

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

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

| |
|---|
| ITA Nos. 1094 & 1095/Bang/2023 |
| Assessment Years : 2017-18 & 2018-19 |

| | | |
|---|------------|--|
| M/s. Swamy Vivekananda Co- operative Society Ltd., B H Road, Batawadi, Tumakuru – 572 102. PAN: ABBFS3163J | Vs. | The Income Tax Officer, Ward – 3, Tumkur. |
| APPELLANT | | RESPONDENT |

| | | |
|-------------|---|-----------------------------|
| Assessee by | : | Ms. Sunaina Bhatia, CA |
| Revenue by | : | Dr. Nischal, Addl. CIT (DR) |

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

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arise out of separate orders both dated 19.07.2023 passed by the NFAC, Delhi for A.Ys. 2017-18 and 2018-19.

2. At the outset, it is noted that the grounds raised by the assessee for both the years under consideration are identical and accordingly grounds raised for A.Y. 2017-18 are only reproduced herein.

“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 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 to associate/nominal members under the facts and in the circumstance of the appellant's case.

3. 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 that no distinction can be made with regard to the income derived from different category of members for allowance of deduction u/s. 80P[2][a][i] of the Act under the facts and in the circumstances of the appellant's case.

4. 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 under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver before the Honble 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.

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.”

Assessment Year 2017-18:

3. Brief facts of the case are as under:

3.1 Assessee is an AOP and filed its return of income for A.Y. 2017-18 on 28.10.2017 declaring total income of Rs. Nil and claimed deduction u/s. 80P amounting to Rs.1,27,36,630/-. For A.Y. 2018-19, assessee filed its return of income on 16.10.2018 declaring Nil income and had claimed deduction u/s. 80P amounting to Rs.1,81,72,552/-. The case was selected for scrutiny and the Ld.AO called for various details to verify the deduction claimed u/s. 80P of the act. After considering the details filed by the assessee, the Ld.AO disallowed the deduction u/s. 80P for both the years under consideration by observing that assessee was providing credit facility to its members being regular, nominal / associate members. It was the observation of the Ld.AO that these are two different categories and the principle of mutuality does not apply to nominal / associate members as they do not have the same right and facilities as the regular / permanent members. The Ld.AO thus denied the exemption claimed by assessee u/s. 80P(2)(a)(i) of the act.

The Ld.AO further examined the provisions of 80P(2)(d) in respect of the interest received by the society on deposits with commercial banks and co-operative banks. The Ld.AO after considering various submissions of the assessee, relied on the decision of *Hon'ble Karnataka High Court* in case of *PCIT Vs. Totgars Co-operative Sale Society Ltd.*, reported in 395 ITR 611.

For A.Ys. 2017-18 and 2018-19, the Ld.AO disallowed the entire claim u/s. 80P(2)(a)(i).

3.2 Aggrieved by the orders of the Ld.AO, assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) for A.Y. 2017-18 after considering various decisions observed as under:

“7.8 In view of above mentioned facts, legal provisions and following decisions in above mentioned cases I direct AO that appellant should be granted deduction u/s 80P(2)(a)(i) for the income earned from activity of providing credit facilities to its members. However same will not include income earned from activity of providing credit to Associate/nominal members. Further, appellant will get deduction u/s 80P(2)(d) on the interest received from deposits/savings account kept with other cooperative banks. However such deduction will not be available to interest received from scheduled commercial banks. While giving appeal effect; AO will allow these deductions looking into respective amounts / figures from appellant’s books of accounts. Accordingly, these grounds of appeal are PARTLY ALLOWED.”

3.3 For AY 2018-19, the Ld.CIT(A) observed as under:

“7.9 In view of above mentioned facts, legal provisions and following decisions in above mentioned cases I direct AO that appellant should be granted deduction u/s 80P(2)(a)(i) for the income earned from activity of providing credit facilities to its members. However same will not include income earned from activity of providing credit to Associate/nominal members. Further, appellant will get deduction u/s 80P(2)(d) on the interest received from deposits/savings account kept with other cooperative banks. However such deduction will not be available to interest received from scheduled commercial banks. While giving appeal effect; AO will allow these deductions looking into respective amounts/figures from appellant's books of accounts. Accordingly, these grounds of appeal are PARTLY ALLOWED.”

3.4 Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal.

4. The Ld.AR submitted that the decision of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in *431 ITR 1* has not distinguished between the nominal members and associate members. Further he submitted that *Hon'ble Supreme Court* has distinguished the facts of *Citizen Co-operative Society Ltd.* reported in *(2017) 397 ITR 1* wherein the issue was pertaining to the provisions of section 80P(2).

5. 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.

6. Before us, the Ld.AR submitted that there is a delay of 89 days in filing the present appeals before this *Tribunal*. The affidavit of the assessee with explanations, the reasons for causing the delay in filing the present appeals has been scanned herewith.

6.1 Assessee was unaware of the order being communicated electronically and it was after they received call from the Income Tax Officer, while passing the OGE, that the assessee realised about the impugned orders having passed by the NFAC. Immediately the assessee obtained the orders and approached the representative to file the appeals. The Ld.DR could not controvert the inability of the assessee in obtaining the e-order of the NFAC. From the above conduct of the assessee, it cannot be

said that assessee was not interested in prosecuting the appeal as it had already approached the representative for necessary action. It has been submitted by the Ld.AR that later the assessee found that the orders were received in the spam folder of the mail box which went unnoticed by the assessee. The present circumstances cannot be treated as any lapse on behalf of assessee and deserves to be considered in the light of natural justice.

He thus prayed for the delay to be condoned.

6.2. The Ld.DR though objected, however could not controvert the reasoning given by the Ld.AR for the delay that was caused in filing the present appeals.

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

6.3. It is noted that there is no malafide intention on behalf of assessee in not filing the present appeals within limitation. It is noted that, there is no malafide intention on behalf of assessee in not filing the present appeals within time. In our opinion, sufficient and reasonable cause has been made out by the assessee for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions, wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to

enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

6.4. Considering the above observation by *Hon'ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals.

Accordingly, the delay of 89 days in filing the present appeals stands condoned.

7. On merits of the case, we note that the issue is in respect of not applying the ratio of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT (supra)* by the

Ld.CIT(A) to the facts of the present case. *Hon'ble Supreme Court* in this case has observed as under:

“45. *To sum up, therefore, the ratio decidendi of Citizen Co-operative 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 assessees 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 non-members, profits attributable to such loans obviously cannot be deducted.*

46. *It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions' Federation Ltd. v. CIT [1997] 11 SCC 287 referred to section 80P of the IT Act and then held:*

"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the light of the definition of that

expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).

47. *Further, unlike the facts in Citizen Cooperative Society Ltd. (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:*

"59. Restrictions on loans.— (1) A society shall not make a loan to any person or a society other than a member:

Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

(3) Granting of loans to members or to non-members under sub-section (2) and recovery thereof shall be in the manner as may be specified by the Registrar."

Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra)."

Based on the above observations by *Hon'ble Supreme Court*, we note that Karnataka Co-operative Societies Act, 1959 defines Members to include nominal / associate members u/s. 2(f). Considering the definition of "Member" under the Karnataka Co-operative Societies Act, the present assessee qualifies for deduction u/s. 80P(2)(a)(i).

Accordingly, respectfully following the above ratio, we allow the claim of the assessee u/s. 80P(2)(a)(i) of the act in respect of the credit facilities extended even to nominal / associate members.

In the result, both the appeals filed by the assessee stands allowed.

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

By order

Assistant Registrar,
ITAT, Bangalore