

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

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

ITA No.506/Bang/2024
Assessment Year: 2017-18

Shree Pushpagiri Souharda Sahakari Niyamitha Sharana Sadana, Hosaline Road Northern Extension Hassan 573 201 Karnataka PAN NO : AAAJS3812Q	Vs.	ITO Ward-2 Hassan
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	06.05.2024
Date of Pronouncement	:	06.05.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal by assessee is directed against order of NFAC passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2017-18 dated 18.1.2024. The assessee has raised various grounds of appeal.

2. Facts of the issue are that in this case assessee claimed deduction of Rs.3,28,434/- u/s 80P of the Act, which has been denied by the Id. AO. Further, an amount of Rs.2,94,430/- from e-stamping business and income from bank interest on which also assessee claimed deduction u/s 80P of the Act. The same has been denied and treated as income from other sources. Further, assessee made a deposit of Rs.8,76,95,000/- into assessee’s bank account during demonetization period. Out of this, an amount of

Rs.75,52,500/- has been treated as unexplained income u/s 68 r.w.s. 115BBE of the Act. Against this assessee went in appeal before ld. CIT(A). Before ld. CIT(A), assessee has not participated in the appellate proceedings. Hence, NFAC was of the opinion that assessee was not interested to prosecute the appeal. Accordingly, for want of prosecution, appeal was dismissed. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. Before us, ld. A.R. submitted that due to some misunderstanding in the management, assessee was not able to send the hearing notices sent by NFAC to its counsel. As such, the counsel of the assessee could not have been attended the proceedings before NFAC and that the entire issue is remitted to the file of ld. AO, so as to decide it afresh. In our opinion, the issue relating to 80P of the Act is required to be decided afresh in view of the binding decision of the Tribunal.

3.1. 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(2)(a)(i) of the Act to the file of the A.O. for de novo consideration.

5. Next issue in this appeal is with regard to granting of deduction u/s 80P(2)(d) of the Act.

5.1. 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.

6. 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.

7. Further, with regard to deposit during demonetization period, it is required to be examined in the light of various circulars issued by CBDT. Admittedly, the issue herein is with regard to deposit of cash during the demonetization period in the year 2016, which were not verified by the ld. AO in accordance with CBDT Circular wherein various instructions have been issued by CBDT dated 21.2.2017, 3.3.2017, 15.11.2017 & 9.8.2019. The ld. A.R. submitted that as the verification of cash deposit is not in accordance with instruction of CBDT, there is inadequate enquiry in respect of cash deposited during the demonetization period. These, CBDT instructions gives hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

7.1 In one of such instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such

cases the books of accounts have been rejected or not where substantial evidences of wide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

7.2 The instruction dated 21/02/2017 that the assessing officer basic relevant information *e.g.* monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash sales or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash sales or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

7.3 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. We are aware of the fact that not every deposit during the demonetization period would fall under category of unaccounted cash. However, the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash. The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law. Needless to say, that proper

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opportunity of being heard must be granted to the assessee. The assessee may be granted physical hearing in order to justify its claim. Accordingly, the issue in dispute is remitted to the file of Id. AO for fresh consideration.

8. In the result, the appeal filed by assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 6th May, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 6th May, 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.