

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 114 & 115/Bang/2024
Assessment Years : 2017-18 & 2018-19

M/s. Kuvempu Co-operative Credit Society Ltd., No. 899/A, 1 st Cross, 3 rd Main, D Block, Behind Shanimahatma Temple, Rajajinagar 2 nd Stage, Bangalore – 560 010. PAN: AACAK2273N	Vs.	The Income Tax Officer, Ward – 2(2)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Gireesha .T.L, CA
Revenue by	:	Shri Subramanian .S, JCIT (DR)

Date of Hearing	:	14-03-2024
Date of Pronouncement	:	14-03-2024

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

These two appeals filed by the assessee are against separate orders passed by the NFAC, Delhi both dated 23.11.2023 DIN & Order No: ITBA/NFAC/S/250/2023-24/1058172192(1) and

ITBA/NFAC/S/250/2023-24/1058172328(1) for A.Ys. 2017-18 and 2018-19 respectively.

Assessment Year 2017-18: Ground No. 2 to 7

2. The brief facts of the case are that the assessee is a co-operative society registered under Karnataka Co-operative Societies Act, 1959 and engaged in extending credit facilities to its members. It filed its return of income declaring total income of Rs. Nil after claiming deduction u/s. 80P to the extent of Rs.1,19,74,318/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. In response to this notice, the assessee furnished copies of byelaws for claim of deduction u/s. 80P, details of the cash deposits during demonetisation period along with other details. On perusal of the byelaws it was noticed that there are three types of members i.e. regular members, the nominal and associate members who do not have equal rights in the society as explained in the byelaws of the society. The nominal / associate members cannot participate in the affairs of the society as compared to the regular members. Though the nominal / associate members were provided with loan and other facilities thereby there is absence of mutuality and the concept of mutuality itself gets defeated. The assessee has various types of members and the principle of mutuality has been lost, the principle of mutuality can be seen in two parts one the participation of the associate / nominal members. The assessing officer noted that there is no equal right among the regular members and nominal / associate members. The nominal / associate member has no right to share

capital, be an office bearer, participating in general body, profit or loss, right to assets of the co-operative society, right to refund the membership if paid and right to get annual reports. He also referred to the Karnataka Co-operative Societies Act, section 18. Accordingly, he noted that the assessee has violated the provisions of Karnataka Co-operative Societies Act and relying on the judgment of Hon'ble Apex Court in the case of M/s. Citizen Coop Society vs. ACIT, C-9(1), Hyderabad in Civil Appeal No. 10245 of 2017 dated 08.08.2017 the assessee is not eligible for deduction u/s. 80P(2) as claimed. He further noted that during the course of demonetisation period, the assessee deposited cash in its two bank accounts maintained with Karnataka State Co-operative Apex Bank Ltd., Bangalore, Account no. 1012102040008817 of Rs. 1,28,39,000/- and State Bank of India Account No. 30604749097 of Rs.13,38,000/-. He noted that the old notes are banned from circulation w.e.f. 09.11.2016 as per the Govt. of India Gazette Notification in F.No. 10/03/2016-Cy.I dtd. 08.11.2016 in spite of the same assessee has accepted the cash in specified bank notes(SBNs). The assessee was not authorised to collect such money and it has deposited in its bank account in the SBNs cannot be used for transacting business and the value has been lost and the assessee has made entry in the cash book and corresponding ledger accounts of the members. Hence the entry made in the said book is unexplained. Therefore section 68 of the IT Act is squarely applicable in the case of the assessee and the amount received by way of SBNs after 09.11.2016 become unexplained and it was added into total income of the assessee as per section

68 of the IT Act, 1961 and taxed under 115BBE and assessed the income at Rs.2,61,51,318/-.

2. Aggrieved from the above order, the assessee filed the appeal before the CIT(A). Before the CIT(A), the assessee made submissions and the Ld.CIT(A) after considering the details submitted by the assessee, the deduction claimed u/s. 80P was not accepted. Further the Ld.CIT(A) also upheld the addition made u/s. 68 regarding the cash deposited during the demonetisation period. Accordingly, the Ld.CIT(A) dismissed the appeal of the assessee.

3. Aggrieved from the above order, the assessee filed appeal before the Income Tax Appellate Tribunal.

4. The Ld.AR of the assessee reiterated the submissions made before the lower authorities and he submitted that the assessee has not violated the provisions of Karnataka Co-operative Societies Act, 1959. He submitted that nowhere the members has been defined in the Karnataka Co-operative Society Act. The case relied by the revenue authorities in the case of Citizen Coop Society vs. ACIT, C-9(1), Hyderabad (supra) is not applicable in the present facts of the case and he referred to the judgment of Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT reported in 431 ITR 1 and submitted that the meaning / expression "members" must be considered in the context of the provision of the law enacted by the State legislature under which the co-operative society is claiming

exemption has been formed. Therefore it is necessary to consider the expression “member”. As per section 80P(2)(a)(i) of the IT Act in the light of the definition as contained in section 18 of the Karnataka Co-operative Societies Act, 1959 he submitted that the society is eligible for claim of deduction u/s. 80P. He further submitted that during the course of demonetisation period, the cash was accepted only from the members of the society and the amount has been credited in their respective accounts as directed by the members only. The details of the members were submitted during the course of assessment proceedings. However the assessing officer did not make any further enquiry and made addition u/s. 68 which is not justified. In support of his argument, he relied on the judgment of the decision of Coordinate bench in ITA No. 329/Bang/2023 order dated 24.08.2023.

5. On the other hand, the Ld.DR relied on the order of the lower authorities. He submitted that the assessee society has violated the provisions of Karnataka Co-operative Societies Act, 1959, section 18. In the assessee society there are regular members and nominal / associate members. The assessee has not submitted the details of the nominal / associate members and what are the ratio among the regular member with nominal member / associate members. He further submitted that the rights of the nominal / associate members are not equal with the regular members and the assessing officer has discussed it in details in para no. 4 to 7 of his order. Therefore the assessee is not eligible to make claim of deduction u/s. 80P. He further

submitted that the assessee has accepted SBNs during the demonetisation period however it was not authorised to accept SBNs as per the circular / guidelines issued by the Govt. of India as well as Reserve Bank of India. Therefore the order of the lower authorities shall be upheld.

6. Considering the rival submissions, we note that the assessee is a registered co-operative society under the Karnataka Co-operative Societies Act, 1959 and engaged in extending credit facilities to its members and has claimed deduction u/s. 80P of Rs.1,19,74,318/-. However, both the authorities below have not accepted the claim of the assessee by observing that the assessee has violated the provisions of section 18 of the Karnataka Co-operative Societies Act and have relied on the judgment of Hon'ble Apex Court in case of Citizen Coop Society vs. ACIT, C-9(1), Hyderabad (supra). We note from the order of the assessing officer that there is no equal rights in the case of nominal / associate members with a regular members to which the assessing officer has detailed discussed in para no. 4 to 7. We also noted that there is no detailed submission of the number of members that how many members are regular members and how many are nominal / associate members. The assessee has claimed deduction on the interest income earned from the regular members as well as nominal / associate members. We hold that the judgment relied by both the authorities below are squarely applicable in the present facts of the case accordingly the assessee is not eligible for deduction u/s. 80P on the income received from the nominal / associate members since the

assessee has lost the concept of mutuality. Further we hold that the assessee is eligible to make claim of deduction u/s 80P from the income received from the regular members only. Accordingly, we restore this issue to the assessing officer for fresh consideration and assessee is directed to furnish the details of the income received from the regular members as well as nominal / associate members and the assessing officer is directed to give benefit of deduction u/s. 80P(2) from the income received from the regular members only and decide the issue as per law. The case law relied by the Ld.AR is not applicable in the present facts of the case. Accordingly, this ground is allowed for statistical purposes.

7. Ground nos. 8 to 15

During the course of assessment proceedings, the assessing officer noted that the assessee has deposited cash in its bank account during the demonetization period of Rs.1,41,27,000/- received from its members and the assessing officer has added the entire cash deposits u/s. 68. However the assessee submitted the details of the members which has not been examined. During the course of hearing, the Ld.AR of the assessee submitted that the cash was accepted from members from 09.11.2016 to 14.11.2016 and these has been deposited in the respective account of the members only. During the course of hearing the ld. AR of the assessee relied on the decision of the Coordinate Bench in case of Merchants Credit Co-operative Society Ltd., in ITA No. 329/Bang/2023 order dated 24.08.2023. in which it has been held as under:

7. We have considered the rival submissions. The assessee is a credit co-operative society dealing with the members only. During the demonetisation period the members of the society have deposited cash in pygmie a/c, SB A/c, loan a/c. etc. The assessee has produced a list of depositors and the amount deposited by members with denominations of currency. The assessee has accepted the deposits from its members from 9.11.2016 to 14.11.2016. As per Gazette Notification of RBI & Govt. of India dated 08.11.2016, the assessee was not authorized to accept cash deposits in SBNs. The AO observed that the assessee was not authorized to receive or collect money in SBNs of Rs.1,000 and Rs.500 which were not in legal tender w.e.f. 09.11.2016 and such transactions on or after 09.11.2016 cannot be entered in cash book. The cash deposits made by the members of the society had no value as such. The Assessing Officer issued show-cause notice by observing that the impugned amount should be treated as income of the assessee u/s 69A of the Act., however the AO made addition u/s 68 of the I.T. Act. The assessee has satisfied the requirement of section 69A of the Act and the AO did not give further opportunity to the assessee for addition u/s 68 of the I. T. Act. During the assessment proceedings, assessee filed the details of list of depositors and loanees who made cash deposits. The AO accepted that it was money deposited by the members and noted that the assessee had brought the entries in its books of account, therefore section 68 will apply and accordingly treated it as income u/s. 68. There is no doubt that the assessee has satisfied the identity of the deposits, who are members of the society and genuineness of the transactions because the amounts have been deposited in the members accounts only. If the AO had any doubts that the assessee has not satisfied the ingredients of section 68, he could have asked further details from the assessee, but the AO has not done the same, which clearly shows that the assessee has discharged its duty to satisfy the requirement of section 68. We further note that the SBNs have been deposited in the members accounts, accordingly, the assessee did not get any extra benefit as observed by the AO in his order at para No. 06 which was treated as income us 69A of the Act. In view of this, the provisions of section 68 is not applicable in the present facts of the case and the AO without discussing in detail has made addition u/s. 68 which is not proper. Therefore the addition is deleted.

Since in the case of assessee it is not clear whether the details of the depositors were provided by the assessee or not in respect of cash deposit received from its members like Name of the members, address of the members, account No. in which the cash has been deposited, their PAN/Aadhar No. Currency denomination. Therefore it is directed to the assessee to provide such above details to the AO and AO is directed to decide the issue as per considering the above judgment. Accordingly, this issue is allowed for statistical purpose.

8. Ground No. 01 is general in nature.

9. In the result, the appeal filed by the assessee for A.Y. 2017-18 stands allowed for statistical purposes.

Assessment Year 2018-19:

10. Since the issue involved regarding claim of deduction of 80P of Rs.1,25,80,400/- is similar as decided in ITA No. 114/Bang/2024 supra . Therefore the decision of the above appeal will apply mutatis mutandis in ITA NO. 115/Bang/2024 in above terms as decided above.

11. To sum up, both the appeals of the assessee are allowed for statistical purposes. This common order passed shall be kept in respective case files.

Order pronounced on the 14th day of March, 2024, through virtual hearing.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, the 14th 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