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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 739/Bang/2021
Assessment Year : 2017-18

M/s. Bhavana Co-operative Credit Society Niyamita, #38, Market Road, Sirsi – 581 401. **PAN: AACAB5033D**	**Vs.**	The Income-tax Officer, Ward – 1, Sirsi.
APPELLANT		**RESPONDENT**

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ITA No. 361/Bang/2022
Assessment Year : 2017-18

M/s. Bhavana Co-operative Credit Society Niyamita, #38, Market Road, Sirsi – 581 401. **PAN: AACAB5033D**	**Vs.**	The Principal Commissioner of Income Tax, Hubali.
APPELLANT		**RESPONDENT**

Assessee by	**:**	Shri V. Srinivasan, Advocate
Revenue by	**:**	Shri Praveen Karanth, CIT-DR

Date of Hearing	**:**	14-09-2022
Date of Pronouncement	**:**	16-09-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee against order dated 22/11/2021 passed by National Faceless Appeal Centre, Delhi u/s. 250 of the Act and against the order dated 29/03/2022

passed by Ld.Pr.CIT, Hubli u/s. 263 of the Act relating to A.Y. 2017-18 on following grounds of appeal.

ITA No. 739/Bang/2021

"1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned Commissioner of Income tax [Appeals] of the National Faceless Appeal Center (CIT[A] for short) is not justified in upholding the denial of deduction u/s.80P[2][a][i] of the Act to the extent of Rs. 24,44,073/- that has been computed by the Assessing Officer as the profits earned by the appellant from the business of providing credit facilities to associate members under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] erred in holding that the aforesaid profits computed in respect of the business of providing credit facilities to associate members, who could neither vote nor were entitled to a share in the profits as per the bye-laws of the appellant cannot be allowed as deduction u/s. 80P[2][a][i] of the Act having regard to the rationale behind the judgment of the Hon'ble Supreme Court in the case of Citizen Co-Operative Society reported in 397 ITR 1 under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] erred in holding that the activities of the appellant undertaken with associate members amounts to dealing with non-members without appreciating that there is no prohibition under the Karnataka Cooperatives Societies Act, 1959 and thus, there was no violation of any of the provisions of the Karnataka Co-operative Societies Act under which the appellant was constituted and therefore, the same cannot be considered as business carried on with non-members in order to disentitle the appellant to deduction in light of the ratio of the judgement of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. reported in [2021] 123 Taxmann.co 161[SC], which the learned CIT[A] has failed to advert to.

5. The learned CIT[A] ought to have appreciated that the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. reported in [2021] 123 Taxmann.co

161[SC] has held that Paragraphs 24 to 26 of the judgement in the case of Citizen Co-Operative Society reported in 397 ITR 1, being the judgment based on the combined effect of the statements of the principle of law applicable to the material facts of the case cannot be described as the ratio decidendi of the said judgment and therefore, the view expressed by the learned CIT[A] that the test of mutuality has to be complied with as held in the earlier judgement of the Hon'ble Apex Court in the case of Citizen Co-Operative Society [supra] is erroneous and therefore, the disallowance sustained on this basis requires to be vacated.

6. The learned CIT[A] erred in holding that the appellant is a co-operative credit society and is thus not entitled to the deduction u/s 80P[2][a][i] of the Act without appreciating that the appellant is providing credit facilities to its members, and thus the learned CIT[A] ought to have allowed the entire deduction u/s 80P[2][a][i] of the Act as claimed by the appellant.

7. The learned CIT[A] has erred in sustaining the addition of Rs. 43.10.760/-made by the learned A.O. u/s 68 rws 115BBE of the Act, without appreciating that the appellant had received Specified Bank Notes [SBN's for short] from its members who are identifiable and thus the money deposited into the appellant's bank during the demonetization period cannot be considered to be "unexplained cash credits" under the facts and in the circumstances of the appellant's case,

8. The learned CIT[A] failed to appreciate that the appellant had given complete details of the members who deposited cash with the appellant during the demonetization period and therefore, the said amount cannot be considered as unexplained cash credit.

9. Without prejudice to the above, the learned CIT[A] ought to have appreciated that the extent of SBN's deposited by the appellant during demonetization period was only Rs. 38,40,000/- and not Rs. 43,10,760/- as held by the learned A.O.

10. Without prejudice to the above, the tax levied u/s 115BBE of the Act at 60% is highly excessive and liable to be reduced substantially.

11. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s 234-B and 234-D of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

12. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

ITA No. 361/Bang/2022

"1. The order of the learned AO 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 learned P.C.I.T erred in holding that the jurisdiction u/s. 263 of the Act was available to revise the assessment order passed u/s. 143[3] of the Act, dated 31/12/2019 that has since merged with the appellate order passed by the learned CIT[A] dated 22/11/2021 wherein the deduction claimed u/s. 80P[2][a][i] of the Act was considered and decided and therefore, the impugned order passed u/s. 263 of the Act, dated 29/03/2022 with regard to the deduction u/s. 80P[2][a][i] of the Act is opposed to law and therefore, the same deserves to be cancelled.

3. Without prejudice to the above, the learned P.C.I.T. failed to appreciate that there was no error much less an error prejudicial to the interest of the revenue in the order passed by the learned Assessing Officer warranting revision u/s.263 of the Act and consequently, the order passed by the P.C.I.T. is opposed to law and facts of the appellant's case and requires to be cancelled.

4. The learned P.C.I.T. failed to appreciate that the learned A.O. had passed the order u/s 143(3) after making sufficient inquiries and with proper application of mind, and thus the same could not be held as erroneous by labelling the same to be not in accordance with law to warrant revision u/s 263 of the Act under the facts and in the circumstances of the appellant's case.

5. The learned P.C.I.T. is not justified in law and on facts in holding that the judgement of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited reported in [2021] [431 ITR 1] is inapplicable to the facts of the appellant's case and therefore, holding that the appellant was not entitled to deduction u/s. 80P[2][a][i] of the Act following the decision of the Hon'ble Supreme Court in the case of the Hon'ble Supreme Court in Citizen Coop Society Ltd. [397 ITR 1] and the decision of the Hon'ble ITAT Bangalore in Athmashakthi Co-operative Society Ltd. [ITA No.1221/Bang/2019 dated 18.10.19] and Sharanabasaveshwar Credit SouhardSahkariNiyamit [ITA No.1699/Bang/2019 dated 3.1.20], under the facts and in the circumstances of the appellant's case.

6. The learned P.C.I.T is not justified in law in directing the learned A.O. to tax the interest income under the head "Other Sources" without appreciating that the said interest income earned by the appellant was from out of the funds of the business of providing credit facilities to the members and therefore, the said interest income formed part of the income earned from business and therefore, the same cannot be assessed under the head "Other Sources" under the facts and in the circumstances of the appellant's case.

7. Without prejudice, the learned P.C.I.T is not justified in law in directing the learned A.0 to deny the alternate claim for deduction u/s 80P[2][d] of the Act to the extent of income earned from co-operative banks which are nothing but co-operative societies in possession of a license from the RBI under the facts and in the circumstances of the appellant's case.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered."

2. Brief facts of the case are as under:

2.1 The assessee is a cooperative credit society engaged in providing credit facilities to its members, filed its return of income for the assessment year under consideration on 20/09/2016 declaring Nil income after claiming Chapter VIA deduction u/s 80P(2)(a)(i) of the Act of Rs. 41,01,356/-. It was

noticed that the assessee has been collecting membership fees accepting deposits and providing credit facilities to the members.

2.2 Accordingly, the Ld.AO called upon assessee to show cause as to why the disallowance claimed u/s 80P should not be disallowed under the provisions of section 80P(4) applicable with effect from 01.04.2007. The assessee contended that the assessee being cooperative credit society is entitled for deduction u/s 80(2)(d) of the Act. However, the AO rejected the contention of the assessee and disallowed the claim u/s 80P of the Act, holding that since the assessee fulfills the condition laid down u/s 56 (c) (ccv) of part-V of the Banking Regulation Act, 1949 and being cooperative bank, not entitle for deduction u/s 80P (2)(a)(i) of the Act and also by taking support of the decision rendered by Hon'ble Supreme Court in the case of *M/s Citizens co-operative bank Vs. ACIT* reported in *[2017] 84 taxmann.com 114 (SC)* dated 8/8/2017 held that the above said income is not allowable as deduction u/s 80P(2)(d) of the Act.

2.3 The assessee had deposited Specified Bank Notes [SBN's] received from its members during the period of demonetization into its bank account. In course of the assessment proceedings, the assessee explained that its members had deposited the SBN's with the assessee and in turn, the assessee had deposited the said SBN's in the Nationalized Bank.

The assessee also produced the cash book before the Ld.AO [page 41 to 624 of the Paper Book] and the assessee filed also a copy of the confirmations from its members for having received SBN's,

which is placed at page 656 to 660 of the paper book for the Assessment Year 2017-18.

The Ld.AO after considering the submissions made the said addition of Rs. 43,10,760/- u/s 68 rws 115BBE of the Act on the ground that the assessee ought not to have accepted SBN's, which are banned and cannot be considered as legal tenders.

3. The ld.AO assessed Rs. 67,54,833/- as regular income of the assessee after a proportionate disallowance of Rs. 24,44,073/ u/s 80P(2)(a)(i) from Gross total income of Rs. Nil and made addition of Rs.43,10,760/- u/s. 68 r.w.s. 115BBE.

Aggrieved, the assessee challenged the assessment order before the CIT, who confirmed the order of the AO.

Aggrieved by the order of the CIT(A), the assessee is before us.

4. Ground nos. 2-6 is in respect of disallowance of deduction claimed u/s. 80P proportionately.

5. The Ld.AR submitted that, the entire issue requires re-examination in the light of decision rendered by *Hon'ble Supreme Court* in the case of *Mavilayi Service Co-operative Bank Ltd. and others* reported in *(2021) reported in 431 ITR 1*. He submitted that the coordinate bench restored identical issue to the file of the A.O. in many cases for examining the deduction claimed u/s 80P(2)(a)(i) of the Act, in the light of decision rendered by *Hon'ble Supreme Court* in the case of *Mavilayi Service Co-operative Bank Ltd. (Supra).*

The ld.DR supported the order of the lowers authorities.

We have heard both the parties and perused the materials record.

6. We find merit in the prayer of the assessee since the issue of deduction u/s 80P(2)(a)(i) of the Act requires fresh examination in the light of decision rendered by *Hon'ble Supreme Court* in the case of *Mavilayi Service Co-operative Bank Ltd. (supra)*, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O for examining it afresh as discussed above.

Accordingly Ground nos. 2-6 stands allowed for statistical purposes.

7. Ground nos. 6-10 is in respect of the addition made u/s. 68 r.w.s. 115BBE in respect of the money deposited into assessee's bank during demonetisation period. The Ld.AR submitted that it accommodated its members by extending its services by accepting the money deposited by them. It is the submission of the assessee that no benefit has accrued to assessee from the deposit of demonetised currency notes and that assessee has merely acted as an intermediator in utilising old currency which ceased to be accepted as a legal tender. The Ld.AR submitted that during the demonetisation period, assessee had deposited cash as under.

Account No	Name of the Bank and Branch	Cash deposited during the period from 09.11.2016 to 30.12.2016
9110100128518	Axis Bank	Rs. 470760/-
9150200329670	Axis Bank	Rs. 3840000- Rs.
Total		Rs. 4310760/-

8. The Ld.AR submitted that authorities below have not verified the genuineness and has rejected the claim of the assessee by considering the said deposits to be unexplained cash credit. He thus submitted that the issue may be remanded for due consideration based on the evidences filed by assessee. On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

9. We have carefully considered the rival contention and perused the orders of the lower authorities.

Admittedly the assessee has deposited Rs. 43,10,760/- during the post-demonetization between 09/11/2016 and 30/12/2016. Therefore Ld.AO made addition of said amount as income of the assessee u/s. 68 of the income tax act, on the ground that the assessee ought not to have accepted SBN's which were no longer a legal tender. At the outset, we are of the view that the cash book and the confirmations filed by the assessee should have been verified.

9.1 We have carefully gone through the various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number 03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II. These instructions gives a hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

10. In 1 of such instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of accounts have been rejected or not where substantial evidences of vide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

10.1 The instruction dated 21/02/2017 that the assessing officer basic relevant information *e.g.* monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash and is or fictitious

sales. The instruction is also suggested some indicators for suspicion of back dating of cash else or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

10.2 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. We are aware of the fact that not every deposit during the demonetisation period would fall under category of unaccounted cash. However the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash.

The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law.

Needless to say that proper opportunity of being heard must be granted to the assessee. The assessee may be granted physical hearing in order to justify its claim.

Accordingly the appeal in ITA No. 739/Bang/2021 stands allowed for statistical purposes.

11. One more appeal has been filed by assessee against an order passed u/s. 263 of the Act on identical issue that was considered by the Ld.PCIT. As we have already remitted the issues arising out of the original assessment proceedings back to the Ld.AO with necessary directions to verify, the present appeal filed by assessee becomes academic at this stage. Keeping all the contentions open, we upheld the 263 passed by the Ld.Pr.CIT.

In the result, the appeal filed by the assessee in ITA No. 361/Bang/2022 stands dismissed as not pressed.

In the result, the appeal in ITA No. 739/Bang/2021 stands allowed for statistical purposes and the appeal in ITA No. 361/Bang/2022 stands dismissed as not pressed.

Order pronounced in the open court on 16th September, 2022.

Sd/-	Sd/-
(CHANDRA POOJARI)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 16th September, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore