

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

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

ITA No.534/Bang/2024
Assessment Year: 2016-17

Puttur Mahila Vividoddesha Sahakari Sangha N 01, Sri Radhakrishna Mandira Road Puttur 574 201 Karnataka PAN NO : AADAP2751K	Vs.	ITO Ward-1 Puttur
APPELLANT		RESPONDENT

Appellant by	:	Ms. Lakshmi S., A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing counsel for department

Date of Hearing	:	22.04.2024
Date of Pronouncement	:	23.04.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2016-17 dated 12.02.2024. The assessee has raised following grounds of appeal:

2. Facts of the case are that the assessee is a Women's Multipurpose Co-operative Society which filed its return of income for the AY 2016-17 on 31/03/2018 declaring total income at Rs Nil after claiming deduction of Rs 27,32,008/- u/s 80P of the Act. The case was selected for limited scrutiny under CASS and subsequently assessment proceedings were completed assessing the total income of the assessee at Rs 27,32,010/-, wherein the entire deduction claimed u/s 80P of Rs 27,32,010/- by the assessee was disallowed by the AO. Aggrieved with the assessment order, the assessee went

in appeal before NFAC. NFAC confirmed the order of Id. AO. Once again assessee is in appeal before us by way of above grounds.

3. The main crux of the aforesaid grounds is with regard to the ground relating to deduction claimed under section 80P(2)(a)(i) of the Act and 80P(2)(d) of the Act, which have been denied. Against this assessee is in appeal before us.

4. 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 license 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.”

4.1 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).

4.2. Alternatively, assessee raised ground that the assessee earned interest income from deposit with scheduled banks and co-operative banks. Facts regarding this ground are 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 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 deduction u/s 57(iii) of

the Act with regard to cost of funds incurred if the income is assessed as “income from other sources” u/s 56 of the Act.

5. 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.

5.1 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 ld. AO for de-novo consideration with the above observations.

5.2 Accordingly, the issue in dispute in this appeal is remitted to the file of ld. AO for fresh consideration.

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

Order pronounced in the open court on 23rd Apr, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 23rd 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.**