

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

**Before Ms. Padmavathy S., Accountant Member  
and  
Shri Prakash Chand Yadav, Judicial Member**

<b>ITA No. 1729/Bang/2024</b> (Assessment Year: 2018-19)		
Shri Saraswathi Credit Souharda Sahakari Sangha Ltd. Sachidanand Seva Sadan Vinayaka Nagar Darbe Puttur 567420 PAN – AABAS8625H (Appellant)	vs.	The Income Tax Officer Ward - 1, Puttur      (Respondent)

Assessee by:	Shri V. Srinivasan, Advocate
Revenue by:	Ms. Neha Sahay, JCIT-DR

Date of hearing:	21.10.2024
Date of pronouncement:	23.10.2024

**ORDER**

**Per: Padmavathy S., A.M.**

This appeal of the assessee is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)] dated 12.08.2024 for Assessment Year (AY) 2018-19. The assessee raised the following grounds of appeal –

*“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 CIT[A] is not justified in upholding the denial of deduction claimed u/s.80P[2][a][i] of the Act with regard to the income derived from activity of providing credit facilities to its members on the erroneous and mistaken notion that the appellant had dealings with members as well as non-members under the facts and in the circumstances of the appellant's case.*

- 2.1 The learned CIT[A] is further not justified in observing that the appellant being a Souharda is not a Co-operative Society and that the decision of the Hon'ble Supreme Court in the case of CITIZEN CO-OPERATIVE SOCIETY reported in 397 ITR 1 is applicable to the case of the appellant while upholding the denial of deduction claimed u/s.80P[2][a][i] of the Act without appreciating that the said judgement was explained in the later decision of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank reported in 431 ITR 1 and therefore, the appellant ought to have been allowed the deduction claimed u/s. 80P[2][a][i] of the Act under the facts and in the circumstances of the appellant's case.*
- 3. The learned CIT[A] is not justified in upholding the disallowance of proportionate employee cost of Rs.91,85,684/- and proportionate administrative overheads of Rs.35,63,408/- claimed u/s 57 of the Act from out of the interest income earned from co-operative banks offered under the head "other sources" under the facts and in the circumstances of the appellant's case.*
- 4. Without prejudice to the above, the learned CIT[A] ought to have allowed the deduction u/s 80P[2][d] of the Act towards interest income earned from co-operative banks under the facts and in the circumstances of the appellant's case.*
- 5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234-A and 234-B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*
- 6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”*
2. The assessee is a souharda cooperative society duly registered under the Karnataka Souharda Sahakari Act, 1997 and is engaged mainly in the business of accepting deposits from members and lending credit facilities to its member. The assessee is also engaged in the business of issuing e-stamp papers, insurance agency services, etc. which is insignificant in volume. The assessee filed the return of income for AY 2018-19 on 26.10.2018 declaring the total income at Nil after claiming deduction of Rs. 3,37,91,925/- u/s. 80P(2)(a)(i) of the Income Tax Act, 1961 (the Act). The assessee in the return of income has shown interest income of Rs.4,17,99,567/- from its investments

in fixed deposits with other cooperative societies and against the said interest income the assessee had claimed deduction u/s. 57(iii) of the Act towards cost of funds so invested to earn such interest income and proportionate administrative and other overheads accruing to Rs.1,27,44,092/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. With regard to the deduction claimed u/s. 80P(2)(a)(i) the Assessing Officer (AO) held that the assessee is not carrying on the business of providing banking facilities only to its members but is providing services to common public also. The AO further held that the activities of the assessee is that of finance and cannot be regarded as a cooperative society. Accordingly the AO denied the benefit of deduction u/s. 80P(2)(a)(i) placing reliance on the decision of Hon'ble Supreme Court in the case of Citizen Cooperative Society Ltd. vs. ACIT [2017] 250 Taxman 0078 wherein it is held that the cooperative society which fails the test of mutuality cannot be allowed deduction u/s. 80P of the Act. With regard to the expenses u/s. 57(iii) of the Act the AO restricted the deduction only to the cost of funds and disallowed the claim made towards proportionate cost incurred towards employees and administrative overheads to the tune of Rs.35,63,408. Aggrieved, assessee filed further appeal before the CIT(A) who confirmed the addition by holding that: -

*“5.3 The arguments of the assessee boils down to the fact that assessee is eligible for claim under section 80P(2)(a)(i), where the Assessing Officer argues that taxpayer is into “finance business” having collected deposits from the general public. Whereas the very concept of Co-operative Societies envisages the concept of mutuality which means the deposits can be received from members only. Later on through various judicial pronouncements it was extended to non members as well as nominal members also (please read the recent Judgment by the Honourable Supreme Court of India in the Civil Appeal Nos. 7343-7350 of 2019 in the case of Mavilayi service cooperative bank Ltd. & ors. Vs Commissioner of income tax, Calicut) as well as decision in the case of Chirakkal. Further, the Hon'ble Supreme Court of India in the case of The Citizen Cooperative Society Limited, Hyderabad Vs. ACIT Circle- 9(1), Hyderabad vide Civil Appeal No.10245 of 2017 has held as under:*

*"It is in this back ground, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:*

*"As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality: that no person can earn from him; that there a profit motivation; and that there is no sharing of profit. It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund (as said by the MD vide his statement dated 20/12/2010). [Though the bank formed the third party vis-à-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs]. In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all."*

*5.4 Hon'ble High Court of Kerala in the case of The Chirakkal Service Coop. Bank Ltd. Vs. CIT (ITA No.212 of 213), says that "if that co-operative society satisfies the definition of 'primary agricultural credit society', it would be one to which the exemption as per sub-section 4 of section 80P of the IT Act would apply."*

*5.5 By no stretch of imagination a cooperative society extending credit facility to general public can be considered as a Primary Agricultural Credit Society working on the concept of mutual benefit. The Cooperative sector was envisaged for the upliftment of the agricultural and farm sector. And for that purpose exemption from taxation was given to those entities who fall under the definition of "Primary Agricultural Credit Society". The taxpayer is a credit cooperative society registered under Karnataka Credit Cooperative Societies Act. The deduction under Sec 80P(2)(a)(i) was rejected for reasons- (a) citing the decision of honble SC in The Citizens Credit Co Operative Society Limited, Hyderabad in Civil Appeal No 10245 of 2017 merely because of the fact that the Appellant had admitted Nominal Members with restrictions on their voting rights and right to get share in the profits of the society and (b) holding that Souharda Sakakari is not a co op society and hence, not eligible for deduction u/s 80P. Since it can be categorically stated that Saraswati Credit Souharda Sahkari Limited, the taxpayer is registered under Karnataka Souharda Sahkari Act, 1997 and it was held in the case of Citizens Cooperative Society that Souharda Society is not a Cooperative Society, the eligibility of the assessee under section 80P(2)(a)(i) is rejected and the addition at Rs 33791925 is upheld.*

5.5 The next main ground is during the F.Y. 2017-18 relevant to A.Y. 2018-19 assessee earned gross income of Rs.41799567/- from other sources. Against the earning of above income from other sources the assessee claimed proportionate employee cost of Rs.9185684/- and proportionate administrative overheads of Rs.3563408/- in addition to cost of Rs.38392749/- of the funds utilized to earn the gross income of Rs.41799567/- from other sources. Thus the net result is loss of Rs.9681182/- from other sources. The assessee failed to justify its claim of proportionate employee cost and proportionate administrative overheads from the business of the assessee without earmarking any specific services of the employees as well as its administrative machinery. Once the funds are parked they automatically result into income from other sources. The assessee could not correlate its claim of proportionate employee cost and administrative costs which it claimed u/s 57 of the Act. Therefore, the claim of expenses attributable to earning of income from other sources is restricted to Rs.38392749/-. Accordingly income from other sources is taken as Rs.3406818/- and the same is brought to tax U/s 56 of the Act. Section 56 gives very specific items for the claim of expenditure under Income from other Sources, it is not like a general section like section 37(1) meant for business income wherein all expenses other than capital and personal expenses are allowable. Moreover the entire claim under section 80P(2)(a)(i) have been already disallowed. Considering these the addition of Rs 3406818 is upheld as not allowable u/s 57. The assessing officer is requested to recheck the interest calculation u/s 234A and 234B. Interest calculation is consequential to the appeal giving effect and will be considered based on the decision in appeal.

5.6 In the result the appeal is partly allowed.”

The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. The learned A.R. at the outset submitted that the findings of the AO that the assessee is not only carrying on business with its members but also for common public is factually incorrect since the assessee is doing business with its members only. In this regard the learned A.R. drew our attention to the submissions made before the CIT(A) wherein the assessee had made a detailed submission substantiating that the business of the assessee is carried out with its members only (pages 47 to 49 of the paper book). The learned A.R. further submitted that under the Karnataka Souharda Sahakari Act, 1997 even loans to nominal and associate members are also considered as members and therefore the income derived from lending loans to members including nominal and associate members is also eligible for deduction u/s. 80P(2)(a)(i) of the Act.

The learned A.R. also submitted that complete list of all deposits and loans outstanding as of 31.03.2018 along with details of name and address of borrowers, membership number, type of facility granted, PAN and Aadhar number etc., were furnished before the CIT(A). The ld AR argued that the CIT(A) has not examined these details which substantiates the claim that the findings of the AO that the assessee deriving income from non members which is factually not correct. The ld AR further argued that the CIT(A) has merely placed reliance on the decision of the Hon'ble Apex Court in the case of Citizen Cooperative Society Ltd. (supra) to reject the claim of the assessee u/s. 80P(2)(a)(i). With regard to the finding of the CIT(A) that the assessee is not a cooperative society under the Karnataka Souharda Sahakari Act, 1997 the learned A.R. placed reliance on the decision of the Hon'ble Karnataka High Court in the case of (i) Swabhimani Souharda Credit Co-operative Ltd & (2) Karnataka State Souhards Federal Co-operative Ltd. vs. Government of India and Others [2020] 421 ITR 670 (Karn) to submit that the assessee is a cooperative society within the meaning of Karnataka Souharda Sahakari Act, 1997. The learned A.R. also placed reliance on the decision of the coordinate bench in the case of Gonikoppal Primary Rural Agricultural Credit Co-operative Society Ltd. (ITA No. 1016/Bang/2024 for AY 2018-19 dated 04.07.2024) wherein similar issue has been considered by the coordinate bench.

4. The learned D.R., on the other hand, relied on the orders of the lower authorities.

5. We have heard the rival contentions and perused the material on record. The contention of the Revenue while disallowing the deduction claim u/s. 80P(2)(a)(i) is that the income derived by the assessee claimed as deduction under the said section is not attributable to the income earned from the

business of providing credit facilities to its members. From the perusal of the findings of the AO we notice that the AO has not considered the submissions of the assessee contending that the income earned is from doing business with its members only. The CIT(A) also upheld the AO's claim for the reason that the assessee is doing business with nominal members which is not eligible for deduction u/s. 80P(2)(a)(i) and also for the reason that the assessee is not a cooperative society. We further notice that the assessee has submitted various details on the deposits / loans given in support of the contention that the income derived which is claimed as deduction u/s.80P(2)(a)(i) is from providing credit facilities to members only.

6. In this regard it is relevant to note the following observations of the coordinate bench in the case of Basaveshwaranagara Co-opera society, in ITA Nos. 329 to 333/Bang/2024 dated 23.04.2024 where it is held that: -

*“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:*

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

*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. & 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.”*

*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).*

*3.2 Alternatively, assessee raised ground that the assessee earned interest income from deposit with scheduled banks and co-operative banks. Facts regarding this ground are that the assessee earned interest income from deposits with Scheduled banks and Cooperative banks, which has been assessed as “income from other sources” and no deduction u/s 80P(2)(d) of the Act has been granted to the assessee. Now the contention of the assessee is that this income is to be assessed as “business income” and deduction u/s 80P(2)(d) of the Act to be granted. Without prejudice to this, it was submitted*

*that the assessee is entitled for deduction u/s 57(iii) of the Act with regard to cost of funds incurred if the income is assessed as "income from other sources" u/s 56 of the Act.*

*4. 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.*

*4.1 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. The above decision has been followed in the decision of the coordinate bench in the case of Gonikoppal Primary Rural Agricultural Credit Co-operative Society Ltd. (supra). We notice that the coordinate bench has restored the appeal back to the AO with direction to examine the facts in the light of principles laid down by the Hon'ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. (surpa). In assessee's case the lower authorities have not examined the submissions and documentary evidences of the assessee claiming that credit facilities are extended by the assessee to its members including associate and nominal members and the judicial precedence laid down by the Apex Court. Considering facts and circumstances of the present case, we deem it fit to remand the case back to the AO to examine the submissions / documents afresh with regard to allowability of deduction u/s. 80P(2)(a)(i) of the Act keeping in mind the decisions of the Hon'ble Supreme Court and the decisions of coordinate bench.

8. The alternate claim of the assessee with regard to allowability of deduction u/s.80P(2)(d) is also restored back to the assessee respectfully following the above decision of the coordinate bench.

9. We notice that the coordinate bench in the case Basaveshwaranagara Co-opera society (supra) on the issue of deduction under section 57(iii) also has restored the issue back to the AO to grant relief to the assessee u/s 57 of the Act in accordance with law. The Id AR during the course of hearing drew our attention to the workings submitted before the lower authorities regarding the proportionate claim of the employee and administrative cost to pray that the same have not been factually examined. Therefore respectfully following the above decision of the coordinate bench and considering facts in the present case we restore the issue back to the AO with a direction examine whether the proportionate expenses claimed by the assessee are incurred towards earning interest income offered to tax under the head “income from other sources” based on the evidences and decide in accordance with law. The assessee is directed to furnish the relevant details as may be called for by the AO to substantiate claim of deduction u/s.57(iii). It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 23<sup>rd</sup> October, 2024.

Sd/-  
**(Prakash Chand Yadav)**  
**Judicial Member**

Sd/-  
**(Padmavathy S.)**  
**Accountant Member**

Bengaluru, Dated: 23<sup>rd</sup> October, 2024  
n.p.

Copy to:

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2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

*By Order*

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*Assistant Registrar*  
*ITAT, Bangalore*