

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1428/Bang/2024
Assessment Year: 2018-19

Nava Karnataka Souhard Credit Co-operative Limited 396, Shree Building Hospet Patel Nagar IV Ward Hospet 583 201 Karnataka  <b>PAN NO : AACAN8113A</b>	<b>Vs.</b>	ITO Ward-1 & TPS Hosapete Karnataka
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Harsha J., A.R.
<b>Respondent by</b>	:	Shri V. Parithivel, D.R.

<b>Date of Hearing</b>	:	04.09.2024
<b>Date of Pronouncement</b>	:	10.09.2024

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against order of CIT(A)/NFAC for the AY 2018-19 dated 8.7.2024 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised various grounds of appeal.

**2.** Facts of the case are that the assessee society, Nava Karnataka Souhard Credit Co-operative Limited being a credit co-operative society registered under Karnataka Souhardha Sahakari Act, 1997 had e-filed the return of income for the AY 2018-19 on 1.10.2018 declaring Nil income after claiming deduction u/s 80P of the Act amounting to Rs.36,02,052/-. The said return was then processed u/s 143(1) of the Act. Thereafter, the notice u/s 143(2) of the Act was issued to the assessee on 22.9.2019 and

subsequently notices u/s 142(1) were issued time to time for further verification and enquiry. In response to the notice issued u/s 142(1) of the Act, the assessee uploaded details/information on the e-portal. After perusing and considering the details/information submitted during the course of assessment proceedings, the AO relying on the decision of Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd. (2017) 397 ITR 1 is of the view that that the assessee was not capable of having the right to claim the deduction u/s 80P2(a)(i) as it has failed in satisfying the appropriate conditions. Assessee was not licensed to deal with public and it is clearly provided in the sub-clause (i) of clause (a) of sub-section (2) of section 80P that deduction shall be allowed in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members only.

**2.1** Further, AO observed that in the instant case, associated members are not entitled to participate in the profits of the society and hence have only contributed funds in the form of share capital to the society. Therefore, the fundamental principle of mutuality requiring a nexus with the contributors and participators is solely missing. Further, Nominal members and associated members have not been provided with voting rights which prejudices the concept of mutuality as the mandates of such members cannot be carried out. It is a matter of fact that the nominal and associated classes of members are specifically barred from holding voting rights and are not entitled to share in the profits or losses of the society. These members are deprived of any right or interest in the property of the society. In other words, these nominal members are solely contributors to earning surpluses and not participators in the surpluses and hence the concept of mutuality in the said entity ceases to exist. The denial of voting rights is patently discriminatory and does not enable the member to have a say in the way the affairs

of the society ought to be carried on and thereby violate the co-operative principles which forms the foundation of the mutual concern. It is immaterial to go into the argument of the extent of the association of such member in the concerns i.e. whether the share of such members in the whole mutual concern is miniscule or of great numbers as the concept of mutuality is based on equality among the members.

**2.2** In view of the above, the AO held that the society cannot be termed as a mutual concern and the principles of mutuality cannot be applied. The transactions with associate/nominal members result in certain income/advantages, which are used by the society or rather applied to the benefit of the regular members. Under the circumstances, the entire deduction claimed by the assessee society u/s 80P(2) of the Act was disallowed by the AO.

**2.3** Further, during the course of assessment proceedings, the AO noticed that the assessee has claimed deduction u/s 80P(2)(a)(i) of the Act on the interest income Rs. 2,92,14,754/- received. The AO was of the view that the legislature is very clear that the interest earned from the investments only with other co-op Societies is eligible for deduction u/s 80P(2)(d) and thereby it encouraged coop movement by giving deduction on its investments with Coop societies. On the contrary, the assessee society has invested its idle funds which are immediately not required for lending to its members in Co-op Banks and Scheduled Banks and earned interest of Rs. 2,92,14,754/- out of such investment which as per legislature the assessee is not supposed to get deduction u/s 80P(2)(d). He observed that the Hon'ble High court of Karnataka in the case The Totagars Co-operative Sale Society in ITA No. 100066/2016 16.06.2017 held that the interest received from the cooperative bank and urban banks are to be assessed under section 56 of the Income tax Act. Though the assessee is under obligation to invest compulsorily as per the Karnataka Co Operative Society

Act, 1959, the resultant interest is nothing but income in the hands of the society. The assessee has invested the idle funds which were not required for lending to its members with Co-op Banks or scheduled banks and earned interest on such funds. The assessee has invested the excess funds which were not required by the assessee for its immediate operations. In view of the above discussion, the AO held that the interest income of Rs.2,92,14,754/- derived by the assessee society from loans/advances/investment in share/schedule bank/district Co-operative bank is not eligible for deduction u/s 80P(2)(a)(i) of the Act and requires to be added to income of the assessee as "income from other sources" u/s 56 of the Act. Hence, the same was added to the income of the assessee. Accordingly, income of Rs.2,92,14,754/- was assessed under the head "income from other sources" u/s 56 of the Act, rejecting the deduction u/s 80P(2)(a)(i) of the Act, being interest income received from member/Schedule Bank/District Co-operative bank. As the assessee has under reported its income penalty proceedings u/s 270A of the Act were initiated by the AO. Aggrieved, the assessee went in appeal before Id. CIT(A).

**3.** The Id. CIT(A)/NFAC observed that ground of appeal objects to disallowing deduction of interest income as income from other sources and denying deduction u/s 80P(2) of the Act. He observed that the decision of Hon'ble Supreme Court in Citizens Cooperative society on normal members, is against the very basis as a cooperative society wherein differential voting rights imply that it is not a cooperative society. Further, RBI guidelines, mandate that if equity capital is in excess of Rs.one lakh then the entity is a cooperative bank and not a cooperative society and therefore, deposits placed with other cooperative banks are not entitled to exemption under section 80P(4) of the Act. Further, he observed that the distinction between a cooperative society and cooperative

bank is brought out by Banking Regulation Act. In view of the above discussion, the ld. CIT(A) held that the interest income of Rs.2,92,14,754/- derived by the assessee society from loans/advances/investment in share/Schedule Bank/District Cooperative Bank is not eligible for deduction under section 80P(2)(a)(i) of the Act and requires to be added to the income of the assessee as "Income from Other Sources" under section 56 of the Income tax Act, 1961. Hence, the same is added to the income of the assessee and the assessment of interest income of Rs.2,92,14,754/- as income from other sources was confirmed by the ld. CIT(A).

**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 that 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.** 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.

**5.1** 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 Id. AO for de-novo consideration with the above observations.

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

Order pronounced in the open court on 10<sup>th</sup> Sept, 2024

**Sd/-**  
**(Waseem Ahmed)**  
**Accountant Member**

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

Bangalore,  
Dated 10<sup>th</sup> Sept 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.**