

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 27/Bang/2024
Assessment Year : 2017-18

M/s. Hassan City House Building Co-operative Society, 1, Kattinakere Market, Hassan – 573 201. PAN: AAAAH5561N	Vs.	The Income Tax Officer, Ward – 1 & TPS, Hassan.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sunaina Bhatia, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of Hearing	:	01-02-2024
Date of Pronouncement	:	22-03-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order passed by the NFAC, Delhi dated 15.11.2023 for A.Y. 2017-18 on following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. *The learned CIT[A] is not justified in disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case under the facts and in the circumstances of the appellant's case.*

3. *The learned CIT[A] is not justified in holding that the appellant is not entitled to deduction u/s.80P[2][a][i] of the Act with regard to the income derived from activity of providing credit facilities to its members in as much as the appellant had associate & nominal members and thereby violating the principle of mutuality under the facts and in the circumstance of the appellant's case.*

4. *The learned CIT[A] erred in holding that the dealings of the appellant with its associate & nominal members was opposed to the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society reported in 397 ITR 1, without appreciating that the ratio of the said judgement has been explained in the later judgement of the Hon'ble Supreme Court in the case of Mavilayi Service Cooperative Bank Ltd reported in 431 ITR 1 under the facts and in the circumstances of the appellant's case.*

5. *The learned CIT[A] ought to have appreciated that associate and nominal members are also permitted under the Karnataka Co-operative Societies Act, 1959 and therefore, no disallowance of deduction u/s. 80P[2][a][i] of the Act can be made on this ground under the facts and in the circumstances of the appellant's case.*

6. *Without prejudice to the above, the learned CIT[A] ought to have observed and directed that the cost of funds and proportionate administrative expenses be allowed from the income to be considered as derived from dealing with associate and nominal members should benefit of deduction u/s. 80P[2][a][i] of the Act be denied with reference to such income earned under the facts and in the circumstances of the appellant's case.*

7. *Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies itself liable to be charged to interest u/s. 234-B of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.*

8. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice*

rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. Brief facts of the case are as under:

2.1 The assessee is submitted to be a housing co-operative society registered with Karnataka Co-operative Societies Act, 1959 and is engaged in the business of providing credit facilities to its members. It filed its return of income for year under consideration on 27.09.2017 declaring total income of Rs.4,16,740/-. Assessee had claimed a sum of Rs.43,51,015/- as deduction u/s. 80P of the act. The case was selected for scrutiny and notice u/s. 143(2) of the act was issued, in response to which various information, books of account were called for. The representatives of the assessee submitted all the relevant details.

2.2 The Ld.AO observed that, the assessee is providing credit facilities to regular members, as well as nominal/Associate members, and has earned interest income from them. The Ld.AO denied the deduction claimed by the assessee u/s. 80P(2)(a)(i)/80P(2)(d) by holding that, the principle of mutuality does not exist, as the interest income has been earned by the assessee by providing credit facility to its both members and non-members. The Ld.AO thus relying on the decision of *Hon'ble Supreme Court* in case of *Citizen Co-operative Society Ltd.* reported in (2017) 397 ITR 1 disallowed the deduction claimed by the assessee u/s. 80P(2)(a)(i) amounting to Rs.47,67,759/-.

2.3 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.4 Before the Ld.CIT(A), the assessee relied on various decisions including the decision of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in 431 ITR 1, however disallowed the claim of assessee by upholding the observations of the Ld.AO.

2.5 Aggrieved by the order of the Ld.CIT(A) / NFAC, the assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted that the NFAC did not consider the decisions of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in 431 ITR 1 and various other decisions which has been passed subsequent to the impugned orders by *Hon'ble Supreme Court* in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors.* in Civil Appeal Nos. 10069 of 2016 dated 14.09.2023. He therefore submitted that the issue needs to be readjudicated based on the observations of *Hon'ble Supreme Court* in the above referred cases.

3.1 On the contrary, the Ld.DR relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. Coming to the merits of the case, as rightly submitted by the Ld.AR that the directions of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT (supra)* is not considered by the NFAC insofar as the deduction u/s. 80P(2)(a)(i) is concerned. Further in a subsequent decision of *Hon'ble Supreme Court* in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors. (supra)*, *Hon'ble Supreme Court* analysed applicability of section 80P(2)(d) deduction to an assessee in great detail regarding the interest / dividend income earned from deposits. The NFAC / Ld.CIT(A) is directed to consider the claims by the assessee in the light of the aforesaid decisions by *Hon'ble Supreme Court*. In the interest of justice, we remand these appeals back to NFAC / Ld.CIT(A) for readjudication on merits. The Ld.AR is directed to fill all relevant documents / decisions available on these issues before the NFAC / Ld.CIT(A) and the NFAC/Ld.CIT(A) shall pass a detailed order on merits.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 22nd March, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 22nd March, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore