

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos.819 to 821/Bang/2024
Assessment Years: 2016-17 to 2018-19

Belve Vyavasaya Seva Sahakari Sangha Ltd. Belve, Hebri Taluk Udupi Dist 576 212  <b>PAN NO : AAAAB1636N</b>	<b>Vs.</b>	ITO Ward-2 Udupi
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Mahesh R. Uppin, A.R.
<b>Respondent by</b>	:	Sri Parithivel V., D.R.

<b>Date of Hearing</b>	:	07.08.2024
<b>Date of Pronouncement</b>	:	07.08.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These three appeals of assessee are directed against different orders of NFAC for the assessment years 2016-17 to 2018-19 with common date i.e. 1.3.2024. The grounds in all these appeals are common in nature except change in figures.

**2.** Facts of the case are that assessee is registered as a Primary Agricultural Credit Society under Karnataka State Cooperative Societies Act, 1959. ITR was filed for AY 2016-17 under Section 148 on 04.11.2017 with a returned total income of Rs. 75,56,377 after claiming deduction of Rs.75,56,377/- under Section 80P(2)(a)(i) r.w.s 80P(2)(d), 80P(2)(a)(ii), 80P(2)(c) which they are legitimately entitled to. Assessee cooperative society under Section 2(19) of IT Act is engaged in carrying on the business of banking or providing credit facilities to its members. Members include Ordinary Members who have voting and profit-sharing rights and also Nominal Members who

do not have such rights. Nominal Members are admitted under Section 17 and 18 of KSCS and are defined as Members under Section 2(f) of the same act. Assessee has therefore neither accepted deposits nor provided credit facilities to non-members or general public. KSCS which governs the assessee and their bye laws do not prohibit such dealings with Nominal Members as they are covered under the definition of members under Section 2(f) supra and therefore there is no violation thereof. Being eligible, the assessee has claimed deduction of such income under Section 80A(2)(a)(i) from Gross Total Income. Assessee cooperative society is also engaged purchase' of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying to its members which is also eligible for deduction of income from engaging in such activities under Section 80P(2)(a)(ii). Assessee co-operative society. is engaged in PDS sales to its members and non-members. Although the Gross Trading Profit from such activity is Rs.1,19,679, the net profit Net Profit there from after deducting wages and salaries is either loss or less than Rs.50,000/-. Therefore, the assessee had claimed deduction of this Gross Profit after deducting such expenses u/s 80P(2) (c). Ld. AO has erred in adding the entire Gross Trading Profit instead of Net Profit of Net Profit from this activity by citing Section 80P(2)(c). Assessee society has claimed deduction of expenses under Section 37 of IT Act of a sum of Rs.1,45,000/-, which is the audit fees and ascertained as per the directions of Director of Co-operative Societies Audit under KSCS Act for auditors. If this is not so ascertained it would be a violation of KSCS Act governing the assessee society. Learned AO has erred in adding this disallowing this ascertained expenditure to the total income by treating the same as ascertained provisions. Assessee cooperative society has received interest or dividend income on investments of surplus funds available with them at different points in time which were not required by them for lending to its members as there were no takers

at that time. It is in fact the working capital of the assessee and not their liability. Therefore, the assessee has claimed deduction of such income amounting to Rs. 70, 66,995 as it is attributable to carrying on the business of banking or providing credit facilities to its members under Section 80P(2)(a)(i). The learned AO has erred in applying Section 80P(2)(d) which is not relevant to this case and thereby treating it as income from other sources without deducting costs incurred by the assessee. Against this the assessee went in appeal before NFAC.

**2.1** However, the NFAC confirmed the disallowance made u/s 80P(2)(a)(i) & 80P(2)(d) of the Act. Against this assessee is once again in appeal before us.

**3.** The ld. D.R. relied on the order of lower authorities.

**4.** We have heard the rival submissions and perused the materials available on record. First, we consider the ground relating to allowability of deduction u/s 80P(2)(a)(i) of the Act. 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. & Ors. v. CIT & 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. (surpa).*

*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.”*

**4.1** 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(2)(a)(i) of the Act to the file of the A.O. for de novo consideration.

**5.** Next issue in this appeal is with regard to granting of deduction u/s 80P(2)(d) of the Act.

6. We have heard the rival submissions and perused the materials available on record. As regards the claim of deduction u/s 80P(2)(d) of the I.T. Act, we direct the A.O. to verify whether interest / dividend is received by the assessee out of investments made with Cooperative Societies. If the assessee earns interest / dividend income out of investments with co-operative society, as observed by Hon'ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. in Civil Appeal No.10069 of 2016, order dated 14.09.2023, the same is entitled to deduction u/s 80P(2)(d) of the I.T. Act.

7. Without prejudice to the above, we make it clear that if the interest earned by assessee from the banks is considered under the head "Income from other sources", relief to be granted to the assessee u/s 57 of the Act in accordance with law. Accordingly, the issue is restored to the file of Id. AO for de-novo consideration with the above observations.

8. In the result, appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 7<sup>th</sup> Aug, 2024

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

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

Bangalore,  
Dated 7<sup>th</sup> Aug, 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.**