

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE**

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

ITA No.723& 724/Bang/2024
Assessment Years : 2017-18 & 2018-19

Mahaveera Credit Co-operative Society Limited,Thakshila Building, Ballal Bagh,Mangaluru-575 003.	Vs.	The Income Tax Officer, Ward-1(3), Mangaluru.
<b>PAN – AAEAM 3398 Q</b>		
APPELLANT		RESPONDENT

Assessee by	:	Shri Pupa Ron, Advocate
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel

Date of hearing	:	24.07.2024
Date of Pronouncement	:	26.07.2024

**ORDER**

**PER SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER :**

1. Present appeals filed by the assessee are against the order passed by the NFAC, Delhi dated 20/02/2024 in DIN No. ITBA/NFAC/S/250/2023-24/1061211566(1) for the assessment year 2017-18 and for AY 2018-19 dated 21.02.2024 having DIN No- ITBA/NFAC/S/250/2023-24/10612808931(1). Since facts for both appeals and issues involved are common we are taking ITA No-723 as lead matter.
  
2. Facts leading to the filing of present appeal are, the assessee, a Credit Co-operative society, registered under the Karnataka Co-operative Act 1959 and claimed deduction under section 80-P(2)(a)(i) of the Income Tax Act. For impugned assessment year it has filed its ROI declaring gross total income of Rs 25,61,316/- and the same was claimed exempt under section 80P of the Income Tax Act. Thereafter the case of the assessee was selected for scrutiny

after issuing statutory notices. During the course of assessment proceedings, the AO asked for justification from the assessee vis-à-vis his claim under section 80-P(2)(a)(i), Assessee filed its reply.

3. Dissatisfied with the reply of the assessee the AO framed the assessment and denied the exemption of 80(P)(2)(ia) to the assessee. The AO has basically relied on the judgment of Hon'ble Apex Court in the case of Citizen Cooperative society case dated 08.08.2017, in Civil Appeal Number-10245 of 2017(**84 taxmann.com 114**), to hold that the assessee was transacting with non-members, and hence income of the assessee cannot be treated as exempt lacking principle of mutuality. The AO also made certain comments on the total number of members of the assessee society comprising of Associate Member and Nominal Members. The AO was of the view that since the assessee is dealing with nominal principle of mutuality is lacking in this case and hence assessee is not entitled for deduction of section **80(P)(2) (ia)** of the Act.
4. Aggrieved with the order of the AO assessee filed appeal before the CIT(A), the CIT(A) partly allowed the appeal of the assessee limited to the ground that interest income earned by assessee society is available for deduction of section 80(P)(2)(d), against which the revenue is not in appeal before us.
5. Now the assessee has come up in appeal before us and raised following grounds.
6. At the outset the counsel for the assessee submitted that the issue involved in the present appeal is limited to the extent of availability of deduction of section 80(P)(2)(ia). Counsel for the assessee further submitted that case relied upon by the CIT(A) and AO are not applicable to the facts of the present case and the coordinate Benches in assessee's own case and other cases have set aside the order of the AO for fresh adjudication.
7. Ld. DR relied on the orders of authorities below and vehemently contended that the AO's view is correct and tenable in law.

8. After hearing both the parties, we observe that similar view has been recently decided by the Bangalore Bench in the case of DCIT Vs Srisa Taluka in ITA Number 1131/Ban/2024 dated 16.07.2024, in which both of us were the members, has restored the matter to the file of AO following the verdict of Coordinate Bench in the case of **Basaveshwaranagara Coopera in ITA Nos.329 to 333/Bang/2024 order dated 23.04.2024 the Coordinate Bench.** For the sake of convenience, we deem it fit to reproduce the observations of the Coordinate Bench in the case of **Basaveshwaranagara Co-opera.**

*“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](http://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. 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 anything 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.

10 In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in court on 26<sup>th</sup> day of July, 2024

Sd/-

**(CHANDRA POOJARI)**  
Accountant Member

Sd/-

**(PRAKASH CHAND YADAV)**  
Judicial Member

Bangalore,  
Dated, 26<sup>th</sup> July, 2024

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore