

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

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

ITA Nos. 1944, 1945, 1946 and 1947/Bang/2024
Assessment Year: 2013-14, 2014-15, 2015-16 & 2017-18

M/s Sri Venugopalakrishna Credit Co-operative Society Ltd., No.123/3, 9 th Cross, 2 nd Main, Chamrajpet. Bangalore – 560 018. PAN – AABAS 6974 R	Vs.	The Income Tax Officer, Ward – 5(2)(4), Bangalore. CIT(A), NFAC, New Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Shri H Guruswamy, ITP
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	21.11.2024
Date of Pronouncement	:	29.11.2024

R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The present appeals are preferred by the assessee against the orders issued by the National Faceless Assessment Centre (NFAC), Delhi, dated January 11, 2024 and January 22, 2024 pertaining to the assessment years 2013-14, 2014-15, 2015-16, and 2017-18.

2. These appeal were filed by the assessee with a delay of 200 days. To explain the delay, the assessee has submitted a condonation petition accompanied by an affidavit. In the condonation petition, the assessee stated that the delay occurred due to the negligence of the Tax Consultant, who was entrusted, along with the necessary documents, with the responsibility of filing the appeal. However, the Tax Consultant failed to fulfil his duty. Upon discovering the non-filing of the appeal within the prescribed time, the assessee promptly engaged a new counsel, who subsequently filed the appeal. The assessee contends that the delay is solely attributable to the Tax Consultant's failure and not due to any fault on the part of the assessee. Consequently, the assessee has requested the Tribunal to condone the delay.

3. On the contrary, the learned Departmental Representative (DR) opposed the condonation request but was unable to refute the arguments advanced by the learned counsel for the assessee.

4. After considering the rival submissions and reviewing the materials on record, we note that the delay in filing the appeal was indeed caused by the Tax Consultant's lapse. The affidavit submitted by the assessee is uncontroverted, as no objections or discrepancies were pointed out by the learned DR appearing for the Revenue. Furthermore, the Revenue didn't file the counter affidavit. Considering these circumstances, and in the interest of justice and equity, we find it appropriate to condone the delay in filing the appeal. The matter shall now proceed to be adjudicated on its merits.

ITA No. 1945/Bang/2024 for the assessment year 2014-15

5. The sole issue raised by the assessee pertains to whether the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in denying the benefit of deduction under Section 80P(2)(d) of the Income Tax Act, 1961, on account of interest income earned from deposits with co-operative banks.

6. The assessee, a credit co-operative society, is engaged in the business of providing banking-related services. During the relevant assessment year, the assessee claimed a deduction under section 80P of the Act amounting to ₹56,48,107/- only. However, the Assessing Officer (AO) disallowed the deduction on the reasons detailed below:

"5. It is a settled legal position that ability to induct nominal members who can only contribute profits but can not participate in such profits, itself negates the existence of Principle of Mutuality in the case of assessee. Further from the Bye-laws it is evident that any member of the public can become a nominal member and can avail loan facility from the assessee society. As held by the Hon'ble Supreme Court of India in the case of Citizen Co-Operative Societies, income earned from providing credit facilities to such nominal members does not satisfy the test of mutuality. Thus in the assessee's case the test of mutuality is not satisfied and as such it is no possible for deduction u/s 80P of the IT Act.

6. Assessee society is one legal entity and cannot have two different parts one which is adhering to Principle of Mutuality and the other not satisfying the Principle of Mutuality. As per the ratio of Hon'ble Supreme Court of India in Citizen Co-Operative Societies (Supra), since assessee is single legal person, just one instance of non-compliance to Principle of Mutuality will make it a non-mutual organization and not eligible u/s 80P.

In view of the above legal position, I hold that assessee society does not satisfies the I test of mutuality and hence not eligible to deduction u/s 80P. Accordingly the assessment is completed as under rejecting the assessee's claim of deduction u/s 80P of the IT Act, 1961."

7. Aggrieved by the disallowance made by the Assessing Officer (AO), the assessee filed an appeal before the learned Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A), after considering the submissions, partly allowed the assessee's appeal with the following observations:

"This view of Hon'ble Bangalore High Court has been upheld in number of subsequent decision of ITAT Bangalore including in the case of M/s.Vasavamba Co-operative Society Ltd. (ITA No.453/Bang/2020 (order dated 13.08.2021 had held that the assessee is not entitled to deduction u/s 80P(2)(d) nor u/s 80P(2)(a)(i) of the I. T. Act with regard to the interest income earned from investments made with cooperative banks either. Accordingly, it is held that assessee shall not be eligible for deduction u/s 80P(2)(d) on its entire income earned as interest, be it from scheduled commercial bank or from cooperative banks.

5.12 On the basis of discussion in paragraph no. 5.10 and para 5.11 it is hereby decided that the entire amount of Rs. 18,59,846/- earned by the assessee which was held to be income chargeable under the head income from other sources and therefore, not eligible for deduction u/s 80P(2)(a)(i) shall also not be eligible for deduction u/s 80P(2)(d).

In the background of above decision let us direct ourselves to individual grounds of appeal.

5.13 Ground no. 1, 2, 3 and 11: These grounds are general in nature, therefore, they are not being decided separately.

5.14 Ground no. 4,5,6 and 7: In terms of discussion in para-5.1 to para-5.12 these grounds are partly allowed. It has been held that the assessee shall be eligible to deduction u/s 80P(2)(a)(i) to the extent of Rs. 45,88,261/- and shall not be eligible for deduction u/s 80P(2)(d) on Rs. 18,59,846/-.

5.15. Ground no.8: The entire expenditure claimed by the assessee be it relating to its business activity or be it related to its investments activity has been allowed in computing the income of the appellant under the head business and profession. In this ground, the appellant has rightly argued that if deduction u/s 80P(2)(d) is being disallowed he should be allowed expenditure directly relating to this income. However, the main business of the assessee is that of accepting deposits, maintain accounts giving credits ensuring timely payment to interest of depositors and ensuring timely collection of principle an interest from the borrowers therefore, merely an insignificant and non-material amount must have been spend by the appellant in

making investment on which the interest has been earned. Any pro-rata apportionment of expenditure relatable to earning of the appellant under the head income from business and profession and income under head other sources shall not give the true picture of the activities of the appellant. Be as it may, the appellant has not earmarked or identified any specific expenditure for its eligibility for deduction u/s 57, no amount is being allowed u/s 57."

8. Dissatisfied with the partial relief granted by the learned CIT(A), the assessee has preferred the present appeal before this Tribunal, seeking appropriate adjudication on the matter.

9. During the hearing, the learned Authorized Representative (AR) for the assessee conceded that the interest income earned from deposits with the co-operative bank does not qualify for deduction under section 80P(2)(d) of the Income Tax Act, 1961. However, the learned AR argued that the assessee is entitled to claim a deduction under Section 57 of the Act for the expenses incurred in earning such interest income from the co-operative bank.

10. On the other hand, the learned Departmental Representative (DR) did not present any substantive rebuttal to the arguments put forth by the learned AR. However, the learned DR strongly supported the orders passed by the lower authorities.

11. After hearing the contentions of both parties and examining the materials available on record, we note that it is well established in law that an assessee is entitled to deduct the expenses incurred in earning income taxable under the head "Income from Other Sources." Such a deduction is allowable under the provisions of Section 57 of the Act. Considering this legal position, we agree with the arguments advanced

by the learned AR. Accordingly, we hold that the assessee cannot be denied the benefit of deducting the costs incurred in earning the interest income from the co-operative bank under Section 57 of the Act. However, the burden lies on the assessee to substantiate its claim for such a deduction by providing adequate evidence and complying with the relevant provisions of law. Hence, in light of the above, we set aside the findings of the learned CIT(A) on this issue and remit the matter back to the file of the Assessing Officer for fresh adjudication. The Assessing Officer is directed to allow the deduction under Section 57 of the Act against the interest income from the co-operative bank, subject to verification of the assessee's claim. Consequently, the assessee's ground of appeal is partly allowed for statistical purposes.

Coming to ITA No. 1944, 446 & 447/Bang/2024 for the assessment years 2013-14, 2015-16 & 2017-18

12. The facts of the present case are identical to those discussed and adjudicated above. Therefore, following the principle of judicial consistency and considering the findings in the preceding paragraphs, we set aside the order of the learned CIT(A) and remit the matter back to the file of the Assessing Officer. The Assessing Officer is directed to adjudicate the issue afresh, allowing the benefit of deduction under Section 57 of the Income Tax Act, 1961, against the interest income earned from the co-operative bank, subject to the assessee substantiating its claim with necessary evidence and as per the provisions of law. The grounds of appeals filed by the assessee are partly allowed for statistical purposes.

13. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

14. In the combined result, all the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in court on 29th day of November, 2024

Sd/-

(KESHAV DUBEY)

Judicial Member

Bangalore

Dated, 29th November, 2024

/ vms /

Sd/-

(WASEEM AHMED)

Accountant Member

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