

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

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

ITA No.896/Bang/2024
Assessment Year: 2020-21

Raitara Seva Sahakara Sanga Niyamitha Hollehonnure Bhadravathi 577 227 Karnataka PAN NO : AAAAR2168M	Vs.	ITO Ward-1 & TPS Shivmogga
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue.

Date of Hearing	:	10.06.2024
Date of Pronouncement	:	10.06.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2020-21 dated 19.3.2024 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

2. Facts of the case are that the assessee is a Co-operative society registered under Karnataka Co-operative Societies Act, 1959. The Assessee society is carrying on the following business to provide services to its members particularly Agriculturists. The Assessee is providing following services or carrying on the following business.

- i) Providing credit facility to its members
- ii) Marketing of agriculture produce of its members - acting as Commission Agent as per APMC Act.
- iii) Sate-marketing of Agriculture in puts to members.

2.1 In the course of providing various services to members, the Co-operative has accepted deposit from members and also paying interest to members. The Co-operative has also deposited statutory deposits with Shimoga District Central Co-operative Bank Ltd as required under KCSR Act and Rules. The Co-operative has also deposited its funds which is not immediately required for business purpose and earned interest such deposits of co-operative are as under:

Statutory Reserve fund deposit	Rs. 59,52,376.00
Short Term Deposit	Rs. 2,34,66,538.00

2.2 The Co-operative has earned interest of Rs. 16,95,061/-. The Assessee claimed that the total income computed as per statement of total income is claimed for deduction UIs. 80P of the Act only. The Learned AO in page No.3 of the Assessment order held as under:

“From its reply dated 01-09-2022 it was evident that the assessee had received interest of Rs. 1682377/- from the District Co-operative Central Bank Ltd which is the central financing agency licensed from RBI and Rs. 12684/- from Canara Bank. It is further noticed that the aforesaid deposits/ investments in co-operative banks/ Commercial bank are out of surplus funds of the Society. Any interest income arising from deposits investment of funds in banks is in the nature of income from other sources taxable U/s 56 of the Income -Tax Act and cannot be categorized as income from the "profits and gains of business" Since the deduction UIs. 80P is available only for the profits and gains of the business (providing credit facilities to the members), the said deduction is not available to the interest income which is in the nature of "other income" or Income from other sources"

2.3 The Learned AO observed that the deposits with Co-operative banks and commercial banks is made out of surplus funds. This finding of the Learned AO is because of the following reasons.

2.4 The total own funds are only Rs. 3,88,50,725/- as at 31-3-2020. These entire own funds are required for its regular business activity like providing credit facility to its members, marketing of inputs. The total investments in regular business activities 20,36,43,770/. The Loans funds and deposit of members is

Rs. 18,85,75,318/-and deposit with SDCC Bank is only Rs. 2,37,82,273/- Hence, the Learned AO held that the deposit with SDCC Bank is made out of surplus funds is not correct.

2.5 The Co-operative society has invested in deposits Rs. 2,37,82,773/- borrowed funds only. Hence, the Leaned AO ought to have allowed interest paid on various loans have been allowed as deduction.

Total interest received from	Rs. 16,95,061.00
Less: Interest paid on loans – 1,01,71,713.00	Rs. 16,95,061.00

SDCC Bank

Members deposit interest	4,26,227.00
	1,05,97,940.00

Interest allowable against interest income Rs. 16,95,061.00. Balance of Rs. 8902879/- against other co-operative income.

2.6 The claim of the assessee u/s 80P(2)(d) and 80P(2)(a)(i) of the Act has been denied by the ld. AO as well as NFAC. Against this assessee is in appeal before us.

3. The ld. D.R. relied on the order of lower authorities.

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(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.

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.

7. 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 Id. AO for de-novo consideration with the above observations.

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

Order pronounced in the open court on 10th June, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 10th 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.**