

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

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.2048/Bang/2024
Assessment year : 2018-19

Vijaya Credit Co-operative Society Limited, Bantara Bhawana Building, Guruvayanakere, Belthangady Taluk, Dakshina Kannada – 574 217. <b>PAN: AAJVV 0583D</b>	Vs.	The Income Tax Officer, Ward 1, Puttur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar, Advocate
Respondent by	:	Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	02.12.2024
Date of Pronouncement	:	20.12.2024

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by Vijaya Credit Co-operative Society Limited (the assessee/appellant) for the assessment year 2018-19 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 27.08.2024 wherein the appeal filed by the assessee against the assessment order passed u/s. 143(3) r.w.s. 1448B dated 24.5.2021 passed by the ITO, KAR-W-

(531)(1) was dismissed. The Id. CIT(A) dismissed the appeal of the assessee because 3 notices were issued for hearing which remained uncomplished with and assessee did not submit any material against the assessment order. The assessee is in appeal before us raising several grounds as under:-

“ 1. The order passed by the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi, passed under section 250 of the Income Tax Act, 1961 (hereafter "the Act") is in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The Order of the Learned Assessing Officer passed under Section 143(3) r.w.s 144B of the Income Tax Act in so far as it is against the Appellant, is opposed to law, equity, weight of evidence, probabilities and circumstances in the Appellant's case.

3. Without prejudice to the above legal contentions the Appellant denies himself liable to be assessed on a total income determined by the Learned Assessing Officer of Rs. 2,88,26,870/- as against the Income Returned by the Appellant of Rs. 13,17,904/- under the facts and circumstance of the case.

4. The Ld. Commissioner is erred in the order by passing the order u/s 250 of the Act on ex parte basis, as there was no effective opportunity and hence the Appellant was prevented from representing the case. The Appellant is in possession of all the documents and is willing to submit the same before your Honors.

5. The Learned Assessing Officer has erred in law and on facts in disallowing Rs. 2,75,08,960/-u/s 80P(2)(a)(i) on the ground that the "principle of mutuality has been violated" as nominal and associate members have no role in the management of the society and they have no voting rights and 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.

6. The Learned Assessing Officer has erred to note that the Karnataka Co Operative Society Act 1959 denies any right to vote and share in the profit of the Society by way of Dividend to nominal members. Hence there is no violation of Bye- Law and Act by the Appellant.

7. The Learned Assessing Officer has failed to note that there were 1006 "A" Class Members, One 'Associate' member, 8 'ID' class members and 42867 'Nominal' Members. There is no restriction on Nominal Members in the legislature. The Appellant Society has not violated provisions of section 18 of Karnataka Co Operative Societies Act which restricts the number of Associate members to 15% of the total number of members .

8. The learned Assessing Officer has failed to appreciate that the Hon'ble Supreme Court in the case of The Citizen Co Operative Society Ltd reported in (2017) 397 ITR 1 has disallowed deduction u/s 80P(2)(a)(i) for violating the provisions of Mutually Aided Co-operative Societies Act 1995 (MACSA) under which the Appellant is registered and wrongly applied the said decision to the instant case of the appellant.

9. The Learned Assessing Officer failed to distinguish the provisions of Mutually Aided Co-Operative Societies Act 1995 and Karnataka Co Operative Societies Act 1959. The Society is registered under Karnataka Co Operative Societies Act 1959 and Society is formed on the basis of principal of Co Operation". The learned Assessing Officer failed to understand the difference between , the meaning of "Co Operation" and "Mutuality" and wrongly disallowed deduction u/s 80P(2)(a)(i) on the ground that the " Concept of Mutuality is totally missing" as nominal and Associate members have no role in the management of Society and they have no voting rights.

10. The Ld. AO failed to appreciate that, Section 80P(4) provides that deduction under the said section shall not be available to any Co-Operative bank other than a primary agricultural credit Society or Rural Development Bank for the purpose of the said sub-section, Co-Operative Bank shall have the meaning assigned to it in part V of the Banking Regulation Act 1949. In part V of the Banking Regulation Act, a Co-operative Bank means a State Co-Operative Bank, a Central Co-

Operative Bank & a Primary Co-Operative Bank. From the above section, it is clear that the provision of section 80P(4) has got its application only to Co-Operative banks. Section 80P (4) does not define the word "Co-Operative Society". The existing section 80P(2)(a)(i) shall be applicable to a Co-Operative Society carrying on the business of banking or providing credit facilities to members. This view is clarified by Central Board of Direct Taxes vide its clarification No: 133/06/2007-TPL dated 9th May 2007. If the intention of the law is to levy tax on Co-Operative Societies carrying on the business of providing credit facilities to its members then the section 80P (2) (a)(i) would have been deleted or amended. The new proviso to section 80P(4) which is brought in to statute is applicable only to Co-Operative Banks and not to Co-Operative Societies. The intention of the legislature of bringing in Co-Operative Banks in to the taxation structure was mainly to bring it in par with commercial banks.

11. Since the Appellant is a Co-Operative society and not a Co-Operative Bank, the provisions of section 80P(4) will not apply and therefore, it is entitled to deduction u/s 80P (2)(a)(i) of the Income Tax Act.

12. The initiation of penalty u/s section 270A of the Act is not tenable in law as the appellant has not under-reported/misreported particulars of his income and therefore ought to be deleted.

13. The levy of interest U/s 234B is excessive and ought to be deleted.

14. Without prejudice, the tax assessed is excessive, unreasonable and is liable to be dropped.

15. In view of the above and other grounds that may be urged at the time of hearing of the Appeal, the Appellant prays that Appeal may be allowed in the interest of justice and equity.

16. Each ground is mutually exclusive and the appellant craves leave to add, alter, modify, delete, or substitute any or all of the grounds.”

2. The brief facts of the case show that assessee is a co-operative society, filed its return of income on 31.10.2018 at a total income of Rs.13,17,900. Return of income was picked up for limited scrutiny. Notice u/s. 143(2) of the Act was issued on 22.9.2019. The ld. AO examined that assessee is a primary agricultural co-operative society engaged in the business of borrowing and lending with its members. Assessee has claimed deduction u/s. 80P(2)(a)(i) of the Act amounting to Rs.2,75,08,960 and deduction u/s. 80P(2)(c) of the Act of Rs.50,000. The ld. AO on examination of the details, questioned the allowability of deduction u/s. 80P(2) of the Act. After considering the explanation of the assessee, the ld. AO found that there are 4 class of members, who do not have similar rights & liabilities and therefore principle of mutuality is violated. Thus, the deduction u/s. 80P(2)(a)(i) of the Act of Rs.2,75,58,960 was disallowed and assessment order dated 24.5.2021 was passed determining total income of assessee at Rs.2,88,26,865.
3. The assessee preferred appeal before the ld. CIT(A), who issued 3 notices fixing hearing, which remained uncomplied with and therefore as per information available, confirmed the order of the ld. AO.
4. Assessee, aggrieved with the same, filed appeal before us submitting that no notice issued by the ld. CIT(A) was received at the correct e-mail address. The ld. AR submitted that in Form 35

assessee has given his e-mail address, however, hearing notices issued to the assessee were on altogether different e-mail address as per all the notices. Therefore, as assessee did not receive any such notices, the finding of Id. CIT(A) that assessee did not comply with the same is not correct.

5. The Id. DR submitted that assessee has been served with 3 notices and assessee did not comply with any of them, the order was passed on merits as per information available on record and same could not be found fault with.
6. We have carefully considered the rival contentions and perused the orders of Id. lower authorities. The assessee filed Form 35 wherein email address was stated to be 'vijayacreditao@gmail.com'. Therefore necessary notices by the Id. CIT(A) should have been issued at that address. However, before us, hearing notices u/s. 250 of the Act issued by the Id. CIT(A) are sent to "[ceovcc@gmail.com](mailto:ceovcc@gmail.com)". All the 3 notices mentioned by the Id. CIT(A) were addressed to an e-mail id which was not mentioned in Form 35 filed before him. It is not known to us and neither the assessee has explained that how this email-id on which notices have been sent was available with the CIT(A). In view of these facts, it is apparent that assessee has not got any opportunity of being heard and therefore the appeal of the assessee needs to be restored to the file of Id. CIT(A). Accordingly, the appeal of assessee in its entirety is restored back to the file of Id. CIT(A) to

issue fresh notices of hearing as per information in Form 35 and after giving an opportunity of hearing to the assessee, decide the issue afresh in accordance with law.

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

Pronounced in the open court on this 20<sup>th</sup> day of December, 2024.

Sd/-

( SOUNDARARAJAN K.)  
JUDICIAL MEMBER

Sd/-

( PRASHANT MAHARISHI )  
VICE PRESIDENT

Bangalore,  
Dated, the 20<sup>th</sup> December, 2024.

*/Desai S Murthy/*

Copy to:

1. Appellant      2. Respondent      3. Pr. CIT 4. CIT(A)  
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.