On appeal, the assessee filed written submissions. The CIT(Appeals) relying on the decision of the SMC Bench of ITAT Bangalore in ITA No.292/Bang/2023 dated 07.06.2023 allowed proportionate deduction u/s. 80P(2)(a)(i) only relating to income earned from the members, not including the income earned from associate/nominal members. He further directed the AO to allow deduction u/s. 80P(2)(d) on the interest received from cooperative banks only, and not from scheduled commercial banks after verification relying on the decision of the coordinate Bench in University of Agricultural in ITA No.319/Bang/2023 dated 18.05.2023. Accordingly, he partly allowed the appeal of the assessee. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR reiterated the submissions made before the lower authorities and submitted that the assessee has earned income only from providing credit facilities to its members and accordingly eligible for deduction u/s. 80P(2)(a)(i). The AO has denied deduction by observing that the assessee is catering to regular members and associate members which is not as per Karnataka Cooperative Societies Act, 1959. The AO's reliance on the case of Citizen Co-op. Credit Society Ltd. (supra) is not applicable to the assessee's case. The AO has not appreciated the Supreme Court decision in the case of Mavilayi Service Cooperative Bank (supra). The CIT(Appeals) has also not

appreciated the submissions made by the assessee during the appellate proceedings.

6. The Id. DR relied on the order of the lower authorities and submitted that the assessee has violated the provisions of section 18 of The Karnataka Cooperative Societies Act, 1959 which restricts associate members to 15% only, but in this case the percentage of associate members is higher than the regular members. Therefore, such income has rightly been considered by the CIT(Appeals). Accordingly, he submitted that the order of the CIT(Appeals) is to be upheld.

7. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we note that the fact that the assessee has 54.16% associate/nominal members is not in dispute. The CIT(Appeals) has followed the order of the coordinate Bench of this Tribunal in the case of Uppinangady Catholic Multipurpose Coop. Society in ITA No.292/Bang/2023 dated 7.6.2023 and the findings of this decision are reproduced in his order which is as under:-

7. I have heard the rival submissions and perused the material on record. In the instant case, admittedly assessee has been accepting and giving loan to non- ITA No.292/Bang/2023 Page 4 of 7 members also (associate members). Section 18 of Karnataka Co-operative Societies Act, 1959, defines a nominal or associate members 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 member.

A nominal member shall not be entitled to any share in any form whatsoever 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."

8. Section 18 of the Karnataka Co-operative Societies Act, 1959 was amended whereby the following proviso was inserted with effect from 01.06.2014:-

"Provided that the number of associate and nominal members under clause (a) in any Co-operative Society shall not exceed fifteen percent of the total membership of the society. However, in case of Co-operative societies already having more than 15% of their total membership as associate & nominal members, the excess associate & nominal members shall be either made as member, if eligible under the section 16 or shall be removed from the associate & nominal membership within six months from the date of commencement of the Karnataka Co- operative Societies (Amendment) Act, 2014."

9. As per the above amendment, w.e.f. 01.06.2014, Co-operative Societies registered under the Karnataka Co-operative Societies Act, 1959, is allowed to have nominal / associate members (non-members) upto 15% of its total membership. In the instant case, as mentioned earlier, the assessee society is providing credit facilities to non-members exceeding 15% of its total ITA No.292/Bang/2023 Page 5 of 7 membership. Therefore, assessee would not be entitled to deduction under section 80(P)(2)(a)(i) of the Act on income arising from dealing with nonmembers.

10. However, the Hon'ble Apex Court in the case of Mavilayi Service Cooperative Bank Ltd., (supra) reported in 431 ITR 1 had categorically stated that assessee is entitled to proportionate deduction under section 80P(2)(a)(i) of the Act in respect of its income earned from its business from regular members. The relevant finding of the Hon'ble Apex Court in the case of Mavilayi Service Cooperative Bank Ltd., (supra) reads as follows:

"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 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 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 nonmembers, profits attributable to such loans obviously cannot be deducted." (emphasis supplied).

11. From the last sentence of the above extracted portion of the Hon'ble Apex Court judgment, it is clear that only profits attributable to non-members alone would not be entitled to deduction under section 80P(2)(a)(i) of the Act. Thereby meaning proportionate deduction is to be allowed in respect of the income arising out of business with the members of the assessee society. In the light of the above said judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., (supra), I restore the issue to the AO to determine the proportionate deduction under section 80P(2)(a)(i) of the Act with regard to the income earned from the assessee's dealings with its regular members. It is ordered accordingly.

8. Respectfully following the above judgment we find no infirmity in the order of the CIT(Appeals) for granting deduction u/s 80P(2)(a)(i) of the Act and the same is confirmed. The case law relied by the Id. AR is distinguishable on present facts of the case, therefore, it is not applicable.

9. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 14th day of December, 2023.

Sd/-
(GEORGE GEORGE K.)
VICE PRESIDENT

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 14th December, 2023.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.