

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.1131/Bang/2024
Assessment Year : 2017-18

DCIT, Circle – 1(1), Hubballi.	Vs.	M/s. Sirsi Taluka Agricultural Produce Co-op Marketing Society Ltd., 1, Market Yard, Sirsi, Sirsi – 81 401, Karnataka. PAN :AAMAS 4143 D
APPELLANT		RESPONDENT

Assessee by	:	Shri. S. Prakash Hedge, CA
Revenue by	:	Ms. Neha Sahay, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	15.07.2024
Date of Pronouncement	:	18.07.2024

ORDER

Per Prakash Chand Yadav, Judicial Member :

This appeal of the Revenue is arising from the order of CIT(A) dated 18/04/2024 having DIN No. ITBA/NFAC/250/2024-25/1064189259(1) for the Assessment Year (AY) 2017-18.

2. The facts leading to the filing of this appeal are as under:

Assessee is a Co-operative Society registered under the Karnataka State Government Co-operative Act, filed its return of income declaring net profit of Rs.60,10,861/-. The assessee has claimed deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter called ‘the Act’) to the tune of Rs.3,27,90,717/-. In order to verify the deductions claimed by the assessee under chapter VI A case of the assessee was selected for scrutiny. During the course of assessment proceedings, the AO has observed that the assessee society is not giving all the privileges to the nominal members as compared to the regular members. The AO was of the view that there has to be equality among all the members of the society in order to claim benefits of principle of mutuality. The

AO was of the view that the nominal members of the society are akin to general public at large and hence deduction under section 80P(2)(a)(i) of the Act is not available to the assessee. The Ld AO relied on the judgment of Hon'ble Apex Court in the case of Citizen Cooperative society reported in 84 taxmann.com 114.

3. Aggrieved with the Order of AO, assessee filed appeal before the CIT(A) and argued that the AO has erred in concluding that the nominal members are general public at large. The learned Counsel for the assessee has relied upon the judgment of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, reported in 431 ITR 1 (SC).

4. The Ld CIT(A), allowed the appeal of the assessee. And hence the present appeal.

5. Aggrieved with the Order of the CIT(A), revenue has filed the present appeal before the Tribunal and raised the following grounds:

- a) *The CIT(A)/NFAC has erred in not distinguishing the fact that the assessee Mavilayi Service Co-op Bank Ltd, with regard to the Hon'ble Supreme Court case of Mavilayi Service Co-op Bank Ltd vs CIT, was registered under the Kerala State Co-operative Act and the assessee under Karnataka State Cooperative Societies Act 1959. Under the Kerala State Co-operative Act there is no restriction on admission of any type of member, whereas the Karnataka State Cooperative Societies Act 1959 places restriction on the admission of associate & nominal members stating that associate / nominal members cannot be admitted in excess of 15% of the total membership.*
- b) *The CIT(A)/NFAC has not appreciated the findings of the AO wherein it has been brought on record that the assessee Society has admitted and transacted with associate / nominal members in excess of 15% of the total membership thereby violating the law under which the society is registered.*
- c) *In view of the above, the decision of CIT(A)/NFAC to allow entire deduction u/s 80P(2)(a)(i) of the Act is opposed to the decision of the Hon'ble Supreme Court in the case of Mavilayi Service Co-op Bank Ltd vs CIT wherein it was held that proportionate deduction u/s 80P(2)(a)(i) of the Act needs to be disallowed if the society had*

transacted with nonmembers and in the instant case the assessee's transactions made with associate / nominal members in excess of 15% of membership ought to be considered as transactions with nonmembers.

d) Any other ground that may be raised subsequently.

6. Learned DR vehemently argued that the CIT(A) has erred in allowing the appeal of the assessee.

7. After hearing the parties, we observe that ground No.(b) as raised by the Revenue is not coming out from the orders of the authorities below. Hence this ground of appeal is dismissed.

8. In rest of the grounds i.e ground number(a) &(c), the Revenue has argued that the CIT(A) has wrongly relied upon Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT (supra). In this regard, we observe that the Hon'ble Supreme Court while rendering the judgment of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT (supra) has duly considered the facts of Citizen Co-operative Society Ltd., Vs. ACIT reported in 84 taxmann.com 114 relied upon by the AO while framing the assessment. The Hon'ble Supreme Court has held that the facts of Citizen Co-operative Society Ltd., Vs. ACIT were peculiar. In that case, there was restriction in the bye laws of the society which prohibited society to give loan to the nominal members and in view of those facts, the Hon'ble Supreme Court has decided that benefits under section 80P(2) of the Act are not available to the society. However, when we examine the facts of the present case, the bye laws of the present society duly permit the granting of loan facilities to the nominal members. Similar issue has come up before the coordinate Bench in the case of Basaveshwaranagara Coopera in IT Nos.329 to 333/Bang/2024 order dated 23.04.2024 Wherein the Coordinate bench observed as under: -

“2.1 The assessee claimed deduction on interest received on investment with banks and co-operative banks under section 80P(2)(a)(i)

of the Act. Similar is the position in other assessment years, which is as follows:

Sl.No.	Assessment year	Interest received on investment with banks and co-operative banks
1.	2011-12	81,60,055/-
2.	2012-13	1,24,94,050/-
3.	2013-14	1,68,28,561/-
4.	2017-18	2,34,70,800/-
5.	2018-19	2,67,08,210/-

2.2 The same has been denied. Against this assessee is in appeal before us.

3. 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. 85 Ors. v. CIT 85 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. (supra).

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."

3.1 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 of the Act to the files of the A.O. to decide in the light of above order of Tribunal cited (supra)."

9. We has also gone through the judgment of this Tribunal in the case of Charak Seva Shakari Bank Ltd-ITA No-901/Bang/2023, relied upon by the AR of the assessee, wherein similar view, as has been taken in the case of Basaveshwaranagara Coopera (Supra), has been taken.

10. In the light of the judgments of the Coordinate Bench we are of the view that meaning of term member is to be seen in the light of the provisions of respective bye laws of that society. In the present case the Ld CIT(A) has not discussed any thing on this aspect. Further the orders of authorities below have not at all discussed on the definition clause as given in the bye laws of the present assessee under section 18. Therefore, we deem it appropriate to restore the matter to the file of AO, for deciding a fresh.

11. In result the appeal of the revenue is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(PRAKASH CHAND YADAV)
Judicial Member

Bangalore.

Dated: 18.07.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR,ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.