

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3817/MUM/2023  
(Assessment Year: 2017-18)**

**Income Tax Officer,  
27(1)(5), Mumbai,  
Fourth Floor, Tower No. VI,  
Vashi Railway Station Complex  
Mumbai - 400705**

..... **Appellant**

**J R College Emps Co-Op Society,  
LBS Marg, Ghatkopar (West),  
Mumbai - 400086  
[PAN: AAAAJ3577G]**

Vs

..... **Respondent**

**Appearance**

For the Appellant/Department : Ms. Rajeshwari Menon  
For the Respondent/Assessee : Shri Tanmay Milind Phadke

**Date**

Conclusion of hearing : 25.04.2024  
Pronouncement of order : 30.04.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 24/08/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had allowed the appeal of the Assessee against the Assessment Order, dated 07/12/2019, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Revenue has raised the following grounds of appeal:

- "1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) correct in allowing deduction of Rs. 1,46,91,094/- under section 80P of the Income Tax Act, 1961 to the assessee by holding that the assessee is a co-operative society and not a co-operative bank and is entitled for deduction under Section 80P of the Income Tax Act, 1961 without appreciating the fact that the assessee society is neither a primary agricultural credit society nor primary co-operative agricultural and rural development bank and thus as per sub-section (4) of Section 80P of the Act, the assessee is not eligible for availing deduction u/s 80P(2)(a)(i) of the Act.*"
3. The relevant facts in brief are that the Assessee is cooperative society, registered under Maharashtra Cooperative Societies Act, 1960, engaged in providing credit facility to the members of the society. The Assessee had claimed a deduction amounting to INR 1,46,91,094/-, under Section 80P of the Act in the return of income for the Assessment Year 2017-18 which is disallowed by the Assessing Officer while passing the Assessment Order dated 07/12/2019, passed under Section 143(3) of the Act treating the Assessee as a cooperative bank (as opposed to a co-operative society) on the ground that the Appellant was providing credit facility to its members.
4. Being aggrieved, the Appellant preferred appeal before the CIT(A). Vide order dated 24/08/2023, the CIT(A) reversed the decision of the Assessing Officer; allowed Assessee's claim for under Section 80P of the Act; and deleted the addition.
5. The Revenue is now in appeal before us against the above relief granted by the CIT(A) on the grounds reproduced in paragraph 2 above.
6. We have heard the rival submissions and perused the material on record.

7. We note that the CIT(A) has allowed the claim for deduction under Section 80P of the Act holding as under:

"5.6 In this case the appellant is a co-operative society engaged in extending credit facilities to its members. Its income is primarily by way of interest on loans given. Other items of income are also attributable to the primary activity of giving credit. Therefore, the appellant's income qualifies for deduction u/s 80P(2)(a)(i). Now the question comes whether the appellant attracts the mischief of section 80P(4). This subsection qualifies section 80P(2).

*80P(4) The provisions of this section (i.e. 80P) shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.*

*Explanation.—For the purposes of this sub-section,—*

*(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);*

*(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.*

5.7 Section 80P(4) makes it clear that co-operative banks are not eligible for deduction u/s 80P(2)(a)(i). However, the appellant is only engaged in providing financial accommodation to its members. It is not engaged in banking activity. The Hon. Supreme Court has held in *Mavilayi Service Co Operative Bank and Others vs CIT*[2021] (431 ITR 1) (SC) that only a co-operative society with a banking License from RBI can be regarded as Co-Operative bank and attracts the mischief of section 80P(4). This decision also held that giving non-agricultural loans did not attract any mischief. It was further held that giving loan to nominal members would also count as giving loan to members. In the present case, the AO has brought nothing on record to show that the appellant holds a banking license from the RBI. Further the appellant has produced certificate from the Dy. Registrar of Co Operative Society that the appellant is not possessing any banking license from RBI. Therefore the assessee escapes the mischief of section 80P(4).

5.8. *The relevant part of the decision of the Hon Supreme Court in Mavilayi Service Co Operative Bank (supra) is reproduced below:*

*"Section 80P of the Income Tax Act being a benevolent provision enacted by parliament to encourage and promote the credit of the cooperative 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 cooperative banks which are cooperative societies engaged in banking business, that is, engaged in lending money to members public which have a license in this behalf from the RBI. Judged by this touchstone it is clear the impugned full bench judgement is wholly incorrect in its reading of Citizen Cooperative Society Limited. Clearly therefore once 80P(4) is out of harm's way all assesseees in the present case are entitled to the benefit of deduction contained in section 80P(2)(a)(i) notwithstanding that they may also be giving loans to the members which are not related to agriculture also in case it is found that there are instances of loan being given to non-members, profits attributable to such loans obviously cannot be deducted."*

5.9 *The above finding of the Hon Supreme Court has been basis for a number of subsequent ITAT decisions. In Shravati Pathina Niyamita vs ITO [2022] 144 Taxmann.com 170(Bang-Trib), It was held:*

*"The first aspect to be seen is as to whether the assessee can be said to be a co-operative bank. In order to do the business of a co-operative bank, it is imperative to have a license from the Reserve Bank of India. It can, therefore, be said that a co-operative society which does not possess a license from RBI cannot be equated to a co-operative bank even though it might indulge in the business of banking. In the instant case, the Assessing Officer adopted the definition of Co-operative Bank as given in the Banking Regulation Act, 1949 ignoring the specific exclusions given in section 80P(4). The CBDT Circular No. 6/2010 (F.No. 173/(3)/44/2009- IT(A-I), dated 20-9-2010 is also not applicable to the assessee as it cannot be said to be a Regional Rural Bank. [Para 7]"*

5.10 In view of the foregoing discussion, I hold that the appellant is eligible for deduction under section 80P(2)(a)(i). The addition of the AO is deleted. Ground 1 and 2 are therefore allowed."

8. We concur with the above view taken by the CIT(A) as in our view also, the Appellant is entitled to claim deduction under Section 80P(2)(d) of the Act. The Hon'ble Supreme Court has, in the case of **The Malvilayi Service Co-operative Bank Ltd. vs. Commissioner of Income (2021) 123 taxman.com 161 (SC)**, made following observations regarding the judgment of Hon'ble Supreme Court in the case of Citizen Cooperative Society Ltd vs. ACIT: 397 ITR 1 on which reliance was placed by the Assessing Officer:

*"22. However, considering that the learned Senior Advocate appearing for the Revenue argued that the concurrent findings of fact in that case were that most of the business of the assessee was conducted illegally with nominal members, who could not be members of such society under the Andhra Pradesh Act, and considering also that, as the assessee engaged in granting loans to the general public, it could not be treated as a co-operative society meant only for its members and providing credit facilities to its members, the appeal by the assessee would fail. It is important to note that no argument was made by the counsel for the assessee in Citizen Cooperative Society Ltd. (supra) that the assessing officer and other authorities under the IT Act could not go behind the registration of the co-operative society in order to discover as to whether it was conducting business in accordance with its bye-laws.*

23. It is settled law that it is only the ratio decidendi of a judgment that is binding as a precedent. Thus, in B. Shama Rao v. Union Territory [1967] 2 SCR 650, the majority judgment of Shelat J., speaking for himself and other two learned Judges held:

*"It is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein."*

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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."(Emphasis Supplied)

9. Similarly, in the case of **Sharavathi Pathina Sahakara Sangha Niyamitha Vs Income Tax Officer: [2022] 144 taxmann.com 170 (Bangalore - Trib.)[01-08-2022]** the Bangalore Bench of the Tribunal has held as under:

"The first aspect to be seen is as to whether the assessee can be said to be a co-operative bank. In order to do the business of a co-operative bank, it is imperative to have a license from the Reserve Bank of India. It can, therefore, be said that a co-operative society which does not possess a license from RBI cannot be equated to a co-operative bank even though it might indulge in the business of banking. In the instant case, the Assessing Officer adopted the definition of Co-operative Bank as given in the Banking Regulation Act, 1949 ignoring the specific exclusions given in section 80P(4). The CBDT Circular No.

*6/2010 (F.No. 173/(3)/44/2009- IT(A-I), dated 20-9-2010 is also not applicable to the assessee as it cannot be said to be a Regional Rural Bank. [Para 7]"*

10. We note that the CIT(A) has allowed Assessee's claim for deduction of under Section 80P of the Act by placing reliance upon the judgment of the Hon'ble Supreme Court in the case of Mavilayi Service Co Operative Bank (supra) and the above decision of the Tribunal in the case of Shravati Pathina Niyamita (supra). Further, the factual finding returned by the CIT(A) to the effect that the Appellant does not hold a banking license issued by Reserve Bank of India has not been controverted in the appellate proceedings before us. Accordingly, we do not find any infirmity in the order passed by the CIT(A). Ground No. 1 raised by the Revenue is, therefore, dismissed.
11. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 30.04.2024.

**Sd/-**  
**(Om Prakash Kant)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.04.2024  
Alindra, PS

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
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