

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

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

ITA No.292/Bang/2023
Assessment Year : 2016-17

M/s. Uppinangady Catholic Multipurpose Co-operative Society Ltd., Uppinangadi, Puttur Taluk, D. K. District – 574 241. <b>PAN : AAAAU 8482 H</b>	Vs.	The Income Tax Officer, Ward - 1, Puttur, D. K. District – 574 201.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Mahesh R. Uppin, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Advocate – Standing Counsel for Revenue.

Date of hearing	:	07.06.2023
Date of Pronouncement	:	07.06.2023

**ORDER**

*Per George George K, Judicial Member:*

This appeal at the instance of the assessee is directed against order of CIT(A), dated 13.01.2023. The relevant Assessment Year is 2016-17.

2. Two issues were argued before the Tribunal viz., (i) whether the CIT(A) is justified in confirming the AO's order in denying the claim of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter called 'the Act') (ii) whether interest income received amounting to Rs.16,217/- from Co-operative Banks / Scheduled Banks, whether it is income from business or income from other sources.

3. Brief facts of the case are as follows:

Assesse is a credit co-operative society registered under the Karnataka Co-operative Societies Act, 1959. Assessee is engaged in the business of providing credit facilities to its members. For the Assessment Year 2016-17, the return of income was filed declaring gross total income of Rs.3,37,178/- which included interest income received on investments with banks amounting to Rs.16,217/-. The assessee had claimed the entire income as deduction under section 80P(2)(a)(i) of the Act. The assessment was completed under section 143(1) r.w.s. 147 of the Act, vide order dated 16.12.2019, wherein the claim of deduction under section 80P(2)(a)(i) of the Act was denied for the reason that assessee was primarily dealing with non-members and in view of the Hon'ble Apex Court's judgment in the case of Citizen Co-operative Society Ltd., reported in 397 ITR 1, the assessee is not entitled to claim deduction under section 80P(2)(a)(i) of the Act. Further, the AO has held that interest income earned from scheduled banks amounting to Rs.16,217/- would not be entitled to deduction either under sections 80P(2)(a)(i) or 80P(2)(d) of the Act.

4. Aggrieved by the order of the AO, assessee preferred the appeal before the First Appellate Authority (FAA). Before the FAA, the assessee relied on the judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT, reported in 431 ITR 1. The CIT(A), however, rejected the contentions of the assessee and confirmed the view taken by the AO. The CIT(A) held that the assessee has not been able to prove how the dictum laid down in the case of Mavilayi Service Co-operative Bank Ltd., (supra) applies to the facts of the instant case. Further, the CIT(A) held that the interest income received from scheduled banks amounting to Rs.16,217/- cannot be allowed as a deduction under section 80P(2)(a)(i) nor under section 80P(2)(d) of the Act.

5. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. The learned AR fairly submitted that assessee is primarily dealing with the non-members. Learned AR stated that out of 1462 members, 562 members are regular members and balance 900 members are associate members. The learned AR stated that with reference to the income received from non-members / associate members, the assessee may not be entitled to deduction under section 80P(2)(a)(i) of the Act. However, with reference to the regular members (total 562 members), the assessee would be entitled to proportionate deduction under section 80P(2)(a)(i) of the Act, with reference to the income earned from regular members. In this context, learned AR relied on the judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., (supra). As regards the interest income received from scheduled banks, the learned AR did not raise any specific contentions.

6. The learned Standing Counsel Shri. Ganesh R. Ghale submitted that assessee is essentially dealing with non-members, and therefore would not be entitled to deduction under section 80P(2)(a)(i) of the Act. In this context, learned AR relied on the order of the Bangalore Bench of the Tribunal in the case of Shri Parvati Parameshwar Pattin Sahakari Sangh Niyamit Vs. ITO in ITA No.172/Bang/2020 for Assessment Year 2016-17, order dated 21.01.2021. As regards the claim of deduction on interest income from scheduled banks, the learned AR submitted that the assessee is not entitled to deduction either under section 80P(2)(a)(i) or under 80P(2)(d) of the Act and relied on the judgment of the Hon'ble jurisdictional High Court in the case of Totagars Co-operative Sale Society Vs. ITO reported in 395 ITR 611.

7. I have heard the rival submissions and perused the material on record. In the instant case, admittedly assessee has been accepting and giving loan to non-

members also (associate members). Section 18 of Karnataka Co-operative Societies Act, 1959, defines a nominal or associate members as under:

*"Nominal or Associate members : Not with standing anything contained in section 16, a co-operative society may admit,*

- (a) Any individual as a nominal or associate member;*
- (b) Any banking company as a nominal member;*
- (c) Any firm, company, co operative society or any body or corporation constituted by or under any law for the time being in force, as a nominal or associate member.*
  - A nominal member shall not be entitled to any share in any form whatsoever in the assets or profits of the society and a nominal member who is an individual shall not also be entitled to become an office bearer of the society.*
  - An associate member may hold shares but shall not be entitled to become an office bearer of the society."*

8. Section 18 of the Karnataka Co-operative Societies Act, 1959 was amended whereby the following proviso was inserted with effect from 01.06.2014:-

- "Provided that the number of associate and nominal members under clause (a) in any Co-operative Society shall not exceed fifteen percent of the total membership of the society. However, in case of Co-operative societies already having more than 15% of their total membership as associate & nominal members, the excess associate & nominal members shall be either made as member, if eligible under the section 16 or shall be removed from the associate & nominal membership within six months from the date of commencement of the Karnataka Co- operative Societies (Amendment) Act, 2014."*

9. As per the above amendment, w.e.f. 01.06.2014, Co-operative Societies registered under the Karnataka Co-operative Societies Act, 1959, is allowed to have nominal / associate members (non-members) upto 15% of its total membership. In the instant case, as mentioned earlier, the assessee society is providing credit facilities to non-members exceeding 15% of its total

membership. Therefore, assessee would not be entitled to deduction under section 80(P)(2)(a)(i) of the Act on income arising from dealing with non-members.

10. However, the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., (supra) reported in 431 ITR 1 had categorically stated that assessee is entitled to proportionate deduction under section 80P(2)(a)(i) of the Act in respect of its income earned from its business from regular members. The relevant finding of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., (supra) reads as follows:

*“To sum up, therefore, the ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word “agriculture” into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.” (emphasis supplied)*

11. From the last sentence of the above extracted portion of the Hon'ble Apex Court judgment, it is clear that only profits attributable to non-members alone would not be entitled to deduction under section 80P(2)(a)(i) of the Act. Thereby meaning proportionate deduction is to be allowed in respect of the income arising out of business with the members of the assessee society. In the light of the above said judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., (supra), I restore the issue to the AO to determine the proportionate deduction under section 80P(2)(a)(i) of the Act with regard to the income earned from the assessee's dealings with its regular members. It is ordered accordingly.

12. As regards the claim of deduction in respect of interest income earned from scheduled banks, I hold that assessee is not entitled to the claim of deduction either under section 80P(2)(a)(i) or 80P(2)(d) of the Act. In this context, I rely on the judgment of the Hon'ble jurisdictional High Court in the case of Totagars Co-operative Sale Society (supra).

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

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(GEORGE GEORGE K)**  
**Judicial Member**

Bangalore.

Dated: 07.06.2023.

/NS/\*

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

By order

Assistant Registrar,  
ITAT, Bangalore.