

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

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

ITA No. 1038/Bang/2023
Assessment Year : 2018-19

M/s. Mudur Vyavasaya Seva Sahakari Sangha Ltd., Mudur, Kundapura Taluk, Udupi District – 576 233. PAN: AAAAM5489N	Vs.	The Income Tax Officer, Ward – 1, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Mahesh R Uppin, Advocate
Revenue by	:	Dr. Nischal .B, Addl. CIT (DR)

Date of Hearing	:	29-01-2024
Date of Pronouncement	:	22-03-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order passed by the NFAC, Delhi dated 18.09.2023 for A.Y. 2018-19 on following grounds of appeal:

“1. Whether both the below authorities were justified in holding that the 'concept of mutuality' was dislodged in Appellant society even when the appellant society had 1,738 Regular Members, 143 Associate Members and 655 Nominal Members (as noted in para 4.6 —page 13-14 of appellate order) and appellant had not violated the cap of 15% meant for Associate members stipulated under the Proviso to Sec. 18 of KCS Act, 1959 and No restriction was placed in the Statute as to the maximum number of Nominal Members.

2. Does the appellate order sustainable when it came to the conclusion that the 'concept of mutuality' was missing in appellant society ignoring the submissions noted in Para 6.1 of the appellate order (Page 19 to 20) and wrongly relying on the distinguishable citations, viz: Hon. Apex Court in *Bangalore Club vs. CIT* [2013] 29 taxmann.com 29 (SC) and *Citizen Co-op. Society Ltd. vs. Asst. Commissioner* [Civil Appeal No. 10245 of 2017.]

3. Was C.I.T. (A) justified in sustaining addition for Interest on Investments of Rs. 15,87,495/- derived from SCDCC Bank; IDBI Bank S.B. interest Rs. 12,777/- and Dividend from SCDCC Bank Rs. 4,02,895/- aggregating to Rs. 20,03,167/- to the returned income u/s. 56 of the Act and holding that the said income was not liable for deduction u/s. 80P of the Act.

4. The appellant being a PACS, whether in the facts and circumstances of the case, the appellate authority was right in upholding the decision of the Respondent that investment income of Rs. 19,90,390/- derived by the appellant from SCDCC Bank [Interest on investments Rs. 15,87,495/- + Dividend Rs. 4,02,895/-] was liable to be taxed and not eligible for deduction even when the decision runs contrary to the judgements of:

(a) Hon. High Court of Kerala dated 01-11-2021 in ITA No. 142/2019 Principal Commissioner of Income tax, Thiruvananthapuram vs. Vilappil Service Co-operative Bank Ltd, Peyad. ; and

(b) ITAT Bengaluru dated 18-07-2023 in ITA No. 376-379/Bang/2023 - The Totgars' Cooperative Sale Society Ltd. Sirsi Vs. ACIT, Hubli.

5. Whether in law and on facts, does the action of both the below authorities sustainable in holding that Interest earned from S.B. A/c with IDBI Bank Rs. 12,777/- by the appellant being in the nature of interest from short term investments was taxable in view of the law laid down by —

(a) Hon. High Court of Karnataka in ITA307/2014 - Tumkur Grain Merchants Souharda Co-operative Ltd. vs. I.T.O. and ITA 29/2015 - Guttigedarara Credit Co-op. Society Ltd. Mysore Vs. ITO. and

(b) Hon. High Court of Judicature at Hyderabad in W.P. No. 12727 and 12767/2016 The Vavveru Co-op. Rural Bank

Ltd. and Anr. Vs. The Chief C.I.T. & anr. vis-a-vis the judgement in Totgars Co-operative Sale Society Ltd.;

6. The appellant craves leave to add, to amend, modify and / or to alter any of the foregoing grounds and also urge such other grounds at the time of hearing.”

2. Brief facts of the case are as under:

2.1. The assessee is a Primary Agricultural Credit Society registered under the provisions of Karnataka Co-operative Societies Act, 1959. The assessee is in the business of providing credit facilities to its members for their agriculture related activities, selling of fertilizers, manure and PDS distribution and other allied activities as permitted under its Bye-laws duly approved by the Registrar of Co-operative Societies. The assessee had filed its return of income declaring a gross total Income of Rs. 67,98,255/- and claiming full deduction u/s 80P of the Act. In the assessment proceedings, though it was submitted by the assessee, due to oversight, it had omitted to include the Interest on Investments and Dividends in the business profits and instead of claiming deduction for the same u/s 80 P (2) (a) (i) of the Act, it had claimed deduction u/s. 80P (2) (d) of the Act and also u/s. 80P (2) (c) of the Act. However, not accepting the submissions of assessee, the assessment was concluded by the Ld.AO holding that, the declared Business Income of the assessee was ineligible for deduction u/s 80P of the Act, on the ground that the assessee had transacted with nominal members and that its interest income was chargeable under sec. 56 of the Act under Income from other sources. The Id. AO disallowed the entire amount of deduction claimed by the assessee u/s 80P(2)(a)(i) of the Income Tax Act, 1961. Thus, the gross total income of the assessee was

determined at Rs. 67,98,255/- against which no deduction was given under Sec. 80P of the Act.

2.2 Aggrieved by the assessment order, the assessee preferred appeal before the Ld.CIT(A).

2.3 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 the Ld.CIT(A)/NFAC disallowed the claim of assessee by upholding the observations of the Ld.AO.

2.4 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. It has been 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 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. (supra)*, *Hon'ble Supreme Court* has analysed applicability of section 80P(2)(d) deduction in great detail with regard to interest / dividend income earned from deposits. The NFAC / Ld.CIT(A) is directed to consider the claims of the assessee in the light of the aforestated 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 file 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