

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

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

ITA No.646/Bang/2024
Assessment Year: 2017-18

Tumkur City Credit Souharda Co-operative Society Limited PVSV Plaza, Block I Behind RTO Office Water Tank Road Vidya Nagar Tumkur Karnataka 572 103 PAN NO : AADAT5978N	Vs.	ITO Ward-3 Tumkur
APPELLANT		RESPONDENT

Appellant by	:	Sri Prakash Hegde, A.R.
Respondent by	:	Sri Ganesh R. Gale, Standing Counsel for Department

Date of Hearing	:	07.05.2024
Date of Pronouncement	:	07.05.2024

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 28.2.2024. The assessee has raised following grounds of appeal:-

“The Grounds mentioned hereinafter are without prejudice to one another.

1. *That the learned Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on facts and circumstances of the case and in law so far as his order is prejudicial to the interest of the Appellant.*

2. *The learned CIT(A) has erred on facts and in the circumstances of the case and in law by upholding the view of the learned Assessing Officer ('AO') who had held that the Appellant is not eligible or deduction under section 80P(2)(a)(i) of the Act to the extent of Rs since it has carried on business with Nominal Members also (besides Ordinary/ Regular Members).*

3. *The learned CIT(A) has erred on facts and in the circumstances of the case and in law by considering that the interest received by the Appellant from Co-operative Bank amounting to Rs is not eligible for deduction under section 80P(2)(d) of the Act.*
4. *The learned CIT(A) has erred on facts and in the circumstances of the case and in law by considering that the interest received by the Appellant from Co-operative Bank is not eligible for deduction even under section 80P(2)(a)(i) of the Act.*
5. *The learned CIT(A) has erred on facts and in the circumstances of the case and in law by considering that the interest received by the Appellant from Co-operative Bank for deposit of the amount of General Reserve which is required to be statutorily maintained (in accordance with Section 57 of the Karnataka Cooperative Societies' Act, 1959 read with Rule 23 of the Karnataka Co-operative Societies' ules, 1960) is not eligible for deduction under section 80P(2)(a)(i) of the Act.*
6. *The learned CIT(A) has erred on facts and in circumstances of the case and in law by considering that the interest received by the Appellant from Co-operative Bank for deposit of the amount of Cash Reserve and Liquid Assets which is required to be statutorily maintained (in accordance with the Karnataka Cooperative Societies' Act, 1959 read with the Order of the Registrar of Co-operative Societies) is not eligible for deduction under section 80P(2)(a)(i) of the Act.*
7. *The learned CIT(A) has erred on facts and in circumstances of the case and in law by considering that the Appellant is not entitled for deduction under section 57 of the Act for the expenses incurred by it against interest received from Co-operative Bank.*
8. *The learned CIT(A) has erred in confirming the levy of interest under sections 234A and 234B of the Act though the same should not have been levied in the present situation.*

That the Appellant craves leave to add to and/or to alter, amend, rescind, modify, the grounds herein above or produce further documents before or at the time of the hearing of this appeal.

2. the assessee claimed deduction u/s 80P of the Income Tax Act, 1961 (in short "The Act") at Rs.21,27,454/-. The ld. AO has bifurcated this income as follows:

Interest income earned from deposit with other banks treated as income from other sources	Rs.3,74,903/-
Balance income from business	Rs.17,52,551/-
Total	Rs.21,27,454/-

2.1 Consequently assessee claimed deduction u/s 80P(2)(a)(i) of the Act and also u/s 80P(2)(d) of the Act. The deduction u/s 80P(2)(a)(i) of the Act has been denied by the lower authorities by applying the judgement of Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (397 ITR 1) (SC) by observing that there was violation of principles of mutuality among members and the society cannot be granted deduction u/s 80P(2)(a)(i) of the Act. Further, it was observed that the assessee society is having two accounts of members i.e. associated and nominal members, who are not identical to that of ordinary/resident members. As such, the claim of assessee u/s 80P(2)(a)(i) of the Act was denied.

2.2 Further, with regard to claim of assessee u/s 80P(2)(d) of the Act, the lower authorities observed that for deduction u/s 80P(2)(d) of the Act, the assessee earned interest on deposits from Co-operative banks and scheduled banks and it is to be assessed as "income from other sources". Thus, there was no grant of deduction u/s 80P(2)(d) of the Act. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. The ld. A.R. for the assessee relied on the following judgements:-

- a) Judgement of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT Calicut (2021) 123 taxmann.com 161 (SC)
- b) Judgement of Hon'ble High Court of Karnataka in the case of PCIT Hubli Vs. Totagars Co-operative Sale Society (2017) 78 taxmann.com 169 (Karn.)

- c) Judgement of Hon'ble High Court of Karnataka in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO (2015) 58 taxmann.com 35 (Karn.)
- d) Decision of ITAT Bangalore in ITA No.319/Bang/2023 dated 18.5.2023 in the case of M/s. University of Agricultural Employees House Building Co-Op. Society Ltd. Vs. ACIT
- e) Decision of ITAT Bangalore in ITA Nos.376 to 379/Bang/2023 dated 18.7.2023 in the case of The Totgars' Co-operative Sale Society Ltd. vs. ACIT
- f) Decision of ITAT Bangalore in ITA No.685/Bang/2023 dated 14.12.2023 in the case of M/s. Raythara Sahakari Sangha Ltd. Vs. ITO
- g) Decision of ITAT Bangalore in ITA No.901/Bang/2023 dated 2.1.2024 in the case of M/s. Charvaka Seva Sahakari Bank Ltd. Vs. ITO

3.1 In our opinion, similar issue came for consideration before this Tribunal in the case of Kotekar Vyavasaya Seva Sahakara Sangha Niyamitha in ITA No.452 to 454/Bang/2024 dated 1.5.2024, wherein the Tribunal held as under:

“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 Coordinate 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.”*

3.2 In view of the above order of the Tribunal, we remit the issue to the file of Id. AO for fresh consideration to decide the same in the light of above observations.

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

4.1 In our opinion, similar issue came for consideration before this Tribunal in the case of Kotekar Vyavasaya Seva Sahakara Sangha Niyamitha in ITA No.452 to 454/Bang/2024 dated 1.5.2024, wherein the Tribunal held as under:

“6. 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.”

4.2 In view of the above order of the Tribunal, we remit the issue to the file of ld. AO for fresh consideration to decide the same in the light of above observations.

5. 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.

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

Order pronounced in the open court on 7th May, 2024

Sd/-
(Keshav Dubey)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 7th 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.**