

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'B' BENCH : BANGALORE**

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

ITA No. 251/Bang/2024
Assessment Year : 2017-18

M/s. Nirmaan Vividoddhesha Souharda Sahakari Niyamitha, 2 nd Floor, "Krishna", Taluk Office Circle Coure Road, Udupi – 576 101. PAN: AABAN3347F	Vs.	The Income Tax Officer, Ward – 1 & TPS, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sandeep Chalapathy, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Revenue

Date of Hearing	:	11-07-2024
Date of Pronouncement	:	24-07-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 19.12.2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

"1. That the order of the Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the

appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the disallowance of Rs.31,74,712/- claimed as deduction u/s. 80P(2)(a)(i) of the Act.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the disallowance of income earned from associate and nominal members u/s 80P(2)(a)(i) of the Act on the ground that such members do not hold voting rights and do not participate in the management of the appellant.

4. That the learned Commissioner of Income Tax (Appeals) ought to have appreciated that the Karnataka Souhardha Sahakari Act, 1997 and Karnataka Souharda Sahakari Act, 1998 allows the Co-operative Society to admit nominal and associate members and therefore, deduction u/s 80P(2)(a)(i) of the Act be allowed.

5. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing the proportionate income earned from regular members and associate members as deduction u/s 80P(2)(a)(i) of the Act.

6. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in stating that there is lack of concept of mutuality between members of the society.

7. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that there is violation of provisions of Karnataka Souharda Sahakari Act, 1997 and therefore, the appellant is not entitled for deduction u/s. 80P of the Act.

8. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in stating that the interest earned from the assessee society is made out of the surplus funds and therefore the appellant is not entitled for deduction u/s. 80P(2)(a)(i)/ 80P(2)(d) of the Act.

9. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in stating that the interest earned from the surplus funds deposited in co-operative banks/ scheduled banks is not attributable to the main business of the appellant and therefore the same should

not be allowed as deduction u/s.80P(2)(a)(i)/ 80P(2)(d) of the Act.

10. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in in not allowing expenditure incurred for earning the interest income from the investments.

Each of the above grounds is without prejudice to one another, the appellant craves the leave of Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify all or any of the grounds of appeal either before or at the time of hearing of this appeal.”

Brief facts of the case are as under:

2. The assessee is a Souharda Sahakari registered under Karnataka Souharda Sahakari Act, 1997, engaged in the business of providing credit facilities to its members. The assessee filed its return of income during October, 2017 for the AY 2017-18, declaring gross total income at Rs 31,74,712/- and net income at Rs. Nil/-, after claiming deduction under section 80P(2)(a)(i) of the Act of Rs. 31,74,712 /-.The case was selected for Limited Scrutiny through CASS.

2.1 During the assessment proceedings the assessee filed copy of registration certificate, list of members, list of depositors, copy of the Society Bye laws. The Ld.AO after examining the same, noted that, the assessee is a Souharda Sahakari, and not a Co-operative Society, and that deduction under section 80P is only allowed to the Co-operative Societies and not the Souharda Sahakari Registered under the Karnataka Souharda Sahakari Act, 1997. Accordingly, the Ld.AO disallowed the deduction of Rs.31,74,712/- claimed u/s 80P of the Act. Further, the Ld.AO also noted that, the assessee violated the provisions of the

Karnataka Co-operative Societies Act, as it does not satisfy the principle of mutuality, based on the view that, the assessee collected deposits and provided loans to its Nominal Members who are more than 15 percent of the regular members, which is not permitted under Karnataka Cooperative Societies Act. The Ld.AO relied on decision of *Hon'ble Supreme Court* in the case of *Citizens Cooperative Society* to deny deduction under section 80P(2)(a)(i) of the Act to the assessee.

2.2 The Ld.AO further found that, the assessee earned Interest Income of Rs.7,32,755/- from funds invested/deposited in the Co-operative Banks/Scheduled Banks. The assessee treated this interest income of 7,32,755/- as its operational income and claimed deduction u/s 80P(2)(a)(i) of the Act. In this connection, the assessee was called upon to clarify, as to how the interest receipts from Cooperative Banks/Scheduled Banks can be claimed as exempt u/s 80P(2)(a)(i) of the Act. In response, the assessee furnished detailed submission. Subsequently the Ld.AO after considering the facts and submission of the case, completed the assessment by disallowing Rs.7,32,755/- u/s 80P(2)(a)(i) of the Act. The Ld.AO relied on the decision of *Hon'ble Karnataka High Court* in the case of *Totgars Cooperative Sale Society* reported in (2017) 83 taxmann.com 140 to disallow the deduction claimed by the assessee in respect of the interest income earned from other Co-operative Banks.

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

2.3 The Ld.CIT(A) after considering various submissions of the assessee dismissed the claim of assessee by placing reliance on the decision of *Hon'ble Supreme Court* in case of *Totgar's Co-op Sale Society Ltd. vs. ITO* reported in (2010) 322 ITR 283 (SC).

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

3. In respect of the interest earned by the assessee on the issue of disallowance u/s. 80P(2)(a)(i), the Ld.CIT(A) was of the opinion that, the assessee did not satisfy the principle of mutuality, as the assessee transacted with all kinds of members, including nominal and associate members. He submitted that, the decision of *Mavilayi Service Co-operative Bank Ltd. v. CIT* reported in 431 ITR 1 by *Hon'ble Supreme Court* also was not considered.

3.1 On the contrary, the Ld.DR has relied on the orders passed by authorities below.

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

3.2 Admittedly, assessee is a Souharda Sahakari Niyamita and the Ld.CIT(A) analysed the applicability of section 80P in respect of the deduction claimed by the assessee. The Ld.CIT(A) allowed the claim of assessee though a Souharda, and held that the assessee is eligible to claim deduction u/s. 80P of the act.

3.3 However, while analyzing the issue on merits, the Ld.CIT(A) held that, the assessee did not satisfy the principle of mutuality due to the presence of nominal / associate members and therefore denied the claim of 80P(2)(a)(i) on the business income earned out of credit facility. The Ld.CIT(A)/AO has not considered the decision of *Hon'ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* while deciding this issue.

3.4 In respect of the interest income earned out of surplus deposited, a sum of Rs.7,32,755/- was earned by the assessee. The Ld.AO/CIT(A) disallowed this claim of assessee by holding that the said interest earned is not attributable to the business activity carried on by the assessee. We note that the Ld.CIT(A)/Ld.AO did not verify the claim under the provisions of section 80P(2)(d) of the act, in the light of the ratio by *Hon'ble Supreme Court* in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO* reported in (2023) 154 *taxmann.com* 305. In our view, no purpose will be served by remanding the issue to Ld.CIT(A).

We accordingly, remand both these issues to the Ld.AO to verify the claim of assessee in accordance with the decisions of *Hon'ble Supreme Court* referred to hereinabove.

3.5 We also make it clear that, if the interest earned by assessee from the banks that falls outside the exemption u/s. 80P(2)(d), the same be considered under the head "Income from other sources" and necessary relief to be

granted to the assessee u/s 57 of the Act, in respect of cost of funds proportionately of administrative and other expenses in accordance with law. Accordingly, the issues are restored to the file of Ld.AO for *denovo* consideration with the above observations.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

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

Order pronounced in the open court on 24th July, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 24th July, 2024.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore