

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

AND

SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. 1096 to 1098/Bang/2023

**Assessment Years : 2017-18, 2018-19 &
2020-21**

M/s. Mangalore Yanthrika Meenugarara Prathamika Sahakari Sangha, 6740, Southwharf Bunder, Mangaluru – 575 001. PAN: AABAM5847P	Vs.	The Income Tax Officer, Ward – 1[1], Mangaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Subramanian .S, JCIT (DR)

Date of Hearing	:	01-02-2024
Date of Pronouncement	:	01-04-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of separate orders passed by NFAC all dated 02.11.2023 for A.Ys. 2017-18, 2018-19 and 2020-21.

2. At the outset, it is submitted that the issues raised in all the three appeals are common and identical. Accordingly, the grounds raised by assessee for A.Y. 2017-18 are only reiterated as under for convenience:

“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 upholding the assessment of a sum of Rs. 62,20,435/- being the interest earned by the appellant on deposits made with co-operative banks under the head "Other Sources" and thereby upholding the denial of deduction claimed u/s. 80P[2][a] [vii] of the Act on the ground that the said interest income earned by the appellant was not attributable to the business under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] ought to have appreciated that the interest income earned by the appellant on deposits in cooperative banks was part of the business in as much as these deposits were required to be maintained in the nature of statutory reserves and other obligations under the Karnataka Co-operative Societies Act and hence, the said interest income earned was attributable to business and ought to have been assessed under the head "Business" and not under the head "Other Sources" and accordingly, the deduction claimed by the appellant u/s 80P[2][a] [vii] of the Act ought to have been allowed under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the above, the learned CIT[A] is not justified in rejecting the alternate claim made by the appellant for deduction u/s. 80P[2][d] in respect of the

interest income earned from deposits made in co-operative banks by erroneously concluding that the same cannot be allowed by virtue of the judgement of the Hon'ble Karnataka High Court in the case of TOTAGAR'S CO-OPERATIVE SALE SOCIETY reported in 395 ITR 611 [Kar.] under the fact and in the circumstances of the appellant's case.

4. Without prejudice to the above, the learned CIT[A] ought not to have directed for allowance of cost of funds / expenditure on the basis of direct nexus between the expenditure and interest earned without appreciating that the allowance for cost of funds / expenditure is allowable in order to correctly arrive at income to be assessed and therefore the income assessed is excessive and liable to be reduced substantially.

5. 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 and 234-C of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.

6. 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.”

3. Brief facts of the case are as under:

3.1 Assessee is a co-operative society and filed its return of income for the relevant A.Ys. under consideration after claiming deduction u/s. 80P of the act. The case was selected for scrutiny and assessee was called upon to furnish the details regarding the deductions claimed. The assessee submitted that it is engaged in the business of fishing and allied activities such as curing, processing, preserving, storing, marketing of fish, purchases of materials and equipments for supply to its members. The Ld.AO observed that assessee had received interest from MESCOM and

from co-operative banks. The Ld.AO after considering the submissions of the assessee disallowed the deduction claimed u/s. 80P(2)(d) of the act. It was also observed by the Ld.AO that assessee had received funds from non-members and therefore is not eligible for deduction in respect of the interest u/s. 80P(2)(a)(i) of the act.

3.2 Aggrieved by the orders of the Ld.AO, assessee preferred appeals before the Ld.CIT(A).

3.3 The Ld.CIT(A) upheld the view of the Ld.AO by holding that the interest income earned by the assessee is not attributable to the business operations and therefore the deduction is not allowable u/s. 80P(2)(a)(vii) / 80P(2)(d) of the act. The Ld.CIT(A) also rejected the benefit u/s. 57 of the act in respect of the cost of funds and proportionate expenses incurred towards the earning of the interest income.

3.4 Aggrieved by the orders of the Ld.CIT(A)/NFAC, assessee is in appeals before this *Tribunal*.

4. We have heard the contentions advanced by both sides in the light of records placed before us.

5. 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.

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

We have considered the arguments advanced by both sides in the light of the records placed before us.

6. 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. 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. The NFAC / Ld.CIT(A) is directed to consider the claims by 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

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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.

Accordingly, the appeals filed by the assessee stands allowed for statistical purposes.

In the result, all the three appeals filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 01st April, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 01st April, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore