

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “SMC-B” BENCH, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.1263/Bang/2019 : Asst.Year 2016-2017

M/s.The Tappers Service Co-operative Society Limited Ground Floor, Narayana Guru Sabha Bhavan, Near Akashvani Circle, Brahmavara, Udupi – 576 218. PAN : AADAT3571F.	v.	The Income Tax Officer Ward 2 Udupi.
(Appellant)		(Respondent)

Appellant by : Sri.Sandeep Chalapathy, CA
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 17.09.2021	Date of Pronouncement : 20.09.2021
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ORDER

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 30.03.2019. The relevant assessment year is 2016-2017.

2. The grounds raised read as follows:-

“1. That the order of the learned Commissioner of Income-tax (Appeals) is bad in so far it is prejudice to the interest of the appellant and erroneous in law and against the facts and circumstances of the case.

2. That the order of the learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the disallowance of Rs.14,59,623/- claimed as deduction u/s 80P(2)(a)(i) of the Act.

3. That the order of the learned Commissioner of Income-tax (Appeals) denied the deduction u/s 80P(2)(a)(i) of the Act on the only ground that the appellant deals with nominal and associate members.

4. That the order of the learned Commissioner of Income-tax (Appeals) ought to have appreciated that the appellant is registered as Co-operative Society under Karnataka State Co-operative Societies Act, 1959 and the said Act allows the appellant to admit nominal and associate members.

5. That the order of the learned Commissioner of Income-tax (Appeals) erred in law and on facts in not allowing the interest income of Rs.7,20,127/- on investments as deduction u/s 80P(2)(d) of the Act.

6. That the order of the learned Commissioner of Income-tax (Appeals) erred in law and on facts in not allowing the interest income of Rs.7,20,127/- on investments as deduction u/s 80P(2)(a)(i) of the Act.

Additional Grounds

7. That the learned Assessing Officer erred in law and on facts in confirming the disallowance of provision for audit fee and retirement benefit fund of Rs.2,05,000/- on the only ground that it is a provision.

Each of the above grounds is without prejudice to one another, the appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify each or any of the grounds of appeal either before or at the time of hearing the appeal."

3. Apart from the above grounds / additional grounds, the assessee has raised another additional ground, vide its application dated 31.12.2020. The additional ground raised in its application dated 31.12.2020, reads as follow:-

"Without prejudice to the claim that the appellant is entitled to deduction u/s 80P(2)(a) of the Income Tax Act, 1916 (Act) the learned lower authorities ought to have allowed the deduction u/s 80P(2)(a) of the Act to the extent that such income is attributable to the dealing with regular members and nominal members."

4. The brief facts of the case are as follows:

The assessee is a co-operative society, registered under the Karnataka Co-operative Societies Act, 1959. It is engaged

in the business of providing credit facilities to its members. For the assessment year 2016-2017, the return of income was filed on 31.05.2017 declaring 'NIL' income after claiming deduction u/s 80P(2) of the I.T.Act amounting to Rs.14,59,623. The return of income was selected for scrutiny. The Assessing Officer noticed that the assessee has violated the principle of mutuality and denied the benefit of deduction u/s 80P of the I.T.Act in view of the judgment of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT reported in 397 ITR 1 (SC)*. The Assessing Officer also denied the claim of deduction u/s 80P(2) of the I.T.Act since interest / dividend income was earned out of investments with the co-operative banks.

5. Aggrieved by the assessment order in denying the benefit of deduction u/s 80P of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The CIT(A) held that the assessee was having more than 15% members as associate / nominal members, which violates the provisions of Karnataka Co-operative Societies Act, 1959. The CIT(A) further held that since the assessee was having majority of dealing with non-members, the judgment of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT (supra)*, is clearly applicable. The CIT(A) concluded by stating that as per the judgment of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT (supra)*, once the principle of mutuality is violated, deduction

u/s 80P(2)(d) of the I.T.Act is not to be allowed, which includes deduction u/s 80P(2)(d) of the I.T.Act.

6. Aggrieved, the assessee has filed this appeal before the Tribunal. The learned AR has filed a brief synopsis, which reads as follow:-

“2. On identical facts, another appeal is disposed of by the Hon’ble Bangalore Tribunal in M/s.Ravindra Multipurpose Co-operative Society Ltd. v. ITO (ITA No.1262/Bang/2019). The Hon’ble Tribunal has remanded the case to the assessing officer to verify the facts with the decision of the Hon’ble Supreme Court in M/s.Mavilayi Service Co-operative Bank Ltd. v. CIT 431 ITR 1 since the Hon’ble Surpeme Court has settled all the issues related to deduction of S.80P(2)(a)(i) by a Co-operative Society dealing with regular members, nominal members and associate members.

3. In the present case, the Revenue is relying on the decision of this Bangalore Tribunal in M/s.Athmashakthi Multipurpose Co-operative Society v. ITO (ITA No.1220 & 1221/Bang/2019. However, this decision is also rendered before the decision of Hon’ble Supreme Court in M/s.Mavilayi Service Co-operative Bank Ltd. v. CIT 431 ITR 1.

In view of the above submissions, it is prayed that the Hon’ble Tribunal be pleased to remand the case to the files of the assessing officer to examine the same de novo in the light of the above judgment of the Hon’ble Supreme Court.”

6.1 The learned AR also placed on record copies of the orders of the ITAT in the case of M/s.Ravindra Multipurpose Co-operative Society Limited v. ITO in ITA No.1262/Bang/2019 (order dated 31.08.2021). The order of the CIT(A) in the case of M/s.Ravindra Multipurpose Co-operative Society Ltd. was also placed on record and the learned AR submitted that the same CIT(A) has passed the order in this case as well as in the case of M/s.Ravindra Multipurpose Co-operative

Society Ltd. v. ITO (supra). It was submitted that the wordings of the CIT(A) in both the orders are identical.

7. The learned Standing Counsel relied on the order of the ITAT in the case of M/s.Athmashakthi Multipurpose Co-operative Society v. ITO (ITA No.1220 & 1221/Bang/2019 (order dated 18.10.2019).

8. I have heard rival submissions and perused the material on record. The Division Bench of the Tribunal in the case of M/s.Ravindra Multipurpose Co-operative Society Limited v. ITO (supra) had remanded the identical issue to the files of the A.O. for *de novo* consideration. The Tribunal directed the A.O. to follow the dictum laid down by the Hon'ble Apex Court. The relevant finding of the ITAT in the case of M/s.Ravindra Multipurpose Co-operative Society Ltd. v. ITO (supra) reads as follow:-

*“6. Grounds 2-4 & additional Ground No.1:
In respect of associate / nominal members, Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC) has held that the expression “Members” is not defined in the Income-tax Act. Hence, it is necessary to construe the expression “Members” in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. In view of this, the facts are to be examined in the light of principles laid down by the Hon'ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. (supra). Accordingly, we remit this issue of deduction u/s 80P(2)(a)(i) of the Act to the files of Ld.AO to examine the same de novo in the light of the above judgment. Needless to say that proper opportunity of being heard is to be granted to assess in accordance with law.”*

8.1 In view of the order of the ITAT, which is identical to the facts of the instant case, I restore the issue of claim of

deduction u/s 80P of the I.T.Act to the files of the A.O. for *de novo* consideration.

8.2 As regards the claim of deduction u/s 80P(2)(d) of the I.T.Act, the CIT(A) has not adjudicated the same for the reason that the assessee has violated the principle of mutuality. If the assessee receives interest / dividend income out of investments earned with co-operative society, the same is entitled to deduction u/s 80P(2)(d) of the I.T.Act. With these observations, we direct the A.O. to examine the claim of deduction u/s 80P(2)(d) of the I.T.Act, afresh.

8.3 Insofar as the issues raised in additional grounds are concerned, I noticed that they are purely legal in nature, which can be decided on the basis of facts on record. Therefore, by placing reliance on the judgment of the Hon'ble Apex Court in the case of National Thermal Power Corporation Limited reported in 229 ITR 383, I admit the additional grounds. The issues raised in the additional grounds are also restored to the files of the A.O. since the main issue of claim of deduction u/s 80P of the I.T.Act is restored to the A.O. for fresh consideration. it is ordered accordingly.

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

Order pronounced on this 20th day of September, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mangaluru.
4. The Pr.CIT mangaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore