

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC-'B' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA Nos. 2275 to 2278/Bang/2024</b>
<b>Assessment Years : 2015-16 to 2018-19</b>

M/s. Moorthedarara Seva Sahakari Sangha Niyamitha, Uppinangady, Puttur, Dakshina Kannada – 574 241. <b>PAN: AABAM2273R</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 1, Puttur.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Srikrishna Kantila, CA
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of Hearing	:	07-04-2025
Date of Pronouncement	:	30-04-2025

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

These are the four appeals filed by the assessee challenging the separate orders of the NFAC, Delhi all dated 27/09/2024 in respect of the A.Ys. 2015-16 to 2018-19.

**2.** All these appeals are related to the same assessee and the issue involved in all the appeals are similar. We decided to take up all the appeals together and pass a common order for the sake of convenience. Since the

grounds raised by the assessee in all the appeals are identical, grounds of appeal raised for the A.Y. 2015-16 in ITA No. 2275/Bang/2024 is reproduced herein below for reference.

*“1. The Order of the learned Commissioner passed under section 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*

*2. The Appellant denies to be assessed to tax on total income as determined by the learned AO of Rs.42,94,690/-as against the total income reported by the Appellant of Rs.NIL on the facts and circumstances of the case. Total tax effect is Rs.17,87,350/-*

*3. On the basis of violation of mutuality concept deduction claimed is added back to the total income. We are having A class member and also C class member. A class member are regular members and C class members are nominal members. Nominal members are also members of society. We don't have any transaction with non-members.Mutuality concept is not violated. The same is held in case of Honorable supreme court of India in the case of Mavilayi Service Co operative Bank Ltd and Others Vs. CIT Calicut &ANR,in Civil appeal no 8315 of 2019 & SLP Diary No 31268 of 2019 in favor of the assessee.*

*4. In case of Shri Saraswathi Credit Souharda Sahakari Sangha Ltd vs The Income tax officer ward 1 ,Puttur (Honorable ITAT Bengaluru in ITA No.1729/Bang/2024), appeal is in favor of assessee in the similar issue of disallowance made under mutuality concept.*

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

**3.** We will take up the appeal in ITA No. 2275/Bang/2024 for A.Y. 2015-16 as the lead case and the result arrived in the said appeal will apply mutatis mutandis to the appeals in ITA Nos. 2276 to 2278/Bang/2024 for A.Ys. 2016-17 to 2018-19.

**4.** The brief facts of the case are that the assessee is a co-operative society registered under the provisions of the Karnataka Co-operative Societies Act, 1959. The assessee filed their return of income and claimed deduction u/s. 80P of the Act. Thereafter, the case was selected for limited scrutiny through CASS and notices u/s. 143(2) and 142(1) were issued. The assessee appeared and furnished the details called for by the AO. Thereafter the AO intimated that the assessee is not entitled to claim deduction u/s. 80P(2)(d) of the Act on the interest income earned from the scheduled banks and co-operative banks. Thereafter, the assessee filed a revised computation and the AO observed that out of the total 224 members, 41 members are "C" class members and therefore denied the deduction claimed under Section 80P(2)(a)(i) on the entire interest income received from the members. Similarly, in respect of the deduction claimed u/s. 80P(2)(d) of the Act, the AO observed that the assessee is not entitled for both the deductions u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act in view of the Citizen Co-operative Bank judgment rendered by the Hon'ble Supreme Court.

**5.** As against the said order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) had accepted the case of the assessee on the interest income earned from co-operative banks by following the jurisdictional High Court judgment reported in (2017) 78 taxmann.com 169 in the case of PCIT vs. Totagars Sales Co-operative Society. Insofar as the deduction claimed u/s. 80P(2)(a)(i) of the Act, the Ld.CIT(A) had held that the assessee is not entitled for deduction since there is no mutuality exists. After giving the above said findings, the Ld.CIT(A) had remitted the matter to the AO to find out the exact amount involved in both the deductions and thereafter grant deduction in respect of the deduction claimed u/s. 80P(2)(d) of the Act only. As against the said order, the assessee is in appeal before this Tribunal.

**6.** At the time of hearing, the Ld.AR submitted that both the authorities had failed to consider that the mutuality principle is no longer a good reason

after the judgment of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT reported in 431 ITR 1.

**7.** The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal filed by the assessee.

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

**9.** The only dispute involved in this appeal is against the disallowance of deduction claimed u/s. 80P(2)(a)(i) of the Act for the reason that the concept of mutuality ceases to exist when the nominal members are present and not entitled to share the profits or losses and also barred from holding voting rights. The AO as well as the Ld.CIT(A) had treated the nominal members as non-members / general public and held that since the assessee society is dealing with the non-members, the benefit granted u/s. 80P(2)(a)(i) could not be available to the society.

**10.** We are surprised to note that, how the authorities can give such findings even after the judgment of the Hon'ble Supreme Court cited supra settled the issue that the presence of "C" class members / nominal members would not disentitle the assessee society to claim deduction u/s. 80P(2)(a)(i) of the Act. The relevant finding of the Hon'ble Supreme Court reads as follows:

*"46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions' Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I (1997) 11 SCC 287 referred to section 80P of the IT Act and then held:*

*"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80-*

*P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:*

*"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"*

*Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i)."*

**11.** In view of the said judgment of the Hon'ble Supreme Court, we have no hesitation to hold that the assessee society is entitled for deduction u/s. 80P(2)(a)(i) of the Act eventhough the society is having nominal members. Since we are granting the relief in respect of the interest income claimed u/s. 80P(2)(a)(i) of the Act, the order of the Ld.CIT(A) remanding the matter to the AO for bifurcating the interest income obtained from the members as well as from the co-operative banks is not required.

**12.** In the result, we set aside the findings of the Ld.CIT(A) insofar as the claim made u/s. 80P(2)(a)(i) is concerned and allow the appeal filed by the assessee. In view of this order, the assessee is entitled for deduction both under Section 80P(2)(a)(i) as well as under Section 80P(2)(d) of the Act. The above said finding given in respect of the A.Y. 2015-16 shall apply mutatis mutandis to the other appeals in respect of A.Ys. 2016-17 to 2018-19.

**13.** In the result, all the four appeals filed by the assessee are allowed.

Order pronounced in the open court on 30<sup>th</sup> April, 2025.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 30<sup>th</sup> April, 2025.  
/MS /

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

By order

Assistant Registrar,  
ITAT, Bangalore