

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.300/Bang/2024
Assessment Year: 2017-18

Shivashree Souharda Credit Co-operative Limited Shivashree I Floor, 7 <sup>th</sup> Cross Ashoka Nagara Tumakuru 572 101  <b>PAN NO : AAFAS3398M</b>	<b>Vs.</b>	ITO Ward-3 Tumkur
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri Ravishankar, A.R.
<b>Respondent by</b>	:	Shri V. Parithivel, D.R.

<b>Date of Hearing</b>	:	18.04.2024
<b>Date of Pronouncement</b>	:	18.04.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 3.1.2024. The assessee raised following grounds of appeal:

1. *The order passed by the learned Commissioner of Income Tax (Appeals) — NFAC ("CIT(A)") under section 250 of the Act insofar as it is against the Appellant, is opposed to law, weight of evidence, natural justice and probabilities on the facts and circumstances of the Appellant's case.*
2. *The Appellant denies itself liable to be assessed at Rs. 3,25,05,697/- as against the returned income of NIL for the assessment year 2017-18, on the facts and circumstances of the case.*
3. *Grounds on disallowance of deduction u/s 80P(2)(a)(i), Rs.79,25,954/-*

- a. *The authorities below are not justified in disallowing the deduction under section 80P(2)(a)(i) having admitted that the sum of Rs.79,25,954/- is business income, by holding that the 'principles of mutuality' does not exist between the appellant and nominal members on the facts and circumstances of the case.*
  - b. *The authorities below have failed to appreciate that the appellant is not claiming exemption under the 'doctrine of mutuality' and the deduction is claimed under section 80P(2)(a)(i) which does not require it to satisfy the test of mutuality on the facts and circumstances of the case.*
  - c. *The authorities below have failed to appreciate that nominal members are also members under the Karnataka State Co-operative Societies Act and ought to have allowed the deduction under section 80P(2)(a)(i) of the Act.*
  - d. *Without prejudice, the sum received towards membership fee, share fee is capital receipt and is not eligible to tax on the facts and circumstances of the case.*
4. *Grounds on disallowance of deduction of interest income, Rs.2,35,79,743/-*
- a. *The authorities below are not justified in disallowing the deduction under section 80P(2)(d), where there is no such claim in the return of income, on the facts and circumstances of the case.*
  - b. *The CIT(A) has erred in upholding the order of the learned assessing officer wherein the interest income claimed as deduction under section 80P(2)(a)(i) was disallowed without appreciating the fact that such interest income is attributable to the business of the appellant and is eligible for deduction under section 80P(2)(a)(i) of the Act, on the facts and circumstances of the case.*
  - c. *Without prejudice, the interest income earned by the appellant from Co-operative banks is eligible for deduction under section 80P(2)(d) of the Act, on the facts and circumstances of the case.*
  - d. *The authorities below have erred in relying on the provisions of section 80P(4), as such provision disentitles only a co-operative bank from claiming deduction under section 80P and does not apply to a co-operative society from claiming deduction under section 80P(2)(d) with respect to the interest received from Co-operative bank, on the facts and circumstances of the case.*
5. *The Appellant denies the liability to pay interest under section 234 of the Act in view of the fact that there is no liability to additional tax as determined by the learned Assessing Officer on the facts and circumstances of the case.*

6. *The Appellant craves to add, alter, modify, substitute, change and delete any or all of the grounds and to file a paper book at the time of hearing the appeal.*
  7. *In the view of the above and other grounds that may be urged the time of the hearing of appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity. For Shivashree Souhardha Patthina*
2. The assessee raised following additional grounds:
1. *Grounds on cost of funds:*
    - a. *The learned CIT(A) was not justified in upholding the order of the AO, in respect of treating the interest income of Rs. 2,35,79,743/- under section 56 of the Act, without allowing the cost of funds incurred, on the facts and circumstances of the case.*
    - b. *The learned CIT(A) was not justified in appreciating that the direction of the Supreme court has not been followed, in so far as allowing cost of funds, while upholding the order of the assessing officer, on the facts and circumstances of the case.*
    - c. *The authorities below failed to appreciate that the appellant has incurred expenditure on the deposits received and maintained in banks as deposits, and the same was required to be allowed as cost of funds under section 57 of the Act, on the facts and circumstances of the case.*
    - d. *The learned CIT(A) was not justified in appreciating that the interest income on fixed deposits when considered under the head other sources, the corresponding interest expenditure and proportionate cost of administrative expenditure incurred was also required to be set off against the head of other income, on the facts and circumstances of the case.*
  2. *Grounds on disallowance of Donation expense, Rs.10,00,000/-:*
    - a. *The authorities below have failed to appreciate that the disallowance of donation expenditure will result in increase in claim of deduction under section 80P(2)(a)(i) and would have no impact on taxes, on the facts and circumstances of the case.*
    - b. *The learned assessing officer has failed to consider the CBDT circular No.37 of 2016 while making disallowance of expenditure and levying tax on such disallowance, on the facts and circumstances of the case.*

3. *The Appellant craves to add, alter, modify, substitute, change and delete any or all of the grounds at the time of hearing the appeal.*

4. *In the view of the above and other grounds that may be urged at the time of the hearing of appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.*

**2.1** The assessee filed a petition for admission of additional grounds.

**3.** First we will taken up the main grounds. Ground No.3 is with regard to non-granting of deduction u/s 80P(2)(a)(i) of the Act to the tune of Rs.79,25,954/-.

**4.** Facts of the case are that the assessee claimed total deduction u/s 80P of the Act at Rs.3,15,05,627/-. Out of this, the ld. AO considered a sum of Rs.2,35,79,743/- as income from other sources as this is the interest income earned from deposits with other banks. The balance amount of Rs.79,25,954/- has been considered by ld. AO as “business income”. However, it is observed by the lower authorities that assessee has two categories of members, namely Regular Members and Nominal Members. All these members are utilizing the facilities provided by the assessee. However, the nominal members are not permanent members and do not carry the same rights and facilities as of regular members. Because of this distinction, the principles of mutuality between regular/nominal/associated members is lost. Therefore, assessee was not granted with deduction u/s 80P(2)(a)(i) of the Act. Against this assessee is in appeal before us.

**5.** We have heard the rival submissions and perused the materials available on record. The Hon’ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (123 taxman.com 161) had held that the co-operative societies providing credit facilities to its members is entitled to deduction u/s 80P(2)(a)(i) of the Act. The Hon’ble Apex Court after considering the judicial pronouncements on the subject, had stated the term “member” has not been defined under the Income-tax Act. It was, therefore, stated

by the Hon'ble Apex Court that the term "member" in the respective State Co-operative Societies Acts under which the societies are registered have to be taken into consideration. The Hon'ble Apex Court held that if nominal / associate member is not prohibited under the said Act, for being taken as a member, the income earned on account of providing credit facilities to such member also qualify for deduction u/s 80P(2)(a)(i) of the Act. It was further held by the Hon'ble Apex Court that section 80P(4) of the I.T. Act is to be read as a proviso. It was stated by the Hon'ble Apex Court that section 80P(4) of the Act now specifically excludes only co-operative banks which are co-operative societies engaged in the business of banking i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. The Hon'ble Apex Court had enunciated various principles in regard to deduction u/s 80P of the Act. On identical factual situation, the Bangalore Bench of the Tribunal in the case of M/s. Ravindra Multipurpose Cooperative Society Ltd. v. ITO in ITA No.1262/Bang/2019 (order dated 31.08.2021) had remanded the issue to the files of the A.O. for de novo consideration. The Tribunal directed the A.O. to follow the dictum laid down by the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra). The relevant finding of the Co-ordinate Bench of the Tribunal in the case of M/s. Ravindra Multipurpose Cooperative Society Ltd. v. ITO (supra), reads as follows:-

“6. Grounds 2-4 & additional Ground No.1:

*In respect of associate / nominal members, Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC) has held that the expression "Members" is not defined in the Income-tax Act. Hence, it is necessary to construe the expression "Members" in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. In view of this, the facts are to be examined in the light of principles laid down by the Hon'ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. (surpa).*

*Accordingly, we remit this issue of deduction u/s 80P(2)(a)(i) of the Act to the files of Ld.AO to examine the same de novo in the light of the above judgment. Needless to say that proper opportunity of being heard is to be granted to assess in accordance with law.”*

**5.1** In view of the order of the ITAT, which is identical to the facts of the case, we restore the issue of claim of deduction u/s 80P of the Act to the files of the A.O. to decide in the light of above order of Tribunal cited (supra).

**6.** Facts regarding the next ground No.4 is that the assessee earned interest income from deposits with Scheduled banks and Co-operative banks, which has been assessed as “income from other sources” and no deduction u/s 80P(2)(d) of the Act has been granted to the assessee. Now the contention of the assessee in ground No.4 and in additional grounds No.1 is that this income is to be assessed as “business income” and deduction u/s 80P(2)(d) of the Act to be granted. Without prejudice to this, it was submitted that the assessee is entitled for cost of funds incurred if the income is assessed as “income from other sources” u/s 56 of the Act.

**7.** We have heard the rival submissions and perused the materials available on record. As regards the claim of deduction u/s 80P(2)(d) of the I.T. Act, we direct the A.O. to verify whether interest / dividend is received by the assessee out of investments made with Cooperative Societies. If the assessee earns interest / dividend income out of investments with co-operative society, as observed by Hon’ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. in Civil Appeal No.10069 of 2016, order dated 14.09.2023, the same is entitled to deduction u/s 80P(2)(d) of the I.T. Act.

**7.1** Without prejudice to the above, we make it clear that if the interest earned by assessee from the banks is considered under the head “Income from other sources”, relief to be granted to the assessee u/s 57 of the Act in accordance with law. Accordingly, the issue is

restored to the file of Id. AO for de-novo consideration with the above observations.

**8.** Now coming to the additional grounds No.2, this ground is with regard to disallowance of Rs.10 lakhs incurred towards donation. The assessee made payment of Rs.10 lakhs towards donation, which has been disallowed by the lower authorities. The contention of the Id. A.R. is that since it has been disallowed, the business income of the assessee has been increased to that extent and consequently assessee is entitled for deduction u/s 80P(2)(a)(i)/80P(2)(d) of the Act on resultant income which is assessed as business income.

**9.** We have heard the rival submissions and perused the materials available on record on this issue. In our opinion, the plea of the assessee is justified that disallowance of donation to the tune of Rs.10 lakhs has resulted in increase in business income of the assessee by Rs.10 lakhs. As such, the increased resultant business income to be considered while granting deduction u/s 80P of the Act in view of the judgement of Hon'ble Bombay High Court in the case of CIT Vs. Gem Plus Jewellery India Ltd. reported in 330 ITR 175 (Mum), wherein held as under:

*“That it was an admitted position that the assessee had deposited both the employer's and the employees' contribution towards provident fund and ESIC, though beyond the due date including the grace period. The Assessing Officer added these payments to the total income of the assessee. The disallowance which was effected by the Assessing Officer had not been challenged by the assessee. The plain consequence of the disallowance and the add back that had been made by the Assessing Officer was an increase in the business profits of the assessee. The contention of the Revenue that in computing the deduction under section 10A the addition made on account of the disallowance of the provident fund/ESIC payments ought to be ignored could not be accepted. No statutory provision to that effect have been made, the plain consequence of the disallowance made by the Assessing Officer must follow. The Tribunal was justified in directing the Assessing Officer to grant the exemption under section 10A of the Act on the assessed income, which was enhanced due to disallowance of the employer's as well as employees' contribution towards PF/ESIC.”*

**9.1** In view of this judgement, we allow this additional grounds taken by the assessee.

**10.** In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 18<sup>th</sup> Apr, 2024

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 18<sup>th</sup> Apr, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**