IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

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

ITA No. 2057/Bang/2024
Assessment Year : 2017-18

The Income Tax Officer, Ward – 1 & TPS, Bagalkot.	**Vs.**	M/s. Jyoti Co-op. Credit Society Ltd., Opp. SBI Navanagar, Bagalkot – 587 103. **PAN: AABAJ9191K**
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Ramesh V Mudhol, CA
Revenue by	:	Shri Parithivel .V, JCIT-DR

Date of Hearing	:	03-12-2024
Date of Pronouncement	:	28-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the revenue challenging the order of the NFAC, Delhi dated 10/09/2024 in respect of the A.Y. 2017-18 and raised the following grounds:

1. *Whether the Ld. CIT(Appeals) was justified on the facts of the case and in law, in not distinguishing the fact that the assessee Mavilayi Service Co-op Bank Ltd was registered under the Kerala State Co-operative Act and the assessee under the Karnataka State Co-operative Act. Under the Kerala State Co-operative Act there is no restriction on admission of any type of member, whereas the Karnataka State Co-operative Societies Act places restriction on the admission of associate & nominal members. It states that associate / nominal members cannot be admitted in excess of 15% of the total membership.*

2. *Whether the Ld. CIT(Appeals) was justified on the facts of the case and in law, in not appreciating the findings of the AO wherein it has been brought on record that the assessee society has admitted and transacted with associate / nominal members in excess of 15% of the total membership thereby violating the law under which the assessee society has been registered. Accordingly, the CIT(A) ought to have considered the transactions made with associate / nominal members in excess of 15% of membership as transactions with non members.*

3. *On facts and circumstances of the case and in law, the Learned CIT(A)/(NFAC) has erred in allowing the deduction u/s. 80P(2)(d) of the IT Act with regard to interest income earned from the investments in Cooperative Banks without taking into its consideration the decision of the Hon'ble HC of Karnataka in Pr.CIT, Hubballi Vs the Totgars Co-operative Sale Society Limited, Sirsi in ITA No. 100066 of 2016 wherein it was held that "..the income by way of interest earned by deposit or investment of surplus funds doesn't change its character irrespective of the fact whether such income is earned from the scheduled or Cooperative Bank and thus, clause (d) of 80P(2) of the Act would not apply in the facts and circumstances of the case.*

4. *On the facts and in the circumstances of the case and in law the ld. CIT(A)/NFAC erred in deleting the addition made u/s 68 of Rs.1,78,77,588/- ignoring the fact that the assessee was not authorized to accept specified bank notes from its members.*

5. *On the facts and in the circumstances of the case and in law the ld. CIT(A)/NFAC erred in deleting the addition made u/s 68 of Rs.1,78,77,588/- without appreciating the fact that the assessee society had brought into its books of account entries pertaining to SBNs which were no longer legal tenders at the time of making the said entries after 08.11.2016*

6. *Any other ground that may be raised subsequently.*

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2. The brief facts of the case are that the assessee is a co-operative society and during the year the assessee had claimed deduction on the income received by them u/s. 80P of the Act which was disallowed by the AO for the reason that the assessee had dealt with the nominal members who are all non-members. The AO also treated the cash deposits made during the demonetisation period as unexplained cash credit u/s. 68 of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that as per the Karnataka Co-operative Societies Act, the nominal members are also members and the byelaws of the assessee society also supported the said view. Insofar as the addition made u/s. 68 of the Act, the assessee submitted that these are all the monies deposited by the members which was duly recorded in the books of accounts and also in the ledger of the members and the said cash deposits were again deposited into the assessee's bank account and therefore the addition u/s. 68 is not correct. The Ld.CIT(A) after considering the issue in detail and also by following the judgment of Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. v. CIT reported in 431 ITR 1 allowed the deduction claimed u/s. 80P(2)(a)(i) of the Act as well as the deduction claimed u/s. 80P(2)(d) of the Act on the interest received from the co-operative banks. Insofar as the interest earned on the deposits held with the other banks, the Ld.CIT(A) had directed the AO to assess the said incomes u/s. 56 of the Act. Insofar as the addition made u/s. 68 of the Act, the Ld.CIT(A) had considered the fact that the assessee had furnished the list of members from whom the deposits in the form of demonetised currency were received, allowed the addition made by the AO. As against the said order of the Ld.CIT(A), the department is in appeal before this Tribunal.

3. At the time of hearing, the Ld.DR submitted that when there is a restriction on the number of associate/ nominal members, the deduction could not be granted when the membership of the associate/ nominal members of the assessee exceeds the limit. The Ld.DR further submitted that the deduction allowed u/s. 80P(2)(d) of the Act is also not correct in

view of the Hon'ble Jurisdictional High Court judgment in case of PCIT vs. Totgars Co-operative Sales Society Ltd. The Ld.DR further submitted that the assessee was not authorised to accept the specified bank notes from its members after 08/11/2016 and therefore the addition made u/s 68 is in order. The Ld.DR also relied on the order of the Coordinate Bench of this Tribunal in ITA No. 666/Bang/2023 dated 30/11/2023.

4. The Ld.AR of the assessee submitted that the deduction claimed u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act are concerned, the same is eligible for deduction in view of the judgment of the Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. v. CIT reported in 431 ITR 1. The Ld.AR further submitted that the interest earned from the co-operative societies and co-operative banks are eligible for deduction since the co-operative banks are also a co-operative society and further submitted that the Ld.CIT(A) had relied on the various orders of this Tribunal and submitted that the relief granted by the Ld.CIT(A) are also in order. The Ld.AR further submitted that the Ld.CIT(A) had not granted the relief in respect of the interest received from the deposits made in other scheduled banks, commercial banks and any financial institutions and therefore the deduction allowed on the interest received from the co-operative banks and societies are in order. The Ld.AR further submitted that the addition made u/s. 68 of the Act for the reason that the assessee had deposited SBN notes during the demonetisation period is also not correct since the amounts deposited by the assessee are the monies deposited by the members upto 14/11/2016 from which date the assessee came to know about the RBI Notification dated 14/11/2016 prohibiting the assessee from collecting the SBN notes. Therefore whatever the amount collected from the members, were entered into the books of accounts and thereafter the said SBNs were deposited into the assessee's bank account well before the appointed date i.e 31/12/2016 by the Government and therefore the same could not be treated as an unexplained cash credit u/s. 68 of the Act. The Ld.AR also filed a small paper book enclosing the written submissions as well as the order of the ITAT, Bangalore Bench in support of his arguments.

5. We have heard the arguments of both sides and perused the materials available on record.

6. We have perused the assessment order as well as the Ld.CIT(A) order in respect of the denial of deduction claimed u/s. 80P(2)(a)(i) of the Act and found that the AO denied the deduction since the assessee had exceeded the permissible limit of associate / nominal members. As seen from the said finding of the AO, there is no doubt about the status of the assessee and the interest income was earned through the members. The assessee society also governed under the provisions of the Karnataka Co-operative Societies Act which permits the associate / nominal members as members of the society and the byelaws of the society also permitted the said members as members of the society. The only grievance of the AO is that because of the presence of more members, than the limit prescribed under the Karnataka Co-operative Societies Act, the assessee is not entitled for deduction u/s. 80P(2)(a)(i) of the Act. The AO had not pointed out any other defects such as the assessee is dealing with the third parties who are all not connected with the assessee society in order to deny the deduction claimed u/s. 80P(2)(a)(i) of the Act. The Ld.CIT(A) by taking into consideration all the material facts and also the judgment of Hon'ble Supreme Court cited (supra) had come to the correct conclusion that the assessee had been doing the business with its members only and therefore they are entitled for deduction u/s. 80P(2)(a)(i) of the Act. The Ld.CIT(A) had given the following findings in para 4.2.3 of its order which is extracted as below:

> *"4.2.3 In this regard, it may be seen that the deduction under Section 80P(2)(a)(i) of the act has been allowed by the Hon'ble SC in the case of Mavilayi Service Co-operative Bank Ltd. V Commissioner of Income Tax, Calicut [2021] 123 taxmann.com 161 (SC) stating that the deduction has to be allowed irrespective of status of member, if the members are mentioned in the respective state act. In this case, the appellant is registered under 'The Karnataka State Co-operative Societies Act, 1959'. In the state act, the definition of Member given under Sec. 2 (f) of Karnataka Co-operative Societies Act also includes Nominal and Associate Member. Since, the Karnataka Co-operative*

Societies Act allows the co-operatives to include a nominal member in accordance with act, also the appellant has done all its business with its members only, the appellant is well within the law to claim the deduction u/s. 80P(2)(a)(i) of the Income Tax Act, 1961."

7. We do not find any error in the order passed by the Ld.CIT(A) since the same is in accordance with the principles laid down by the Hon'ble Supreme Court judgment cited (supra).

8. Further, we are of the view that the Co-operative Societies Act prescribed a ceiling on the membership and when any violation has been committed by the assessee, the authorities under the Co-operative Societies Act should take action on the assessee. Unless and until the status of the assessee has not been changed, then naturally, they are entitled for deduction on the incomes received from their members. Insofar as the order relied on by the Ld.DR, we are of the view that the said order speaks about the profits attributable to non-members and therefore the same are not eligible for deduction u/s. 80P(2)(a)(i) of the Act. In the present case, the interest income are earned from the members including the associate / nominal members who are all members of the society as per the judgment of the Hon'ble Apex Court cited (supra) and therefore the said order is of no assistance to the revenue.

9. On the other hand, we relied on the order of the Coordinate Bench of this Tribunal in case of Kavradi Co-operative Agricultural Bank vs. ITO in ITA No. 93/Bang/2024 dated 10/06/2024 wherein similar issue came up for adjudication and this Tribunal held that the assessee is entitled for deduction irrespective of the violation of exceeding the ceiling prescribed under the Karnataka Co-operative Societies Act. The findings of the Coordinate Bench of this Tribunal is as follows:

"5.1 The first issue relates to the disallowance of deduction claimed u/s 80P(2)(i) of the Act by the AO on the basis that the assessee had violated the provisions of the Karnataka Co-operative Societies Act by having more number of nominal and associate members than prescribed under

section 18 of the Karnataka Co-operative Societies Act. We have perused the provision and found that the Act prescribed that the nominal members should not exceed 15% of the total members and not as stated by the ld AO. The statement of membership filed by the assessee shows that the nominal members are within 15% of the total members prescribed under the statute and therefore there is no violation of any of the provisions of the Karnataka Act. Further we are of the view that the ld. AO has no jurisdiction to look into the fact whether there is any violation committed by the assessee under the provisions of the Karnataka Cooperative Societies Act. It is for the Registrar of Co-operative Societies to take any action on the assessee society, if there is any violation committed by them. Further the ld AO cannot disallow the claim of deduction and also disqualify the assessee as a Coop society for the reason that the assessee is dealing with the nominal members when there is no prohibition under the Act. The only condition prescribed under the Act is that the assessee should be a registered Coop. Society under the provisions of the Coop Societies Act. Admittedly the assessee is registered under the Karnataka Act and therefore the deduction can not be denied by citing other reasons. We find that the issue is fully covered by the judgement of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT cited (supra). We therefore, find that there is no merit in the arguments made by the ld. D.R. and held that the order of the ld. AO is against the provisions of the Act and also against the judgement rendered by the Hon'ble Supreme Court."

10. In view of the above said discussions, we are of the view that the order of the Ld.CIT(A) insofar as the deduction allowed u/s. 80P(2)(a)(i) of the Act is in order and therefore we dismiss the ground raised by the revenue on this issue.

11. The second deduction allowed by the Ld.CIT(A) is with regard to the interest earned from the co-operative societies and co-operative banks. The Ld.CIT(A) had relied on the order of the various Tribunals and extracted one of the order in its order at para 5.3 and allowed the deduction claimed by the assessee as follows:

"5.3 In particular, the relevant Para No. 7 from the fifth order Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. vs. in ITA No. 6547/Mum/2017 dated 25.04.2018, is reproduced below:

"We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co- operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.""

12. From the above we found that the co-operative banks are originally registered under the provisions of the Societies Act and therefore they are to be treated as co-operative societies. Subsequently, in view of the activities carried on by them, they are acting as a co-operative bank catering to the needs of the public. Even though, they are termed as co-operative bank, their original status was only a co-operative society registered under the provisions of the Societies Act and therefore the incomes earned from the deposits made with the said co-operative societies as well as the co-operative banks are eligible for deduction u/s. 80P(2)(d) of the Act. The Hon'ble Gujarat High Court in case of PCIT Vs. Ashwinkumar Arban Co-Operative Society Ltd. reported in [2024] 168 taxmann.com 314 (Gujarat) had held that deduction u/s. 80P(2)(d) is available to co-operative societies on income earned as interest on investment made with co-operative bank which in turn, is a co-operative society itself. By considering the above said proposition of the law and the facts, we do not find any illegality in the order passed by the Ld.CIT(A) and therefore this ground of the revenue is also dismissed.

13. The third issue to be decided in this appeal is about the deletion of addition made u/s. 68 of the Act on the deposits of SBN notes during the demonetisation period. We perused the finding given by the Ld.CIT(A) in paras 6.1 and 6.2 in which the Ld.CIT(A) had perused the details submitted by the assessee before the AO as well as before him from which it was clear that the particulars of the members who had deposited the cash in SBN

notes and the date on which they had deposited were available to show that the SBN notes received were properly entered in the books of accounts as well as the ledger of the members and therefore it could not be termed as unexplained cash credit u/s. 68 of the Act. The relevant portion of the order of the Ld.CIT(A) is extracted as below:

> *"6.1 The appellant submitted that it accepted deposits made by its members in the form of demonetized currency. The amounts so collected were duly credited to the accounts of respective members. The demonetized currency so received from the members was in turn deposited into the bank accounts of the appellant society. In support of the same, the appellant has furnished the list of members from whom the deposits in the form of demonetized currency were received along with the dates of receipt. Thus the appellant duly explained the nature and source of credits as being deposits made by its members.*
>
> *6.2. The appellant places reliance on the decision of Hon'ble ITAT "SMC" "C" Bench Bangalore, vide its order dated 18.02.2022 in ITA No/646/Bang/2021 in the case of Shri Bhageeratha Pattina Sahakari Sangha Niyamita, Hosadurga, wherein the ITAT has held that acceptance of demonetized currency does not attract application of provisions of S.68 of the act. Further, jurisdictional ITAT Bangalore held in favour of appellant in the cases of Yagnaralkya Souhaudha Credit Co. Ltd. Vs ITO in ITA No.1086/Bang/2022 dated 06.01.2023 and Sritherumalleshwsara Co-operative Society Vs ITO in ITA No.187/Bang/2024, whose facts and circumstances are identical to the facts and circumstances of the appellant case. In view of the above, the AO is directed to delete the addition of Rs 1,78,77,588/- made u/s 68 of the Income tax Act 1961. The appellant succeeds on these grounds of appeal."*

14. Further, we have also perused the order of the Coordinate Bench of this Tribunal relied on by the assessee in the case of Sri Bhageeratha Pattina Sahakara Sangha Niyamitha vs. ITO in ITA No. 646/Bang/2021 dated 18/02/2022 in which the Coordinate Bench has given a clear finding in paras 14 and 15 which are extracted as below:

"14. I heard Ld. D.R. on this issue and perused the record. I notice that the A.O. has not doubted the submissions of the assessee that the above said amount of Rs.24,47,500/- represents collection of money in the normal course of carrying on of business of the assessee, i.e., it represents money remitted by the members of the assessee society towards repayment of the loan taken by them and also towards pigmy deposits, etc. The Ld A.R submitted that the assessee has duly recorded in its books of account the transactions of collections of money as well as deposits made into bank account. Thus, I notice that the assessee has explained the nature and source of the above said amount of Rs.24,47,500/-, which was in-turn deposited by the assessee society in its bank account and further, all these transactions have been duly recorded in the books of account. Hence, the above said deposits cannot be considered as "unexplained money" in the hands of the assessee.

15. The case of the A.O is that the assessee has collected the demonetized notes after 8.11.2016 in violation of the notifications issued by RBI. Accordingly, he has taken the view that the above said amounts represents unexplained money of the assessee. I am unable to understand the rationale in the view taken by A.O. I noticed that the AO has invoked the provisions of sec.68 of the Act for making this addition. I also noticed that the assessee has also complied with the requirements of sec.68 of the Act. The AO has also not stated that the assessee has not discharged the responsibility placed on it u/s 68 of the Act. Peculiarly, the AO is taking the view that the assessee was not entitled to collect the demonized notes and accordingly invoked sec.68 of the Act. I am unable to understand as to how the contraventions, if any, of the notification issued by RBI would attract the provisions of sec. 68 of the Income tax Act. In any case, I notice that the assessee has also explained as to why it has collected demonetized notes after the prescribed date of 8.11.2016. The assessee has explained that it has stopped collection after the receipt of notification dated 14.11.2016 issued by RBI, which has clearly clarified that the assessee society should not collect the demonetized notes. Accordingly, I am of the view that the deposit of demonetized notes collected by the assessee from its members would not be hit by the provisions of section 68 of the Act in the facts and circumstances of the case. Accordingly, I set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete this disallowance."

15. We have also gone through the order of the Coordinate Bench relied on by the assessee in the case of M/s. Shri Shivaji Maharaj Credit Co-op. Society vs. ITO in ITA Nos. 939, 940 & 976/Bang/2024 dated 22/08/2024 wherein it was held as follows:

> *"**6.7** In the instant case, there is nothing on record to come to the conclusion that the amount which was invested in banks to earn interest was amount due to its members, and that, it was a liability. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for objects of the society, but was required to be invested as required by the Karnataka Co-operative Societies Act, 1959. Therefore they had deposited the money out of which interest was earned. The said interest is thus attributable to carrying on the business of the assessee and therefore it is liable to be deducted in terms of Section 80P(2)(d) of the Act. In fact similar view is taken by the Hon'ble Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State Co-operative Bank Ltd. reported in [2011] 12 taxmann.com 66."*

16. On going through the facts of the present case, the ingredients to attract section 68 is absent in this case. The assessee from its members had received SBN notes upto 14/11/2016 and later on deposited the said SBN notes into their bank account since the government had given time upto 31/12/2016 to deposit the SBN notes into their bank account. The receipt of the SBN notes from the members and the details of the members were properly explained by the assessee before the AO as well as before the Ld.CIT(A) and therefore the credit entries reflected in the books of accounts were properly explained by the assessee. The cash received in SBN notes itself could not be termed as unexplained cash credit when the assessee had explained the source. The various Tribunals had taken a similar view and the Ld.CIT(A) had followed the view taken by the Tribunals including the orders cited by the Ld.CIT(A) and therefore we do not find any mistake or illegality in the order passed by the Ld.CIT(A) and therefore we are dismissing the ground raised by the revenue.

17. In view of the above said facts, we are dismissing the grounds raised by the revenue as not maintainable.

18. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 28th January, 2025.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	(SOUNDARARAJAN K.)
Vice - President	Judicial Member

Bangalore,
Dated, the 28th January, 2025.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore