IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

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

ITA No.831/Bang/2024
Assessment Year: 2017-18

Jindesha Madar JM Minority Co-Op. Credit Society Ltd. Near TMC, Main Road Guledgudd 587 203 Tq. Badami Dist. Bagalkot 587 203 Karnataka **PAN NO : AAAAJ4639D**	**Vs.**	ITO Ward-1 Bagalkot
APPELLANT		**RESPONDENT**

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

Date of Hearing	:	06.06.2024
Date of Pronouncement	:	06.06.2024

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 30.3.2024 passed u/s 250 of the Income Tax Act, 1961 (in short "The Act").

2. The first ground in this appeal is with regard to sustaining addition of Rs.55,72,067/- u/s 68 of the Act which was made during the course of demonetization period.

3. The ld. A.R. submitted that assessee has deposited said amount during the demonetization period in SBN Notes of Rs.1000/- and Rs.500/-. The addition has been made by ld. AO on the reason that the said currency notes are not legal tenders. It was submitted

that the assessee received this amount from its members and all the details are available with the assessee. Hence, addition to be deleted.

4. Contrary to this, ld. D.R. submitted that the assessee has not discharged burden cast upon it. Hence, the addition was made towards cash deposit of DBN notes during the demonetization period.

5. We have heard the rival submissions and perused the materials available on record. In our opinion, dealing of SBN Notes prior to appointed date i.e. 31.12.2016 which cannot be prohibited and the source of deposit needs to be explained by the assessee and same to be examined by the ld. CIT(A). This view of ours is fortified by the decision of Visakhapatnam Bench of Tribunal in the case of ITO Vs. Tatiparti Satyanarayana in ITA No.76/Vizag/2021 dated 16.3.2.22 wherein held as under:

> *"9. We have heard both the parties and perused all the documents on record. We find that there was sufficient cash balance with the assessee as detailed in page No.30 of the paper book. The Specified Bank Notes (Cessation of Liabilities) Act, 2017, defines "appointed day" vide Section 2(1)(a). As per Section 2(1)(a), "appointed day" means the 31st Day of December 2016. Section 5 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 also deals with prohibition on holding, transferring or receiving specified bank notes. Section 5 states that "On and from the appointed day, no person shall knowingly or voluntarily, hold, transfer or receive any specified bank note". We therefore, find that the specified bank notes can be measured in monetary terms since the guarantee of the Central Government and the liability of Reserve Bank of India does not cease to exist till 31.12.2016. In view of the above, the contention of the Ld.DR, treating the receipt of SBNs from cash sales as illegal and thereby invoking the provisions of section 69A is not valid in law. Therefore, we dismiss this ground of the Revenue."*

5.1 In view of aforesaid reasoning, we remit the aforesaid dispute to the file of ld. AO for carrying out necessary enquiry to make addition u/s 69 of the Act and not u/s 68 of the Act.

6. Next ground in this appeal is with regard to denial of deduction u/s 80P(2)(a)(i) of the Act at Rs.2,00,823/-. After hearing both the parties, we are of the opinion that this issue requires examination at the end of ld. AO. Accordingly, we remit the issue to the file of ld. AO

to examine the same in the light of decision of 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 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 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).*
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> *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."*

6.1 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.

6.2 In view of the above decision of this Tribunal, we remit this issue to the file of ld. AO for fresh consideration after giving an opportunity of hearing to the assessee.

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

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

Sd/-	**Sd/-**
(Keshav Dubey)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 6th June, 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.