

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

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

ITA No.1234/Bang/2024
Assessment Year: 2017-18

Nagini Co-operative Credit Society Limited No.569, Nagini Bhavana 80Feet Road, 3 rd Main, 4 th Block Basaveswara Nagar Bangalore 560 079 PAN NO : AACAN5552H	Vs.	ITO Ward-6(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Gireesha T.L., A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	06.08.2024
Date of Pronouncement	:	13.08.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal by assessee is directed against order of NFAC dated 28.5.2024 for the AY 2017-18 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee raised following grounds:

“The Appellant objects to the Assessment Order and the order of the CIT (A) NFAC - New Delhi, on the following grounds in so far as it is prejudicial to the appellant as it is opposed to law and circumstances of the case, The Appellant is aggrieved by the decision of Ld. CIT(A) in confirming the addition of Rs.1,18,48,133/-: -

- 1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned Commissioner of Income tax [Appeals] of the National Faceless Appeal Center (CIT [A] for short) is not justified in upholding the denial of deduction u/s 80P(2)(d) of the Act to the extent of Rs. 1,18,43,133/-that has been computed by the Assessing Officer as the interest earned by the appellant from*

the deposit made with Co-operative Society Banks and Interest was not earned from any Commercial/ Nationalized Banks.

3. *The CIT (A) was not correct in confirming the addition to the extent of Rs. 1,18,43,133/- relating to interest on deposits made in Co - Operative Banks as the Appellant is eligible for deduction u/s.80P(2)(d)*
4. *The CIT (A) and A.O. erred in not appreciating that the Appellant Society has fulfilled all necessary conditions for claim of exemption u/s.80P(2)(d) as the Appellant's activities are to provide credit facilities to its members.*
5. *The CIT (A) was not correct and not following the Jurisdictional Hon'ble ITAT and High Court decisions, which are mentioned below.*

2. Facts of the case are that the assessee is a cooperative society registered under Karnataka Co-operative Societies Act 1959. The assessee had claimed deduction of Rs.1,18,43,133/- under section 80P of the Act. Ld. AO did not consider the assessee's plea that the Interest Income earned from deposits made in Co-operative Banks is eligible for deduction under section 80P because assessee is credit Co-Operative Society engaged in providing credit facility to members. The interest earned by the assessee out of depositing the surplus fund with cooperative bank and commercial bank is outside the business activity of the assessee and constitute income from other sources. During the appellate proceeding also, the assessee has not responded to any notice. Thus, there is no clarity on the facts of the case and the assessee has failed to justify as to why the case laws cited in the assessment order are not applicable to the facts of the case. The assessee has failed to justify as to how the case of the assessee is similar to the case of Tukmur Merchants Souharda Credit Co Operative Limited Vs Income Tax Officer of Hon'ble High Court of Karnataka on which the assessee relied on before Ld. CIT(A). Therefore, on carefully considering the facts and circumstances and assessment order, the Ld. CIT(A) found no infirmity in the assessment order. He also noted that the assessee has also not made full and

true disclosure of its transactions with documentary evidence before the AO as well. Accordingly, the disallowance made by the AO was confirmed and all grounds of appeal were dismissed by the Id. CIT(A). Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. Similar issue came for consideration in the case of Kotekar Vyavasaya Seva Sahakara Sangha Niyamitha in ITA No.452 to 454/Bang/2024 dated 1.5.2024 where in held as follows:

“4. 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. & 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.*

5.1 *Facts of the case are the assessee has earned interest income from the funds invested in the Co-operative banks other than the Co-operative societies which was held non-operational income by the AO as the same was not attributed to the business activities of the assessee. The AO during the assessment proceedings relied upon the decision of Hon'ble High Court of Karnataka in the case of Principal Commissioner of Income-tax, Hubballi Vs Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 (Karnataka) and has disallowed the deduction claimed u/s 80P of the Act.*

5.2. *The ld. CIT(A) observed that in the above decision the Hon'ble Karnataka High Court has held that 'the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a scheduled bank or a co-operative bank and, thus, section 80P of the Act would not apply". In the present case the assessee has earned interest income from the deposit made out of the surplus funds in the co-operative banks and accordingly the same do not qualify for the purpose of claiming deduction u/s 80P of the Act.*

5.3. *Further, the ld. CIT(A) observed that the issue regarding the word "attributable" has been discussed elaborately by the Hon'ble Supreme Court in the case of M/s. Totagar's Cooperative Sale Society (2010) wherein it is held by the Hon'ble Supreme Court that the deduction u/s 80P of the Act is available only to the income which is attributable to the business operation. Since the interest income received by the assessee was not attributable to the main business of the assessee the same should not be allowed as deduction u/s 80P of the Act.*

5.4. *In view of the above facts, he observed that the interest earned from surplus invested/deposited in the Co-operative banks is not attributable to main business of the assessee, hence needs to be assessed as "income from other sources" and not as "business profits." Accordingly, he observed that the observations and the findings of the AO appear to be in order which does not permit to take a divergent view. Accordingly, the disallowance made by the AO in respect of the interest income earned from the deposits made in Cooperative Bank was upheld and the grounds*

raised in respect of this issue were dismissed by the ld. CIT(A). Against this assessee is in appeal before us seeking relief 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.*

6.1 *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 ld. AO for de-novo consideration with the above observations.*

7. *In the result, appeal of the assessee is partly allowed for statistical purposes."*

3.1 In view of the above order, we direct the ld. AO to pass fresh order in the light of above order of the Tribunal cited (supra).

4. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 13th Aug, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 13th 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.