

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1087/Bang/2024
Assessment Year: 2017-18

Koteshwara V.S.S. Bank Head Office Sahakara Sudha Koteshwara Kundapura Udupi 576 222 Karnataka  <b>PAN NO : AAAAK3781H</b>	<b>Vs.</b>	ITO Ward-2 Udupi
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri Akshay K.S., A.R.
<b>Respondent by</b>	:	Sri Subramanian S., D.R.

<b>Date of Hearing</b>	:	08.07.2024
<b>Date of Pronouncement</b>	:	08.07.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC dated 3.4.2024 for the assessment year 2017-18 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee raised following grounds:

1. *Pertaining to the Provision for NPA and Farmers Reserve of Rs.42,80,068/-.*

1.1. *The appellant contends that the provisions made for the NPA and Farmers Reserve of Rs. 12,80,068/- and 30,00,000/- respectively, must be allowable expenditure, as they are crucial for ascertaining the genuine profitability of the appellant, which is subsequently available for distribution among its members. Furthermore, this approach is in full compliance with the accounting policies as prescribed under the Karnataka State Cooperative Societies Act, underscoring the appellant's adherence to statutory requirements -in its financial practices.*

*1.2. Without prejudice to the above grounds, it is hereby submitted before the honourable authority that despite any additions to the profits, the inherent and fundamental character of the appellant as a Cooperative society remains undiminished. Consequently, the appellant prays to the honourable authority to grant the deduction of the entire enhanced profits under Section 80P(2)(a), considering its intact cooperative framework. This request also aligns with the principles set forth in CBDT Circular No. 37/2016, which explicitly states that enhanced profits, subsequent to the making of additions and disallowances, should be eligible for deductions under Chapter VI A of the Act.*

**2.** Facts of the case are that the assessee is a primary agriculture credit cooperative society registered under the provisions of section 7 of the Karnataka Co-Operative Societies Act, 1959, vide Registration No. DRG/S/2593/76-77 dated 04-09-1976. This society's primary objective is to provide credit facilities to its members by lending loans and accommodating deposits. The society aims to be a catalyst for economic upliftment within its member fraternity, ensuring consistent financial backing for people engaged in agriculture and thereby manifesting the core values and ethos of cooperative principles.

**2.1** The assessee filed the income tax returns on 26-10-2017 vide e-filing acknowledgement No. 258471501261017 declaring a Taxable income of Rs. Rs.24,660/- and claiming the deduction of Rs. 59,33,813/- under the provision of section 80P of the Act. The assessee's return of Income was selected for Scrutiny under Section 143(3) of the Act, wherein the learned Assessing Officer made the additions amounting to Rs.1,02,38,542/-. Aggrieved by the order of the learned assessing officer, the assessee filed an appeal before the National Faceless Appeal Centre (NFAC) under Section 246A of the Act. Upon comprehensive review and consideration of the assessee's submissions and claims, the ld. CIT(A) rendered a decision, allowing the appeal partly in favour of the assessee.

**2.2** Details of additions made by the learned Assessing officer and upheld by the NFAC are as follows:

Particulars	Amount	Reason for disallowance by AO	Adjudication by NFAC
Provision for NPA and Farmer's Reserve	42,80,068	Disallowed holding it as an unascertained liability	Provision for expenses is not allowed under MAT computation

**2.3** The following paragraph briefly details the determinations and proceedings undertaken by the learned Assessing Officer and the National Faceless Appeal Centre (NFAC).

Provision for NPA and Farmers Reserve of Rs. 42,80,068/-

**2.4** The assessee has debited the following expenses as a provision in the Profit and Loss Account during the AY 2017-18.

Type of Provision	Amount
Farmers Reserve	30,00,000
NPA	12,80,068
Total	42,80,068

**2.5** The learned Assessing Officer disallowed the above provision by treating it as an unascertained liability. In its representations to the learned Assessing Officer, the assessee emphasized that the provisions for Farmers Reserve and NPA expense are crucial in accurately determining the true profitability of the society. This calculated profitability is subsequently available for distribution among its members. The assessee asserted that this approach is consistent with the accounting policies prescribed under the Karnataka State Cooperative Societies Act, 1959, thereby ensuring compliance with statutory requirements while accurately reflecting the financial position of the society. However, the Assessing Officer

adopted the position that the aforementioned provisions do not constitute actual expenditure nor represent an ascertained liability. Consequently, it was opined that these provisions should be disallowed. In the proceedings before the learned NFAC, the assessee contended that the accounts are prepared in accordance with the statutory provisions of the Karnataka Cooperative Societies Act, 1959, along with rules made thereunder. As per Rule 22 of the Karnataka Cooperative Societies Rule, 1960, The said provisions are required to determine the true profitability of the assessee, which is further available for distribution to the members. . It was further argued that even if it were to be assumed that the aforementioned provisions need to be added back to the profits of the business, such enhanced profits would still be eligible for deduction under Section 80P(2)(a) of the Act in accordance with CBDT Circular 37/2016. The NFAC, in the order issued under Section 250 of the Act, rejected the assessee's aforementioned argument, holding that said disallowance would have implications on the calculation of MAT profits as provisions are not allowed under the computation of the MAT scheme and, therefore, the same will not be tax neutral.

**2.6** Being aggrieved by the order passed by the learned NFAC under Section 250 of the Act, the assessee now filed this present appeal under Section 253 of the Act before us, anticipating a just and equitable determination on the matter.

**3.** After hearing both the parties, we are of the opinion that the income of the assessee has been increased by disallowance of Rs.42,80,068/- due to disallowance of provisions of NPA and Farmer reserve of Rs.42,80,068/- and the same has been treated as business income of the assessee. In our opinion, once the income of the assessee has been increased by above disallowance and treated the same as business income of the assessee, the claim of the assessee

to be considered for deduction under Chapter VIA on the assessed income and not on the returned income. This view of ours is fortified by the judgement of Hon'ble Bombay High Court in the case of CIT Vs. Gem Plus Jewellery India Ltd. 330 ITR 175, wherein held as under:

*“Under sub-section (1) of section 10A of the Income-tax Act, 1961, a deduction is allowed from the total income of the assessee of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years commencing from the assessment year relevant to the previous year in which the undertaking begins manufacture or production. Sub-section (4) of section 10A provides the manner in which the profits derived from the export of articles or things or computer software shall be computed. Under sub-section (4) the proportion between the export turnover in respect of the articles or things, or, as the case may be, computer software exported, to the total turnover of the business carried over by the undertaking is applied to the profits of the business of the undertaking in computing the profits derived from export. In other words, the profits of the business of the undertaking are multiplied by the export turnover in respect of the articles, things or, as the case may be, computer software and divided by the total turnover of the business carried on by the undertaking. The expression “total turnover” has not been defined at all by Parliament for the purposes of section 10A. However, the expression “export turnover” has been defined. The definition of “export turnover” excludes freight and insurance. Since export turnover has been defined by Parliament and there is a specific exclusion of freight and insurance, the expression “export turnover” cannot have a different meaning when it forms a constituent part of the total turnover for the purposes of the application of the formula. A construction of a statutory provision which would lead to an absurdity must be avoided. Moreover, a receipt such as freight and insurance which does not have any element of profit cannot be included in the total turnover. Freight and insurance do not have an element of turnover. For this reason in addition, these two items would have to be excluded from the total turnover particularly in the absence of a legislative prescription to the contrary.*

*Held, (i) that interest income could not be taken as business income and could not be taken into account in computing the special deduction under section 80HHC.*

*CIT v. Asian Star Co. Ltd. (2010) 3236 ITR 56 (Bom) followed.*

*(ii) That gross interest should be taken into account for purposes of exclusion under clause (baa) of the Explanation to section 80HHC.*

*(iii) That the foreign exchange was realized by the assessee within the period stipulated in law. The assessee had realized a larger amount*

*in terms of Indian rupees as a result of a foreign exchange fluctuation that took place in the course of the export transaction. The gains had to be taken into account for the purpose of section 10A.*

*CIT Vs. Shah Originals (2010) 327 ITR 19 (Bom) distinguished.*

*(iv) That it was an admitted position that the assessee had deposited both the employer's and the employees' contribution towards provident fund and ESIC, though beyond the due date including the grace period. The Assessing Officer added these payments to the total income of the assessee. The disallowance which was effected by the Assessing Officer had not been challenged by the assessee. The plain consequence of the disallowance and the add back that had been made by the Assessing Officer was an increase in the business profits of the assessee. The contention of the Revenue that in computing the deduction under section 10A the addition made on account of the disallowance of the provident fund/ESIC payments ought to be ignored could not be accepted. No statutory provision to that effect having been made, the plain consequence of the disallowance made by the Assessing Officer must follow. The Tribunal was justified in directing the Assessing Officer to grant the exemption under Section 10A of the Act on the assessed income, which was enhanced due to disallowance of the employer's as well as employees' contribution towards PF/ESIC."*

**3.1** Further, the same view was taken by this coordinate bench in the case of Kome Koravadi Vividoddesha Sahakari Sangha Niyamitha in ITA No.982/Bang/2024 dated 24.6.2024 wherein held as under:

*"8. We have heard the rival submissions and perused the materials available on record. We find force in the argument of the assessee counsel as held by the Hon'ble Bombay High Court in the case of CIT Vs. Gem plus Jewellery India Ltd reported in 330 IT R 175 CIT. It is appropriate to grant deduction u/s 80P(2)(a)(i) of the Act on the assessed income, which was enhanced due to disallowance of deduction u/s 80P(2)(a)(i) of the Act on the provision for interest expenses and provision for employees retirement fund. Accordingly, we remit this issue to the file of the AO for re-computing the deduction u/s 80P(2)(a)(i) of the Act after considering this disallowance as income from business and directed accordingly. Hence, the appeal of the assessee is allowed for statistical purposes.*

*9. In the result, the appeal filed by the assessee is allowed for statistical purposes."*

**3.2** In view of the above discussion, we direct the ld. AO to grant deduction u/s 80P(2)(a) of the Act on assessed income and not on the returned income. Ordered accordingly.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on 8<sup>th</sup> July, 2024

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 8<sup>th</sup> July, 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.**