

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

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

ITA No. 1606/Bang/2025
Assessment Year : 2020-21

M/s. Hemaraddi Mallamma Souhardha Pattina Sahakari Ni Ilkal, Hemaraddi Souhard Building APMC, Ilkal. Karnataka – 587 125. PAN: AAAAH6208A	Vs.	The Income Tax Officer, Ward – 1, Bagalkot.
APPELLANT		RESPONDENT

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

Date of Hearing	:	15-10-2025
Date of Pronouncement	:	12-01-2026

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 27/05/2025 in respect of the A.Y. 2020-21 and raised the following grounds:

	<i>Grounds of Appeal</i>	<i>Tax effect relating to each Ground of appeal (see note below)</i>
1	<i>The Ld CIT (A) erred in upholding the order of the Ld AO, disallowing the claim of deduction u/s 80P(2)(a)(i) and 80P(2)(d)</i>	<i>Rs 19,11,813</i>

2	<i>The Ld CIT(A) failed to appreciate that the AO had erred in disallowing the claim of deduction u/s 80P(2)(a)(i) by placing reliance on the decision of the Hon'ble SC in the case of The Citizen Co op Society Ltd Hyderabad Vs ACTT C-9(1) Hyderabad.</i>	Rs 19,11,813
3	<i>The Ld CIT(A) erred in following the decision of Hon'ble SC in the case of Totgar Sales C op society (322 ITR 283)</i>	Rs 19,11,813
4	<i>The Ld CIT(A) erred in following the decision of Hon'ble SC in the case of Totgar Sales C op society (395 ITR 611)</i>	Rs 19,11,813
5	<i>The Ld CIT(A) erred in not following the decision of Hon'ble SC in the case of Mavilayi Service Co operative Bank Ltd (431 ITR 1) 1</i>	Rs 19,11,813
6	<i>The Appellant craves leave to add, alter, amend or withdraw any ground/ grounds of appeal</i>	Rs 19,11,813
		Rs 19,11,813
<i>Total tax effect (see note below)</i>		Rs 19,11,813
<p><i>Note. Grounds number 1 to 6 are in respect of same issue of disallowance of deduction u/s 80P(2)(a)(i) and 80P(2)(d). The AO has not made any separate disallowance of deduction u/s 80P(2)(d) as the same is covered in disallowance u/s 80P(2)(a)(i). Hence the total tax effect is Rs 19,11,813/</i></p>		

2. The brief facts of the case are that the assessee is a co-operative society registered under the Karnataka Souharda Sahakari Act, 1997 and filed their return of income. The case of the assessee was selected for scrutiny for which notices u/s. 143(2) and 142(1) were issued. The assessee also responded to the notices and submitted the required documents. The AO proposed to deny the deduction claimed u/s. 80P(2)(a)(i) of the Act since the assessee is having more nominal members than the prescribed limit for nominal members and therefore the assessee had violated the principles of mutuality. The AO therefore arrived a conclusion that the assessee had extended the credit facilities to non-members also. Further, the AO had noted that the assessee had invested the surplus funds with Bilagi Pattan

Sahakari Bank Ni. Bilagi and BDCC Bank. The AO had relied on the judgment of the Hon'ble Supreme Court in the case of Citizen Co-op. Society Ltd. reported in 397 ITR 1 and denied the deduction claimed u/s. 80P(2)(a)(i) of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and raised several grounds and submitted that the excess of nominal members would not disentitle the assessee from claiming the deduction u/s. 80P(2)(a)(i) of the Act. The assessee also submitted that there is no violation of the principle of mutuality. The Ld.CIT(A) had not accepted the said submissions and confirmed the disallowance of the interest income claimed u/s. 80P(2)(a)(i) of the Act.

3. As against the said order, the present appeal has been filed by the assessee before this Tribunal.

4. At the time of hearing, the Ld.AR submitted that the assessee is a credit society and dealt with only the members and not having any transaction with the general public and therefore they are entitled for deduction u/s. 80P(2)(a)(i) of the Act. The Ld.AR further submitted that in the judgment of the Hon'ble Supreme Court reported in 431 ITR 1 in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT, the Hon'ble Supreme Court had considered the Citizen Co-op. Society Ltd. and held that the presence of nominal members would not be a reason for denying the deduction u/s. 80P(2)(a) of the Act when the respective State enactments allows such members. The Ld.AR therefore submitted that the assessee had dealt with only the members and therefore the findings given by the AO as well as by the Ld.CIT(A) is against the facts of the case and therefore prayed to allow the appeal. The Ld.AR filed a paper book enclosing the written submissions as well as the order of the Coordinated Bench of this Tribunal and prayed to allow the appeal.

5. The Ld.DR relied on the orders of the lower authorities and submitted that admittedly the assessee had violated the State enactments by enrolling

more nominal members than the one prescribed under the Statute and therefore the AO had rightly denied the deduction u/s. 80P(2)(a) of the Act.

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

7. We have gone through the assessment order in which the AO had mainly alleged that the assessee had admitted more number of nominal members than the prescribed limit under the respective Act. The AO further observed that the nominal members are non-members and therefore the assessee is not entitled to get the benefit provided u/s. 80P of the Act. The admission of nominal members was considered by the Hon'ble Supreme Court in its judgment reported in 431 ITR 1 in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT in which it was clearly held that the admission of nominal members would not be a reason for denying the deduction claimed u/s. 80P(2)(a)(i) of the Act. The Hon'ble Supreme Court further held that the only requirement is that the concerned State Act should have provisions for admitting the nominal members in the assessee societies.

8. In the present case, the Karnataka Societies Act, 1959 permits the societies to have nominal members and therefore the presence of nominal members would not be a valid reason to reject the deduction claimed u/s. 80P(2)(a)(i) of the Act. Further, the finding of the AO as well as the Ld.CIT(A) that the nominal members exceeds the prescribed percentage and therefore they had violated the provisions and violated the principle of mutuality and therefore the assessee was not entitled to claim deduction u/s. 80P(2)(a)(i) of the Act is not correct. The Karnataka Societies Act, 1959 prescribes a limit and also granted the registration certificate for the society by taking into consideration the various documents required under the said Act. Once the said Act granted the status of the assessee as a co-operative society, then merely on the ground that the assessee society had admitted nominal members more than the prescribed limit, we could not find that the assessee

lost its status as co-operative society. If the authority under the Karnataka Societies Act, 1959 took some action and cancelled the registration certificate of the said society, then the income tax department could deny the benefit granted u/s. 80P(2)(a)(i) of the Act. Therefore we are of the view that unless and until, the society loses its status as co-operative society, the admission of more nominal members would not be a ground to reject the deduction claimed u/s. 80P(2)(a)(i) of the Act.

9. In an earlier order, the Coordinated Bench of this Tribunal vide an order dated 28/01/2025 in ITA No. 2057/Bang/2024 in the case of ITO vs. M/s. Jyoti Co-op. Credit Society Ltd. had considered the similar circumstances and held that the assessee is entitled for deduction irrespective of the violation of exceeding the ceiling prescribed under the Karnataka Societies Act, 1959. The Coordinated Bench in its order dated 28/01/2025, had relied on an earlier order of the Coordinated Bench in the case of Kavradi Co-operative Agricultural Bank vs. ITO in ITA No. 93/Bang/2024 dated 10/06/2024 to arrive such a conclusion. We, therefore, find that the order of the lower authorities are not in accordance with the law laid down by the Hon'ble Supreme Court and also against the orders of this Tribunal. We, therefore set aside the orders of the lower authorities and allow the appeal filed by the assessee.

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

Order pronounced in the open court on 12th January, 2026.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 12th January, 2026.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore