

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 552/Bang/2024
Assessment Year : 2017-18

The Income Tax Officer, Ward – 1(7), Hubballi.	Vs.	The Dharwad Urban Credit Souharda Sahakari Ltd. CTS, 96/B2, G F, PB Road, F F Ducss, Alur Venkat Rao Circle, Dharwad – 580 001. PAN: AABAT3406D
APPELLANT		RESPONDENT

Assessee by	:	Shri Shree Raksha D, CA
Revenue by	:	Shri V. Parithivel, JCIT – DR

Date of Hearing	:	30-05-2024
Date of Pronouncement	:	18-06-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal by revenue arises out of the order passed by NFAC, Delhi dated 15.02.2024 for A.Y. 2017-18 on following grounds of appeal:

“a) On facts and circumstances of the case and in law, the Learned CIT(A)(NFAC) has erred in deleting the disallowance u/s. 80P(2)(d) of the IT Act of Rs.

66,25,939/-, without appreciating that the assessee society has earned interest income from investments in entities which are not cooperative society nor they are members of assessee cooperative society.

b) On facts and circumstances of the case and in law, the Learned CIT(A)(NFAC) has erred in deleting the disallowance u/s. 80P(2)(d) of the IT Act of Rs. 66,25,939/- without appreciating the decision of Hon 'ble Supreme court in the case of Mavilayi Service Cooperative Bank Ltd & Others in Civil Appeal Nos. 7343-7350 of 2019 dated 12th January, 2021 wherein, it is held in Para 35 that interest income derived from Cooperative societies is eligible for deduction u/s 80P(2)(d), which implies that interest from deposits in entities other than co-operative society is not eligible for deduction u/s. 80P(2)(d). In the instant case the assessee society has received interest from investment with entities other than co-operative societies.

c) On the facts and in the circumstances of the case and in law, the Learned CIT(A)(NFAC) has erred in holding the Cash transactions and deposit of Rs. 1,59,81,000/-in Specified Bank Notes, as a genuine transaction even though the same is done after the specified date, in violation of Government of India Gazette Notification No.2652. The Learned CIT(A)(NFAC) has erred deletion of addition made u/s. 68 of the Income Tax Act as the Specified Bank Notes were not a legal tender after 08.11.2016.

d) On the facts and in the circumstances of the case and in law, the Learned CIT(A)(NFAC) has erred in holding the identity and creditworthiness is established just because a list of such members of the Assessee Society is provided without PAN and KYC documents.

e) Whether on the facts and in the circumstances of the case and in law, the Learned CIT(A)(NFAC) has erred in holding that it was genuine transaction although it has been proved that such pigmy deposit and repayment of loan was immediately due to the Assessee society, during the normal course of its business operations.

f) Any other ground that may be raised subsequently.”

2. Brief facts of the case are as under:

2.1 The assessee is a credit Souharda Sahakari Ltd. and filed its return of income on 01.11.2017 declaring total income of Rs.1,68,25,644/- after claiming deduction u/s. 80P(2)(a)(i). The case was selected for scrutiny and notice u/s. 143(2) along with notice u/s. 142(1) was issued to verify the large deduction claimed under Chapter VIA and to verify the source of cash deposited during the demonetisation period. The Ld.AO disallowed the 80P(2)(a)(i) claim of the assessee by holding that assessee does not satisfy the principle of mutuality as it includes nominal as well as associate members which is in violation of Souharda Co-operative Act, 1997 as well as Karnataka Co-operative Societies Act, 1959.

2.2 In respect of the cash deposited during demonetisation period, the Ld.AO did not appreciate the submissions of the assessee by holding that the assessee during the material time did not have permission from the RBI to accept the demonetised cash. The Ld.AO thus made addition in the hands of the assessee amounting to Rs.3,28,06,644/-.

2.3 Aggrieved by the order of the Ld.AO, assessee preferred appeal before Ld.CIT(A).

2.4 The Ld.CIT(A) decided the issues by observing as under:

*“6. Observation and Conclusion:
In ground No. 1 is general in nature.*

In ground No. 2, 3, 4, 5, and 6, the Appellant has contested the order u/s. 143(3) of the IT Act, 1961 dated 20.11.2019 for the A.Y.: 2017-18 of the AO of not allowing

deduction of Rs.1,68,26,664/- u/s. 80P(2)(a)(i) of the Act by holding that the appellant is registered under the Karnataka Souhardha Sahakari Act, 1997 and therefore not a Co-operative Society. All these grounds are taken up together for the sake of Convenience

I have carefully considered the submissions made by the Appellant. It is observed that the Hon'ble Karnataka High Court in the case of Swallimana Souharada Credit Co-op Ltd V. PCIT in ITA No. 832 and 833 of 2018 cited supra has held that Co-operative societies registered under the Souharda Act which is a State enactment would certainly be construed as Co-operative Society coming within the ambit of Section 2(19) of the I T Act, 1961. In view of the decision of the Jurisdictional High Court, the Ao is hereby directed to allow the deduction u/s. 80P(2)(a)(i) of the Act. These grounds are allowed.

In ground No. 7, 8 and 9 the Appellant has contested the action of the AO in not allowing deduction u/s.80P(2)(d) of the Act. It is observed that the AO disallowed the interest income of Rs.2,69,30,408/- earned from Co-operative banks as Co-operative Banks are not Co-operative societies for the purpose of 80P(2)(d). The Hon'ble Karnataka High Court in the case of PCIT, Hubli Vs. Totgens Co-operative Sale Society in 392 ITR 74 (Karnakata) has held that any interest earned by a Co-operative Society from a Co-operative Bank would necessarily be deductible u/s. 80P(2)(d) of the Act. In view of the above decision of the Jurisdictional High Court. the Appellant is eligible for deduction u/s. 80P(2)(d) and the AO is hereby directed to allow the deduction. These grounds are allowed.

In ground No. 10, 11,12,13 and 14 the Appellant has contested the action of the AO in making an addition of Rs.1.59.81.000/- u/s. 68 r.w.s. 115BBE of the Act. The AO made the addition on the ground that the SBNs had ceased to be legal tender from the midnight of 08.11.2016 and these deposits were made by the Appellant on 10.11.2016 and 11.11.2016 when it had ceased to be legal tender. It is observed that the Appellant had submitted all the information and documents to prove the sources for the cash deposits made in its bank account. The Appellant has clearly stated that these amounts have been received from their account holders and the same is deposited together with its cash holding as on 08.11.2016. The details of the account holders were also furnished to the AO as noted by him. The Appellant had. therefore,

discharged its onus to prove the identity and genuineness of the transaction. The AO has simply ignored all these facts and relied on a Gazette notification. The onus was on the AO to prove that these were unaccounted cash credit and the AO has failed to do so.

In view of the above and the decisions of the Division Bench of the Hon'ble ITAT, Visakhapatnam in ITO Vs. Sri Tatipari Satyanarayana (ITA No. 76/Viz/2021). the Honble ITAT, Bangalore in Shri Bhageerdi Pattina Sahakara Sangha Niyamitha Vs. ITO (ITA No. 646/Bang/2021) and Prathomika Krushi Pattina Vs. ITO (ITA No. 593/Bang/2021) relied upon by the Appellant and all the other submissions made by the Appellant Supra, the action of the AO in making an addition u/s. 68 r.w.s. 115BE is not justified and hereby deleted. These grounds are allowed.

In the result, the appeal is allowed.”

2.5 Aggrieved by the order of Ld.CIT(A), revenue is in appeal before this *Tribunal*.

3. The Ld.DR submitted that the above details regarding the KYC of the members who have deposited cash during the demonetisation period has not been submitted by the assessee in order to substantiate its argument. In respect of the disallowance made under chapter VIA, the Ld.AR relied on the orders passed by the authorities below.

4. On the contrary, the Ld.AR submitted that there are decisions of *Hon'ble Supreme Court* as well as this *Tribunal* on the issue of claim pertaining to deduction u/s. 80P(2)(a)(i) in respect of the business income earned out of credit facilities.

4.1 Further, he also submitted that the alternative claim in respect of interest income earned out of deposits may also be

considered u/s. 80P(2)(d) of the act as per the decisions of *Hon'ble Supreme Court* in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors.* in *Civil Appeal Nos. 10069 of 2016* dated 14.09.2023. He submitted that both these decisions have not been considered by Ld.CIT(A) in respect of the deductions claimed under Chapter VIA of the act. In respect of cash deposited during demonetisation period, the Ld.AR submitted that these are the cash received from the members including associate and nominal members and therefore it cannot be treated as unaccounted credits u/s. 68.

We have perused the submissions advanced by both sides in the light of records placed before us.

5. Admittedly, the decisions of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in 431 *ITR 1* as well as the decision of *Coordinate Bench of this Tribunal* in various cases in respect of the deduction claimed by the assessee u/s. 80P(2)(a)(i)/80P(2)(d) has not been looked into / considered. This *Tribunal* has been taking consistent approach on these issues which needs to be verified based on the records. **Accordingly, we remit the issue raised by revenue in ground nos. a & b to the Ld.AO for necessary reverification.**

6. In respect of the cash deposited during demonetisation, we note that necessary verification in accordance with the following instructions has not been carried out by the Ld.AO.

- a) The 1st instruction was issued on 21/02/2017 by instruction number 03/2017.
- b) The 2nd instruction was issued on 03/03/2017 instruction number 4/2017.
- c) The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II.

6.1 In the interest of justice, we remit this issue as well to the file of Ld.AO. The assessee is directed to furnish the PAN & KYC documents of all the members from whom cash has been collected during the demonetisation that is appearing as credits in the accounts of the assessee. The Ld.AO then shall carry out necessary verification in respect of the same.

Accordingly, ground nos. c – e stands allowed for statistical purposes.

Needless to say that proper opportunity of being heard must be granted to the assessee on both the above issues in accordance with law.

In the result, the appeal filed by the revenue stands partly allowed for statistical purposes.

Order pronounced in the open court on 18th June, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 18th June, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore