

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

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

ITA No.1002/Bang/2024
Assessment Year: 2018-19

Siddapura Taluka Agricultural Produces Co-op. Marketing Society Ltd. No.1, Market Yard Siddapur 581 355 Karnataka  <b>PAN NO : AADAS8652G</b>	<b>Vs.</b>	ITO Ward-1 Sirsi
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri M. Monish Sowkar, A.R.
<b>Respondent by</b>	:	Sri Subramanian S., D.R.

<b>Date of Hearing</b>	:	04.07.2024
<b>Date of Pronouncement</b>	:	04.07.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC dated 30.3.2024 for the assessment year 2018-19 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

**2.** The only grievance of the assessee is with regard to levy of penalty u/s 270A of the Act at Rs.4,43,350/-.

**3.** Facts of the issue are that the ld. AO initiated penalty u/s 270A of the Act for having not reporting the income. The ld. AO observed that in the instant case, assessee has filed e-return of income on 22.9.2018 declaring total income of Rs.23,63,800/- after claiming deduction under Chapter VIA at Rs.5,85,04,295/- and the same has been processed u/s 143(1) of the Act on 2.9.2019. The assessee has claimed deduction u/s 80P(2)(a)(i) of the Act in his return of income at Rs.4,75,25,965/-. However, allowable deduction u/s 80P(2)(a)(i)

of the Act was Rs.4,72,34,078/-. The same was granted while processing return u/s 143(1) of the Act. Later assessment was completed u/s 143(3) r.w.s. 144B of the Act on 19.4.2021 and in the course of assessment, it was found that there was under reporting of income by assessee at Rs.2,91,882/- by claiming excess deduction u/s 80P(2)(a)(i) of the Act. Thus, penalty was levied u/s 270A of the Act. Against this assessee went in appeal before ld. CIT(A), which is confirmed, wherein he confirmed the penalty order. Once again assessee is in appeal before us.

**3.1** The ld. AO invoked the provisions of section 270A(2)(a) of the Act. The income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143 of the Act.

**3.2** In this case, the ld. AO issued notice u/s 274 of the Act for under reporting of the income. In the assessment year under consideration, there was excess claim of deduction u/s 80P(2)(a)(i) of the Act at Rs.2,91,882/- and resulted in evasion of tax to the tune of Rs.87,101/-. The ld. AO after issuing the notice u/s 274 of the Act, levied penalty u/s 270A of the Act at 50% of the tax to be evaded worked out at Rs.43,550/-. On appeal, NFAC confirmed the same. Against this assessee is in appeal before us.

**4.** We have heard the rival submissions and perused the materials available on record. In this case, the assessee claimed deduction u/s 80P(2)(a)(i) of the Act at Rs.4,75,25,965/-. However, the ld AO while processing return u/s 143(1) of the Act allowed the same. However, while framing assessment u/s 143(3) of the Act vide assessment order 19.4.2021, the said deduction u/s 80P(2)(a)(i) of the Act was reduced to Rs.4,72,34,072/-. Consequently, the ld. AO invoked the provisions of section 270A of the Act for under reporting the income of the assessee, consequent to change in amount of deduction claimed u/s 80P(2)(a)(i) of the Act.

**4.1** The ld. A.R. submitted that the deduction of 80P(2)(a)(i) of the Act has been reduced due to misrepresentation of section 80P(2)(a)(i) of the Act by ld. AO though the said impugned issue was decided in favour of the assessee by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (431 ITR 1) and the Tribunal has been following that judgement. Being so, changing in the computation of deduction u/s 80P(2)(a)(i) of the Act by ld. AO cannot be reason to levy penalty u/s 270A of the Act.

**4.2** In our opinion there is force in the argument of assessee's counsel based on the observations by Hon'ble Supreme Court in case of Mavilayi Service Co- operative Bank Ltd. v. CIT (supra), we note that, Karnataka Co-operative Societies Act, 1959 defines Members to include nominal / associate members u/s. 2(f). Considering the definition of "Member" under the Karnataka Cooperative Societies Act, the present assessee qualifies for deduction u/s. 80P(2)(a)(i). At the cost of repetition, we draw reference from following observations of Hon'ble Supreme Court in case of Mavilayi Service Co- operative Bank Ltd. v. CIT (supra):-

*"46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions' Federation Ltd. v. CIT [1997] 11 SCC 287 referred to section 80P of the IT Act and then held:*

*"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:*

*"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"*

*Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i)."*

**4.3** In view of this, we are of the opinion that though assessee entitled for deduction u/s 80P(2)(a)(i) of the Act, assessee has not filed any appeal against the quantum addition made in the cited assessment order for the assessment year under consideration. As such, this is not a fit case to levy penalty u/s 270A of the Act where assessee claimed deduction u/s 80P(2)(a)(i) of the Act and the assessee's explanation is bonafide. Accordingly, we delete the penalty levied and sustained by the Id. AO.

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

Order pronounced in the open court on 4<sup>th</sup> July, 2024

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

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

Bangalore,  
Dated 4<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.**